

ANNUAL INTERNATIONAL REPORT

2011



PREFACE

During the Apartheid era, South Africa was excluded from the human rights community. In 1994 South Africa was embraced into the family of democratic nations in which human rights are guaranteed and enshrined in a constitution. Along with this transition, the State signed and ratified most of the international human rights instruments at an international and regional level. South Africa still has much to do to address the impact of past racial discrimination that has entrenched deep inequalities in our country resulting in the majority of people in South Africa living in poverty. Our constitution demands that the workings of discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth are addressed in order to improve the 'quality of life of all citizens and free the potential of each person'.¹ Poverty has become the greatest human rights violation in that it prevents people who are poor from accessing their socio-economic, civil and political rights. In the process of addressing poverty and giving effect to the constitutional rights to everyone, the precedents and pronouncements of the international human rights community which bind South Africa through its international treaty body obligations may be drawn upon to assist and guide us.

The South African Human Rights Commission's *International Report 2011*, is an annual publication which seeks to explore international human rights developments at an international and regional level. In reflecting on the past year, developments that are of interest to South Africa and Africa are extracted and highlighted from the enormous maze of information that exists. The Report then sets out succinctly the level of formal compliance that South Africa currently enjoys in relation to its international and regional treaty body obligations. Finally, in order to bring international law closer to the South African reality, judicial and legislative developments are highlighted as well as popular news stories that have made headlines during the year. This is done in order to demonstrate in a very practical sense how what occurs on a daily basis has resonance not just in terms of our constitution but also in terms of South Africa's international human rights law obligations.

It is anticipated that the *International Report 2011* will enjoy a wide audience and that anyone who is interested in human rights and wishes to deepen their knowledge and understanding in this area will benefit and be further empowered to infuse international law into their daily work

¹ Constitution of the Republic of South Africa, 1996, Preamble

and activities. It is important that human rights based approach is actively reaffirmed, implemented and entrenched at a domestic level as despite all the excellent human rights conventions and treaties, poverty and inequality continues to deepen globally.

Finally, as South Africa's UN recognized "A" status national human right institution, this Report gives effect to our international obligations enshrined in the Paris Principles to promote the ratification and effective implementation of international instruments; to promote and ensure the harmonization of legislation and policy with international human rights instruments and to report on human rights in the country in general. It furthermore gives effect to our constitutional obligations to promote a culture of human rights and to monitor and assess the observance of human rights in South Africa.

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LIST OF ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AfCHPR	African Court on Human and People's Rights
AMD	Acid Mine Drainage
AMR	Annual Ministerial Review
APRM	African Peer Review Mechanism
APT	Association for the Protection of Torture
CAT	Committee Against Torture
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CGE	Commission for Gender Equality
CMW	Committee on Migrant Workers
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSW	Commission on the Status of Women
DAC	Day of the African Child
DBE	Department of Basic Education
DESA	Department of Economic and Social Affairs
DOJCD	Department of Justice and Constitutional Development
DWCPD	Department of Women, Children and People with Disabilities
EAP	Economically Active Population
ECOSOC	Economic and Social Council
FCS	Family Violence, Child Protection and Sexual Offences Unit
HRC	Human Rights Committee
HSRC	Human Sciences Research Council
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICD	Independent Complaints Directorate
ICEDAW	International Convention on the Elimination of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights

ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICRPD	International Convention on the Rights of Persons with Disabilities
IEC	Independent Electoral Commission
ILO	International Labour Organisation
JICS	Judicial Inspectorate of Correctional Services
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MDG	Millennium Development Goal
NANHRI	Network of African National Human Rights Institutions
NEEDU	National Education and Evaluation Unit
NEPAD	New Partnership for Africa's Development
NGO	Non Governmental Organisation
NHI	National Health Insurance
NHRI	National Human Rights Institution
NPOA	National Programme of Action
NPM	National Preventive Mechanism
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPCAT	Optional Protocol to the Convention Against Torture
OPSC	Optional Protocol on the Sale of Children, Child Pornography, and Child Prostitution
PAIA	Promotion of Access to Information Act
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALC	Southern African Litigation Centre
SAPS	South African Police Service
SASAS	South African Social Attitudes Survey
SERI	Socio-Economic Rights Institute of South Africa
UN	United Nations
UNCAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	United Nations Convention on the Rights of the Child
UPR	Universal Periodic Review

The South African Human Rights Commission has a secretariat, a CEO and Commissioners. The CEO is Kayum Ahmed who commenced his duties on 1 August 2010.

The Commissioners and their portfolios are set out below:

Commissioner	Strategic Focus Area	Section 5 Committee	UN Treaty Bodies
Chairperson, Commissioner M L Mushwana	Asylum Seekers, Migration and Counteracting Xenophobia, Housing, Equality	Non- nationals	Convention on the Elimination of Racial Discrimination
Deputy Chairperson, Commissioner P Govender	Basic Services, Access to Information	Basic services	Convention on the Elimination of All Forms of Discrimination against Women
Commissioner S Baai	Food, Health Care	Food	
Commissioner B Malatji	Disability, Older Persons	Disability and Older Persons	Convention on the Rights of persons with Disabilities
Commissioner L Mokate	Basic Education, Children	Basic Education and Children	Convention on the Rights of the Child
Commissioner J Love (part- time)	Environment, Natural Resources, Rural Development	Acid Mine Drainage	International Covenant on Economic, Social and Cultural Rights
Commissioner D Titus (part- time)	Human Rights and Law Enforcement, Prevention of Torture	Prevention of Torture	Convention against Torture Other Cruel, Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights

PART A

THE INTERNATIONAL SYSTEM

INTRODUCTION

The United Nations (UN) oversees a number of international treaties that bind States Parties to protect and to take positive action to facilitate the enjoyment of basic human rights. By adopting these treaties, member states send a strong message to the world community about their commitment to promoting and protecting human rights. This commitment is not only symbolic; states that ratify international human rights treaties must implement domestic measures and legislation compatible with their treaty obligations.

To demonstrate their compliance, states must abide by the treaty guidelines and periodically report to UN committees of independent experts who monitor implementation by reviewing state reports and issuing concluding observations and recommendations. Although the exact reporting requirements vary, States Parties typically must submit an initial report within one year of ratifying a convention. Periodic reports are subsequently due at regular intervals set by each committee. Additional reports may be required if States Parties have acceded to any optional protocols.

In addition to reviewing state reports, UN committees may issue 'General Comments' to clarify treaty obligations and provide further guidance on the steps necessary for effective implementation. In 2011, the Human Rights Committee and the Committee on the Rights of the Child each issued General Comments regarding their respective treaties.

Some treaty bodies also provide mechanisms which allow individuals to file complaints against States Parties that they believe have violated their treaty rights. When an individual files a complaint, the reviewing committee investigates the claim and gives the named state an opportunity to respond in closed private meetings. After a thorough enquiry, the committee publishes its findings. However, a committee may consider only complaints regarding states that have agreed to be subject to this process.

Additionally, in 2006 the UN General Assembly established the Human Rights Council, which soon after instituted a Universal Periodic Review (UPR) process whereby the Council would review the human rights record of every member state once every four years.²

The role of national human rights institutions (NHRIs), such as the South African Human Rights Commission (SAHRC), in relation to international treaty body monitoring and reporting continues to develop. NHRIs have played important roles in promoting the core UN human rights treaties and in interacting directly with treaty bodies through the submission of independent reports and participation in hearings. NHRIs have also been active in following up

² "General Assembly Resolution 251", U.N. Doc. A/RES/60/251 (3 April 2006).

on treaty body recommendations and Concluding Observations at the domestic level.³ There is hope that these international treaty bodies will strive to formally identify the role of NHRIs in their work, providing specific guidance on the types and forms of interaction that may, and should, take place between the two.

In looking back at 2011, this report will consider the current core international human rights treaties and South Africa's compliance with each, examining (1) treaty body actions, including observations and recommendations issued to States Parties and (2) legal, policy, and social developments in South Africa that are of significance to the international human rights treaty regime. Finally, this report will examine South Africa's obligations under Africa's regional human rights system, along with other human rights mechanisms outside of the core international treaty bodies, such as the various African Courts and the African Peer Review Mechanism.

As at the end of 2011, South Africa had signed and ratified the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (UNCAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). At a regional level South Africa has signed and ratified the African Charter on Human and People's Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).

South Africa has yet to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), and the Optional Protocol to the Convention against Torture (OPCAT). South Africa is a *signatory* to the ICESCR and OPCAT.

³ "NHRI Info Note 19," Office of the High Commissioner for Hum Rights, accessed on 16 March 2012 at www.nhri.ohchr.org.

CHAPTER 1

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) is a treaty that safeguards the right to life, liberty, and security, freedom from torture and slavery, equality before the law, freedom of movement, association, thought, religion and expression, privacy, and the enjoyment of culture. The ICCPR along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights comprise what is commonly known as the International Bill of Rights. There are two Optional Protocols to the ICCPR; the First Optional Protocol gives the Human Rights Committee competence to examine individual complaints with regard to alleged violations of the ICCPR by States Parties to the Protocol. The Second Optional Protocol compels States Parties to abolish the death penalty.⁴

The Human Rights Committee

The Human Rights Committee (HRC) monitors the implementation of the ICCPR and its Optional Protocols. The HRC is composed of 18 independent experts who are elected to four-year terms and normally meets three times per year.⁵ Committee members include representatives from the African nations of Algeria, Egypt, Mauritius and South Africa.⁶ Pursuant to the ICCPR, States Parties must submit an initial report within a year of ratification and periodic reports thereafter at the request of the HRC.⁷ The HRC is currently chaired by Dr. Zonke Majodina, the former Deputy Chairperson of the SAHRC.

Recent Developments

In 2011, the HRC met three times and considered reports from fourteen States Parties⁸ including Togo, Ethiopia and Malawi. During its 102nd session, the HRC revisited previous considerations of Article 19 of the ICCPR, Freedom of Opinion and Expression and adopted

⁴ "International Covenant on Civil and Political Rights," Office of the United Nations High Commissioner for Human Rights, accessed on 15 March 2012 at <http://www2.ohchr.org/english/law/ccpr.htm>.

⁵ In 2011, the Committee held its 101st Session in New York (14 March – 1 April 2011) and its 102nd and 103rd Sessions in Geneva (11-29 July 2011 and 17 October – 4 November 2011, respectively).

⁶ Members of the Committee are Mr. Lazhari Bouzid (Algeria), Ms. Christine Chanet (France), Mr. Ahmid Amin Fathalla (Egypt), Mr. Cornelius Flinterman (The Netherlands), Mr. Yuji Iwasawa (Japan), Mr. Walter Kalin (Switzerland), Mr. Rajoosemer Lallah (Mauritius), Mr. Zonke Zanele Majodina (South Africa), Ms. Iulia Antonella Motoc (Romania), Mr. Gerald L. Neuman (United States of America), Mr. Michael O'Flaherty (Ireland), Mr. Rafael Revis Posada (Colombia), Sir Nigel Rodley (United Kingdom), Mr. Fabian Omar Salvioli (Argentina), Mr. Marat Sarsembayev (Kazakhstan), Mr. Krister Thelin (Sweden), Mr. Margo Waterval (Suriname).

⁷ "Human Rights Committee", Office of the United Nations High Commissioner for Human Rights, accessed on 15 March 2012 at <http://www2.ohchr.org/english/bodies/hrc/index.htm>.

⁸ The Committee considered reports from Serbia, Slovakia, Mongolia, Seychelles, Togo, Ethiopia, Kazakhstan, Bulgaria, Dominica, Jamaica, Kuwait, Norway, Iran and Malawi during 2011.

General Comment 34 which addresses the same content as Article 19.⁹ The HRC emphasised the fundamental nature of the right to freedom of opinion, the right to freedom of expression and the inextricable relationship between these rights.¹⁰ The HRC paid particular attention to media activity within States Parties, noting the critical role of the media in facilitating the distribution of information to which the public has a right of access under Article 19 (2) of the ICCPR. To this end, the HRC's General Comment 34 references the responsibility of States Parties to engender and protect the independence of the media, protect the rights of media users,¹¹ advance global communication through new technology,¹² and to provide state funding to public broadcasting operations.¹³

During 2011, Palau and St. Lucia signed the ICCPR and Tunisia acceded to the First Optional Protocol. The HRC adopted views in respect to thirty-four individual complaints under the First Optional Protocol to the ICCPR.

South Africa and the ICCPR

On 10 December 1998, South Africa ratified the ICCPR and the Optional Protocols and the ICCPR entered into force in March 1999. Although South Africa's initial report to the HRC was due in March 2000, South Africa's initial, second and third periodic reports remain outstanding. South Africa has yet to appear before the HRC.

Right of Access to Information

The right to freedom of expression and the concomitant right of access to information have been at the forefront of government and civil society affairs since the proposal of the Protection of Information Bill (Secrecy Bill) in 2008 in Parliament. The Secrecy Bill has attracted widespread criticism from the outset because of its restrictive provisions that criminalize the publishing of any classified information.

On 22 November 2011, the Secrecy Bill was re-introduced in Parliament as the Protection of State Information Bill and was passed by 229 votes to 107 (with two abstentions) in the National Assembly.

⁹ "General Comment No. 34," CCPR/C/GC/34, Office of the United Nations High Commissioner for Human Rights, accessed on 15 March 2012 at www2.ohchr.org/english/bodies/hrc/comments.htm.

¹⁰ *Ibid.*, paragraph 3.

¹¹ *Ibid.*, paragraph 13.

¹² *Ibid.*, paragraph 14.

¹³ *Ibid.*, paragraph 15.

This development came amidst nationwide protests in which many people dressed in black to mark what was dubbed as 'Black Tuesday'.¹⁴ The SAHRC issued a statement expressing continued concerns about the Secrecy Bill, particularly the absence of a public interest defence that would allow the media to publish classified information to expose corruption or wrongdoing. The SAHRC also reiterated its previous calls for the Secrecy Bill to be aligned with the Promotion of Access to Information Act (PAIA) 2000 that ensured the public's right to access government records. The statement concluded with a call for broader public consultation while the Secrecy Bill was before the National Council of Provinces.¹⁵

Violence against Women

In its 2011 Concluding Observations, domestic violence against women was a further cause for concern for the HRC. In South Africa, domestic abuse, often connected with sexual violence, remains at unacceptably high levels despite the provisions of the Constitution and the Domestic Violence Act 116 of 1998. NGOs working with victims remain concerned by the frequency of domestic abuse incidents taking place, particularly in relation to the low conviction rates.¹⁶

Lesbian, Gay, Bisexual, Transgender and Intersex Discrimination

The HRC placed emphasis on the prevalence of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. In April 2011, Noxolo Nogwaza, a lesbian activist from Kwa-Thema Township, Gauteng was murdered in a violent attack. In response to national and international pressure exerted after the murder, it was announced in May that the government would set up a National Task Team on LGBTI Issues, comprised of judges, police and members of the LGBTI community responsible for creating "a legislative intervention plan, a public awareness strategy, and LGBTI-sensitive shelters".¹⁷ The team began its work in July and commenced its first working session in October. According to the Deputy Minister for Justice and Constitutional Development, the team had already held information sessions reaching more than 1000 court personnel in advance of the first working session.

¹⁴ "'Secrecy Bill' passed in Parliament," Hartley, W., Business Day (22 November 2011), accessed on 15 March 2012 at <http://www.businessday.co.za/articles/Content.aspx?id=159336>.

¹⁵ "Statement regarding the Protection of State Information Act," South African Human Rights Commission (22 November 2011), accessed on 15 March 2012 at <http://www.sahrc.org.za/home/index.php?ipkMenuID=16&ipkArticleID=85>.

¹⁶ "Human Rights Committee-101st Session," Office of the High Commissioner for Human Rights, accessed on 15 March 2012 at <http://www2.ohchr.org/English/bodies/hrc/hracs101.htm>. See Chapter 4 for further information

¹⁷ "South Africa team to tackle gay and lesbian hate crimes," BBC News (5 May 2011), accessed on 15 March 2012 at <http://www.bbc.co.uk/news/world-africa-13291223>.

These sessions aim to “break down stereotypes and mindsets that infringe the constitutional rights of LGBTI persons in [the South African] court system.”¹⁸

In May 2011, the Equality Court of Johannesburg ruled that an article written by the South African ambassador to Uganda, Jon Qwulane, ‘propagated hatred and harm’ and that the piece had caused ‘emotional pain and suffering’ to homosexuals.¹⁹ The article was published in the Sunday Sun newspaper under the heading ‘Call me names, but Gay is NOT okay’. The case was brought by the SAHRC under the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).²⁰ In September 2011, however, Qwulane’s application to rescind the Equality Court judgment was granted on technical grounds. The court explicitly stated that the rescission was not related to the merits of the case. The SAHRC was ordered to pay Qwulane’s costs in respect of the rescission of judgement application.²¹

*Torture and the Rights of the Accused*²²

In 2010, the HRC released its views regarding an individual complaint made by Bradley McCallum in relation to the torture and ill treatment that he endured in St. Albans Correctional facility in Port Elizabeth. The HRC concluded that the State of South Africa had breached Articles 7 (torture), 10 (treatment of accused or incarcerated) and 2(3) (competent remedy) of the ICCPR.²³ In September 2011, the Department of Correctional Services issued a statement in response to the HRC’s finding,²⁴ in which it stated that the decision of the HRC was reached in the absence of representatives from the South African government.

The South African Government was requested to provide information to the HRC on five different occasions.

¹⁸ “Task Team to Combat Homophobic Crimes Set Up,” Sabinet Law (27 October 2011), accessed on 15 March 2012 at <http://www.sabinetlaw.co.za/justice-and-constitution/articles/task-team-combat-homophobic-crimes-set>.

¹⁹ *SAHRC Complainant v. Qwulane*, 2011 (EQ JHB), accessed on 15 March 2012 at <http://constitutionallyspeaking.co.za/equality-court-judgement-against-jon-qwelane/>.

²⁰ *Promotion of Equality and Protection of Unfair Discrimination Act 4/2000*, South Africa Government Online (9 February 2000), accessed on 15 March 2012 at <http://www.info.gov.za/view/DownloadFileAction?id=68207>.

²¹ “Qwulane wins the battle but not the war,” Child, K., Mail & Guardian Online (1 September 2011), accessed on 15 March 2012 at <http://mg.co.za/article/2011-09-01-qwelane-wins-the-battle-but-not-war>.

²² See Convention Against Torture, Chapter 5 for more information on matters concerning torture.

²³ *McCallum v. South Africa*, Communication No. 1818/2008, U.N. Doc. CCPR/C/100/D11818/2008 (2010).

²⁴ “Response by South African Government to the findings of the United Nations Human Rights Committee in the matter of McCallum,” South African Government Information (29 September 2011), accessed on 15 March 2012 at <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=21945&tid=44442>.

In its statement, the government acknowledged that it had failed to act in accordance with the HRC's requests and announced that it was re-opening disciplinary and criminal investigations into the affair, providing a list of actions to be taken. The South African government also expressed its commitment to criminalising torture in its legislative framework.²⁵

In August 2011, the HRC formally requested feedback regarding the government's response to the McCallum matter from the Departments of Correctional Services, International Relations and Cooperation and Justice and Constitutional Development. In September, six years after the alleged incident, the government opened an investigation into the officials involved after having failed to participate in the international inquiry. On 6 October 2011, the Department of Correctional Services issued a joint media statement in response to the findings of the HRC. It must be noted that the HRC specifically requested that the government effectively publish their findings.²⁶ Finally in November 2011, the SAHRC made a presentation to the Portfolio Committee on Correctional Services, entitled 'Torture in Correctional Centres in South Africa'.²⁷ The presentation used the Bradley McCallum matter to emphasise South Africa's international and regional obligations regarding the prevention of torture.

The SAHRC further investigated a complaint brought by the F.W. de Klerk Foundation on behalf of student Chumani Maxwele of Cape Town. Maxwele was arrested in February 2010 after allegedly raising his middle finger in a rude gesture to President Jacob Zuma. It is reported that a bag was placed over Maxwele's head and that his hands were cable-tied during the arrest. The SAHRC investigated the incident and concluded that members of the Presidential Protection Unit had violated several of Maxwele's constitutional rights that fall within the scope of the ICCPR; amongst these, freedom and security of person, freedom of expression and the rights of detained persons.²⁸ The SAHRC also adopted the view that the Minister of Police should be held vicariously liable for the actions of members of the South African Police Service (SAPS) when their actions are within the course and scope of their employment. Maxwele is now claiming damages in the amount of R1.45 million from the Minister.²⁹

²⁵ Ibid.

²⁶ "Stakeholder hearings on the prevalence of Torture in Correctional Centres," Parliamentary Monitoring Group (29 Nov 2011), accessed on 15 March 2012 at <http://www.pmg.org.za/report/20111130-stakeholder-hearings-prevalence-torture-correctional-centres>.

²⁷ "Presentation to the Portfolio Committee on Correctional Services, 30 November 2011, Torture in Correctional Centres in South Africa," South African Human Rights Commission, accessed on 15 March 2012 at <http://www.pmg.org.za/files/docs/111130sahrc.doc>.

²⁸ "Zuma's VIP unit violated man's rights: SAHRC," The Citizen Online (7 July 2011), accessed on 15 March 2012 at <http://www.citizen.co.za/citizen/content/en/citizen/local-news?oid=208223&sn=Detail&pid=800&Zuma-s-vip-unit-violated-man-s-rights--SAHRC>.

²⁹ "Why I'm suing Zuma cops," IOL (9 May 2011), accessed on 15 March 2012 at <http://www.iol.co.za/capeargus/why-i-m-suing-zuma-cops-1.1066243?ot=inmsa.ArticlePrintPageLayout.ot>.

CHAPTER 2

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) include, among others, the right to work; to just and favourable conditions of work; to form trade unions; to social security; to family protection; to an adequate standard of living; to physical and mental health; to water and sanitation; to housing; to education; and to take part in cultural life. On 24 September 2009, the Optional Protocol to the ICESCR officially opened for signature. To date, the ICESCR Optional Protocol has been signed by 39 of the 160 States Parties to the ICESCR.³⁰ Ten ratifications are needed for it to come into force, enabling individuals to bring cases of violations of economic, social, and cultural rights before the Committee on Economic, Social and Cultural Rights (CESCR). By the end of 2011, seven states had ratified the Optional Protocol.³¹

The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of the ICESCR, meets twice a year in Geneva. The CESCR is comprised of 18 independent experts elected to four-year terms. CESCR members include representatives from three African countries, namely Egypt, Cameroon and Algeria.³² States Parties to the ICESCR are required to submit an initial report within two years of ratification and every five years thereafter. The CESCR is in the process of adopting Rules of Procedure for the Optional Protocol that will address how communications will be considered.

³⁰ As of 31 December 2011, the signatories to ICESCR are Argentina, Armenia, Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Cape Verde, Chile, Congo, Costa Rica, Democratic Republic of the Congo, Ecuador, El Salvador, Finland, Gabon, Ghana, Guatemala, Guinea-Bissau, Italy, Kazakhstan, Luxembourg, Madagascar, Maldives, Mali, Mongolia, Montenegro, Netherlands, Paraguay, Portugal, Senegal, Slovakia, Slovenia, Solomon Islands, Spain, Timor-Leste, Togo, Ukraine, Uruguay and Venezuela.

³¹ Argentina, Bolivia, Bosnia and Herzegovina, Ecuador, El Salvador, Mongolia, and Spain.

³² Members of the Committee are Mr. Azzouz Kerdoun (Algeria), Mr. Aslan Khuseinovich Abashidze (Russia), Mr. Mohamed Ezzeldin Abdel-Moneim (Egypt), Mr. Clement Atangana (Cameroon), Ms. Rocio Barahona Riera (Costa Rica), Ms. Jun Cong (China), Mr. Chandrasekhar Dasgupta (India), Mr. Zdzislaw Kedzia (Poland), Mr. Jaime Marchan Romero (Ecuador), Mr. Serigi Martynov (Belarus), Mr. Ariranga Govindasamy Pillay (Mauritius), Mr. Renato Zerbini Ribeiro Leao (Brazil), Mr. Eibe Riedel (Germany), Mr. Nikolaas Jan Schrijver (Netherlands), Mr. Waleed Sadi (Jordan), Ms. Heisoo Shin (Republic of Korea), Mr. Philippe Texier (France), and Mr. Alvaro Tirado Mejia (Colombia); see <http://www2.ohchr.org/english/bodies/cescr/members.htm>.

Recent Developments

In 2011, the CESCR met twice in Geneva reviewing a total of 10 state reports, including those of Cameroon and Algeria.³³ Common recommendations made by the CESCR included implementing international trade and agricultural policies consistent with a human rights-based approach, ensuring access to social security for asylum-seekers, reducing levels of unemployment, combating homelessness, eliminating stereotypes and societal attitudes that discriminate against women, ensuring that persons with disabilities enjoy social, economic and cultural rights, removing barriers to the effective realisation of rights for migrants, asylum-seekers and refugees, combating human trafficking, ensuring minimum wage levels that enable families to meet their basic needs and taking measures to ensure effective enforcement of domestic violence legislation; and combating corruption.

During its 45th session, the CESCR released its ‘Statement on the Right to Sanitation’ reaffirming the importance of sanitation as a fundamental right, enshrined in Article 11 of the ICESCR.³⁴ The Statement on the Right to Sanitation highlighted the fact that children are prone to becoming ill due to a lack of sanitation which can have a serious impact on their education and well-being. Furthermore, the CESCR reaffirmed that ‘since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights.’³⁵

In July 2011, the CESCR released a statement on the obligation of States Parties regarding the corporate sector and economic, social and cultural rights. The statement acknowledged that the corporate sector contributes to the realisation of economic development and investment. The CESCR further observed that the corporate sector is sometimes responsible for a range of societal problems such as child labour, unsafe working conditions and environmental impacts which adversely affect the enjoyment of rights enshrined in the ICESCR.

³³ Other State reports considered came from Germany, Republic of Moldova, Russian Federation, Turkey and Yemen at the 46th Session (2-20 May 2011), and Argentina, Estonia, Israel and Turkmenistan at the 47th Session (14 November – 2 December 2011).

³⁴ “Statement on the Right to Sanitation,” Committee on Economic, Social and Cultural Rights (19 November 2010), accessed on 15 March 2012 at <http://www2.ohchr.org/english/bodies/cescr/statements.htm>.

³⁵ Ibid.

The Statement calls for States Parties to provide a legislative framework that regulates and monitors the corporate sector to ensure accountability.³⁶ The CESCR also released a statement on the importance and relevance of the right to development, adopted on the 25th anniversary of the Declaration on the Right to Development. The statement reaffirms the complementary nature of the ICESCR and the Declaration on the Right to Development.³⁷

South Africa and the ICESCR

On 3 October 1994 South Africa signed the ICESCR and has yet to ratify the Covenant.³⁸ Despite playing an active role in its drafting and adoption, South Africa has yet to sign or ratify the Optional Protocol. South Africa is renowned to have one of the most progressive Constitutions in the world and, as such, most of the rights under the ICESCR are enshrined in the South African Bill of Rights.³⁹ Ratification of the ICESCR would confirm South Africa's commitment at an international level to upholding rights such as access to water and sanitation, health care, adequate housing and basic education.

ICESCR Ratification Campaign

Over the years, there have been a number of civil society campaigns to encourage South Africa to ratify the ICESCR. Currently the South African Campaign for the Ratification of the International Covenant on Economic, Social and Cultural Rights (the ICESCR Campaign) is at the forefront in respect of civil society campaigns. In response to a letter sent by the ICESCR campaign urging South Africa's ratification, President Zuma stated that there is a delay in ratifying the ICESCR due to a possible conflict between the ICESCR and the Constitution and with difficulties in identifying a lead department to service its implementation. On 18 July 2011, the ICESCR Campaign held a seminar in commemoration of Nelson Mandela International Day. The seminar was designed to inform and discuss the importance of ratification of the ICESCR with Parliamentary researchers, political party researchers and members of civil society.⁴⁰ A key

³⁶ "Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights," United Nations: Economic and Social Council E/C.12/2011/1, Office of the United Nations High Commissioner for Human Rights, accessed on 15 March 2012 at <http://www2.ohchr.org/english/bodies/cescr/statements.htm>.

³⁷ "Statement on the Importance and Relevance of the Right to Development, adopted on the occasion of the 25th anniversary of the Declaration on the Right to Development," United Nations: Economic and Social Council, E/C.12/2011/2, Office of the United Nations High Commissioner for Human Rights, accessed on 16 March 2012 at <http://www2.ohchr.org/english/bodies/cescr/statements.htm>.

³⁸ "Status as at: 19-03-2012, International Covenant on Economic, Social and Cultural Rights," Chapter IV: Human Rights, United Nations Treaty Collection, accessed on 16 March 2012 at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

³⁹ Constitution of the Republic of South Africa, 1996, Chapter 2 (Bill of Rights) s.26 (Housing), s.27 (Health care, food, water and social security), s.29 (Education), s.31 (Cultural, religious, and linguistic communities).

⁴⁰ "ICESCR Ratification Campaign Advocacy Progress Report," Community Law Centre Parliamentary Programme, accessed on 16 March 2012 at http://www.peopletoparliament.org.za/focus-areas/socio-economic-rights/resources/icescr-ratification-campaign/ICESCR_Campaign_Report.pdf/view.

message at this event was that ratification of the ICESCR would strengthen the domestic protection of economic, social and cultural rights in South Africa.⁴¹

Right to Food

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, conducted his first official visit to South Africa from 7-15 July 2011. During his visit, Mr. De Schutter met with Ministers and government agencies, and the SAHRC to review the policies that South Africa is implementing towards the progressive realisation of the right to adequate food.⁴² On 15 July 2011, the Special Rapporteur released his preliminary observations and conclusions. The observations and conclusions focused on the need for agrarian reform and the government's support for the farming sector and social protection measures to ensure adequate access to food for the poorest South Africans.⁴³

Right to Water and Sanitation

During 2011, the lack of adequate water and sanitation in poorer areas in South Africa received significant attention. In 2010, the SAHRC investigated complaints regarding 51 unenclosed toilets provided by the City of Cape Town in the Makhaza informal settlement. The SAHRC found that the City of Cape Town had violated the Makhaza residents' right to human dignity and that the City of Cape Town was constitutionally obliged to aid those who are socio-economically disadvantaged to enclose the toilets.⁴⁴ In 2011, the case was heard in the Western Cape High Court⁴⁵ after Makhaza residents approached the High Court to enforce the findings of the SAHRC. The High Court found that the City of Cape Town had violated the rights enshrined in the Constitution and acted unlawfully in providing unenclosed toilets to the residents of Makhaza. As such, the City of Cape Town was ordered to enclose the toilets as soon as possible.

⁴¹ "ICESCR Ratification Campaign Mandela International Day Seminar 18 July 2011," Community Law Centre Parliamentary Programme, accessed on 15 March 2012 at <http://www.peopletoparliament.org.za/icescr-ratification-campaign-mandela-day-seminar-18-july-2011>.

⁴² "First Visit to South Africa by UN Special Rapporteur on the right to food," Office of the United Nations High Commissioner for Human Rights (5 July 2011), accessed on March 16 2012 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11202&LangID=E>.

⁴³ "Mandate of the Special Rapporteur on the right to food – Mission to South Africa from 7 to 15 July 2011, Pretoria, 15 July 2011 – Preliminary observations and conclusions," United Nations Human Rights Office of the High Commissioner for Human Rights, accessed on 16 March 2012 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11243&LangID=E>.

⁴⁴ Constitution of the Republic of South Africa, 1996, ss.26-27.

⁴⁵ *Beja and Others v Premier of the Western Cape and Others*, 2011 (WCC) 3 All SA 401, 1077 (WCC) (29 April 2011), accessed on 16 February 2012 at www.saflii.org.za/cases/ZAWCHC/2011/97.html.

In May 2011, more open toilets were discovered in the Free State municipality of Rammolutsi. Public outrage was compounded by allegations that the mayor profited from these unenclosed facilities.⁴⁶ Similarly to the Makhaza matter in 2010, the SAHRC examined the open toilet complaint in Rammolutsi and found that the unenclosed toilets were unconstitutional and violated the constitutional rights to human dignity, privacy and a clean environment. The SAHRC made recommendations to enclose the toilets as soon possible and requested that the municipality report back to the SAHRC every six months in respect of the progressive realisation of the right to water and sanitation services in Rammolutsi.⁴⁷ In addition, the SAHRC has linked these individual complaints to the generic right to sanitation and has requested additional national reports from the Minister of Human Settlements and the Department of Performance Monitoring and Evaluation (DPME).

In a similar matter, in response to a local councillor refusing to provide basic water and sanitation services to the residents of three informal settlements in Langaville in Ekurhuleni Metropolitan Municipality, the Socio-Economic Rights Institute of South Africa (SERI)⁴⁸ launched a court application to compel the municipality to provide such services, as required by the Water Services Act 108 of 1997. In this case there were only two functioning taps and five other makeshift water connections as well as no access to basic sanitation for approximately 3 600 residents. The South Gauteng High Court handed down a draft order that the municipality must provide a certain number of additional standpipes and chemical toilets at the Langaville settlements by no later than 16 January 2012.⁴⁹

The SAHRC attended an international meeting coordinated by the Centre for Women's Leadership in conjunction with Ms. Catarina de Albuquerque, the United Nations Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation.⁵⁰ The discussions at the meeting focused on the need for the State's macroeconomic policies to comply with human rights obligations when assessing the use of the State's maximum available resources for the progressive realisation of the rights to water and sanitation.

⁴⁶ "ANC mayor stood to profit from open toilets," Mail & Guardian Online (11 May 2011), accessed on 16 March 2012 at <http://mg.co.za/article/2011-05-11-toilet-town-anc-mayor-profited-from-open-lavatories>.

⁴⁷ "South African Human Rights Commission Report in the matter between Gareth Van Onselen and Moqhaka Local Municipality (File Ref No: FS/2010/0231)," South African Human Rights Commission (16 May 2011) accessed on 16 March 2012 at <http://www.sahrc.org.za/home/21/files/FS%20Open%20Toilet%20Finding.pdf>.

⁴⁸ SERI is a South African NGO focused on socio-economic rights.

⁴⁹ "Mtungwa and Others v Ekurhuleni Metropolitan Municipality," Socio-Economic Rights Institute, accessed on 16 March 2012 at http://www.seri-sa.org/index.php?option=com_content&view=article&id=92:mtungwa-and-others-v-ekurhuleni-metropolitan-municipality-langaville&catid=12&Itemid=32.

⁵⁰ Center for Women's Global Leadership Meeting entitled 'Macroeconomic Policy & The Rights to Water & Sanitation' Lisbon, Portugal: 31 March -April 1, 2011, report accessed at <http://www.cwgl.rutgers.edu/globalcenter/proghigh.html>

*Right to Education*⁵¹

In April 2011, the Constitutional Court handed down a judgement in the case of the *Governing Body of Juma Masjid Primary School and Others v Essay NO and Others*⁵² that overturned an eviction order entered by the KwaZulu-Natal High Court for the Juma Masjid public school in the Durban City Centre. The school was officially established in 1957 as a government-aided school and an Islamic school established to offer education with a distinctive religious character for children in Grades 1 to 9. During 1997, the Trust permitted the Department to enlist the school as a public school with an Islamic religious ethos on its property. The permission, according to the Trustees, was subject to the conclusion of a written agreement between themselves and the MEC. Although the agreement was never concluded, the school was conducted on the Trust's property as a public school. The Trust paid for certain expenses associated with the running of the school. These payments were made allegedly on the understanding that the Department would reimburse the Trust. On 28 January 1999, the Trust and the SGB concluded a written agreement titled "Moral Deed of Agreement" (Moral Deed). On 9 October 2002, the Trust caused a letter to be sent to the Department indicating that it had taken a decision to establish an independent school on the property and that it would, in due course, afford the Department notice to "close" the existing school. A copy of the letter was sent to the SGB. On 24 October 2002, the SGB wrote to the Department noting its concerns about the letter received from the Trust. In the same month the Department responded, stating that if the school were to be evicted from the premises, the Department would either relocate the school to other premises or close it.

On 17 July 2003, the Trust sent a notice terminating the Department's right of occupation with effect from 31 December 2004. The Department undertook to vacate the premises. It did not. It appears that invoices for expenses incurred by the Trust were sent to the Department from 5 December 2005. On 11 January 2007, the Department further undertook to pay rentals backdated to 1998, but this too did not happen. Between February and November 2007, the Department again undertook to pay rentals and the Trust's out-of-pocket expenses incurred by the latter for the benefit of the school. Once more, the Department failed to fulfil its undertaking.

⁵¹ See Chapter on Convention on the Rights of the Child for more information on the right to education.

⁵² *Governing Body of Juma Masjid Primary School and Others v. Essay NO and Others* 2011 (ZACCC) 13, accessed on 16 March 2012 at <http://www.saflii.org.za/cases/ZACC/2011/13.html>.

The Trustees then asked the Department to indicate when it would vacate the premises. Instead of doing so, the Department asked for a meeting. The Trustees then launched the application in the High Court on 28 July 2008 for the eviction of the school from its property.

The High Court had granted the eviction order because the school was situated on land owned by a trust, and the Department of Education would not agree to pay any more than R3 000 per month in rent for the property. The school appealed on the grounds that the trust, as a quasi-public body, owes the school a public law duty not to unreasonably interfere with the right to education of its learners, and an eviction order would unjustifiably interfere with its learners' rights to basic education in Section 29 (1)(a) of the Constitution.⁵³ The Constitutional Court found that the Trustees, although acting reasonably in requesting the eviction order, have a constitutional duty to respect the rights of the learners to basic education under section 29(1). In the absence of evidence that alternative options were sought, the High Court in granting the eviction order failed to properly consider the best interests of the learners under section 28(2) of the Constitution and their right to a basic education under section 29(1). As a result, the eviction order was overturned.⁵⁴

Right to a Clean Environment

In November and December 2011, world leaders met in Durban for the 17th Conference of Parties (COP17/CMP7) that featured renewed climate change talks. The Conference aimed for States Parties to enter into a legally binding agreement that would effectively cut emissions and ensure that global temperature does not increase by more than two degrees Celsius. The conference concluded with States Parties deciding to adopt a universal legal agreement by no later than 2015. A new group called the Ad Hoc Working Group on 'the Durban Platform for Enhanced Action' will begin work on this legal agreement immediately.⁵⁵

Another environment related issue in South Africa is the management of Acid Mine Drainage (AMD).

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ "Durban conference delivers breakthrough in international community's response to climate change," COP17/CMP7, accessed on 16 March 2012 at <http://www.cop17-cmp7durban.com/en/news-centre/media-releases/indexhtml>.

AMD is the outflow of acidic water from metal or coal mines. AMD has a detrimental and often irreversible effect on the environment as it releases highly acidic contaminants into water resources that threaten the health and safety of communities who use the water.⁵⁶ Despite the clear threat that AMD poses to water security, AMD is a difficult and complex issue because the mining sector is one of the largest industries of the South African economy.

On 22 March 2011, the SAHRC requested the assistance of the Minister for Mineral Resources in addressing AMD concerns pertaining to the Grootvlei Mine and has specifically requested the Minister to devise and communicate a plan of action to neutralise and rehabilitate the Grootvlei mine.⁵⁷ Water is currently decanting from the mine causing detriment to the surrounding areas. The SAHRC has convened a Section 5 Committee on Environmental Justice and Mining in accordance with section 5 of the Human Rights Commission Act.⁵⁸ The Committee will 'advise the Commission on issues related to mining and impacts thereof on human settlements and the natural environment'.⁵⁹ The effects of AMD on communities threaten several rights enshrined in chapter 2 of the Constitution, particularly the rights to food, water and an environment that is not harmful to one's health or well-being.

Housing

The right to housing became a focal point in 2010 when protests took place in the community of Hangberg in Hout Bay, Western Cape. The local residents, victims of forced removal in the 1960s, had begun constructing informal houses in the mountainside firebreak. In September 2010, the City of Cape Town decided to remove the uninhabited structures, resulting in a violent protest by members of the Hangberg community. The Western Cape High Court ordered mediation between residents, who remained adamant that they had the right to build on the mountainside, and authorities, who insisted that the firebreak must remain free of structures.

⁵⁶ "Acid Mine Drainage in South Africa Briefing Note 2009/02," Council for Scientific and Industrial Research (August 2009), accessed on 16 March 2012 at http://www.csir.co.za/nre/docs/BriefingNote2009_2_AMD_draft.pdf.

⁵⁷ Grootvlei Mine is located in the Mpumalanga Province, South Africa.

⁵⁸ *Human Rights Commission Act* 54 of 1994, section 5. "5. (1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it. ... (4) A committee shall, subject to the directions of the Commission, exercise such powers and perform such duties and functions of the Commission as the Commission may confer on or assign to it and follow such procedure during such exercising of powers and performance of duties and functions as the Commission may direct."

⁵⁹ "Statement to announce the Commission interventions to address concerns regarding the Grootvlei Mine and Acid Mine Drainage," South African Human Rights Commission (12 April 2011), accessed on 20 February 2012 at <http://www.sahrc.org.za/home/index.php?ipkArticleID=48>.

In 2011, after months of negotiations, a peace accord was signed by the local authority and the community of Hangberg. The accord includes, *inter alia*, provisions for housing of people who were living in the firebreak area.⁶⁰

Access to Healthcare

In August 2011, the South African government approved plans to introduce the National Health Insurance (NHI) scheme, which will be launched in April 2012 and phased in nationally over the next 14 years. The main purpose of the NHI is to bridge the gap between the privileged and the poor in access to health care. Currently, more than 80% of South Africans cannot afford private medical insurance and rely on publicly funded hospitals.⁶¹ The private sector treats only 16.2% of the population and has a relatively large proportion of funding allocated through medical schemes, hospital plans, and out-of-pocket payments while public healthcare is provided to 84% of the population and is funded through the fiscus.⁶² The NHI will cover all South African citizens and legal permanent residents, with refugees and asylum seekers provided for in line with the Refugees Act of 1998.⁶³

⁶⁰ "Hangberg, authorities celebrate peace accord," Pretoria News (12 December 2011), accessed on 20 February 2012 at <http://www.pretorianews.co.za/hangberg-authorities-celebrate-peace-accord-1.1196521>.

⁶¹ "South Africa unveils universal health scheme," BBC News (12 August 2011), accessed on 16 March 2012 at <http://www.bbc.co.uk/news/world-africa-14504628>.

⁶² "National Health Insurance briefing by Department of Health," Parliamentary Monitoring Group (23 August 2011), accessed on 16 March 2012 at <http://www.pmg.org.za/node/27955>.

⁶³ *Ibid.*

CHAPTER 3

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a comprehensive instrument prohibiting discrimination based on race, descent, national or ethnic origin, including the prohibition of hate speech and the criminalisation of membership in racist organisations.

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD), which monitors the implementation of the ICERD, meets in Geneva twice a year for three-week sessions which are normally held in February and August.⁶⁴ The CERD is composed of 18 members, each of whom is elected for a term of four years. CERD members include representatives from the following African nations, namely Algeria, South Africa, Burkina Faso, Togo and Niger.⁶⁵ States Parties to the ICERD must submit an initial report within a year of ratification and every two years thereafter.

Recent Developments

In 2011, CERD's 24th meeting of States Parties took place in New York and saw the election of members to CERD to replace the nine members whose terms were due to expire in 2012.⁶⁶ Djibouti ratified the ICERD, becoming its 175th States Party. In September 2011, Palau became a signatory to the ICERD.⁶⁷ In 2011, CERD held its 78th and 79th sessions and considered a total of 21 state reports, including reports from Rwanda and Kenya.⁶⁸

⁶⁴ All sessions of the Committee on the Elimination of Racial Discrimination can be accessed at <http://www2.ohchr.org/english/bodies/cerd/sessions.htm>.

⁶⁵ Committee members are Mr. Noureddine Amir (Algeria), Mr. Avtonomov (Russian federation), Mr. Cali Tzay (Guatemala), Ms. Crickley (Ireland), Ms. Dah (Burkina Faso), Mr. Diaconu (Romania), Mr. de Gouttes (France), Mr. Huang (China), Mr. Kemal (Pakistan), Mr. Lahiri (India), Mr. Kut (Turkey), Mr. Lindgren Alves (Brazil), Mr. Murillo Martinez (Colombia), Mr. Waliakoye Saidou (Niger), Mr. Peter (Tanzania), Mr. Kokou Mawuena Ika Kana Ewomsan (Togo), Mr. Prosper (USA), Mr. Thornberry (United Kingdom).

⁶⁶ Members of the CERD with a term expiring on 12 January 2012 are Mr. Alexei Avtonomov (Russian Federation), Mr. Cali Tzay (Guatemala).

⁶⁷ "Status as at: 01-12-2011, International Convention on the Elimination of All Forms of Racial Discrimination," Chapter IV: Human Rights, United Nations Treaty Collection, accessed on 16 March 2012 at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en.

⁶⁸ CERD also considered reports from Armenia, Bolivia, Cuba, Ireland, Lithuania, Moldova, Norway, Serbia, Spain, Uruguay and Yemen (78th Session) and Albania, Czech Republic, Georgia, Maldives, Malta, Paraguay, Ukraine and United Kingdom (79th Session).

In its Concluding Observations, CERD expressed general concern about the adequacy of current legislative frameworks in eliminating all forms of racial discrimination.⁶⁹ Some of the issues raised in considering state reports include the lack of disaggregated data relating to ethnic minorities;⁷⁰ the treatment of refugees and asylum seekers;⁷¹ ensuring the right of education, housing and employment for ethnic minorities;⁷² and the treatment of people of African descent.⁷³ In considering State reports from African countries, CERD urged Rwanda to recognise the Batwa community as an indigenous group and to take appropriate measures to prevent the continued marginalisation of the group.⁷⁴ CERD recommended that Kenya take steps to combat racial discrimination in employment and housing.⁷⁵ Other issues of particular relevance to South Africa relate to the treatment of non-nationals and the problems of indirect segregation through 'ghetto-like housing'.⁷⁶

On 7 March 2011, CERD held a Day of Thematic Discussion on 'Racial Discrimination against People of African Descent'. This event took place as part of the International Year for People of African Descent,⁷⁷ which aimed to strengthen national activity and cooperation for the benefit of persons of African descent in relation to their rights, their participation in all aspects of society and the promotion of a greater knowledge of, and respect for, their heritage and culture. On 3 October 2011, arising out of the resolutions from the Day of Thematic Discussion, the Committee issued General Recommendation No. 34 on 'Racial Discrimination Against People of African Descent'. CERD emphasised the need for legislative and strategic measures against discrimination perpetrated against persons of African descent living in various part of the world. CERD also encouraged States Parties to cooperate with civil society and members of affected communities to promote the 'spirit of non-discrimination'.⁷⁸

⁶⁹ "Committee on the Elimination of Racial Discrimination Concludes Seventy-Ninth Session," United Nations Office at Geneva (2 September 2011), accessed on 16 March 2012 at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/56416D9AFF8F6789C12578FF0040CDAE?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/56416D9AFF8F6789C12578FF0040CDAE?OpenDocument).

⁷⁰ Ibid. (Armenia, CERD/C/ARM/CO/5-6).

⁷¹ Ibid. (Ireland, CERD/C/IRL/CO/3-4).

⁷² Ibid. (Bolivia, CERD/C/BOL/CO/17-20).

⁷³ Ibid. (United Kingdom, CERD/C/GBR/CO/18-20).

⁷⁴ Ibid. (Rwanda, CERD/C/RWA/CO/13-17).

⁷⁵ Ibid. (Kenya, CERD/C/KEN/CO/1-4).

⁷⁶ Ibid. (Lithuania, CERD/C/LTU/CO/4-5).

⁷⁷ "Committee on the Elimination of Racial Discrimination: Thematic discussion on racial discrimination against People of African descent," Office of the United Nations High Commissioner for Human Rights (7 March 2011), accessed on 15 February 2012 at <http://www2.ohchr.org/english/bodies/cerd/AfricanDescent.htm>.

⁷⁸ Ibid.

South Africa and ICERD

On 3 October 1994 South Africa signed the ICERD and ratified it on 10 December 1998. On its first appearance before CERD in August 2006, South Africa was requested to submit a report on its progress on hate crimes, hate speech, xenophobia, and racist behaviour by 15 August 2007. This report is yet to be submitted. South Africa's last periodic report was due on 9 January 2010, but is also outstanding.⁷⁹

In 2011 there were continued reports of intolerance against non-nationals from Zimbabwe and Somalia. Immigrants are often viewed as a threat to local South Africans in securing an income and are treated with hostility. Media reports suggest attacks on Somali shopkeepers and hostility to Zimbabwean immigrants appear to be rising.⁸⁰ On 4 May 2011, the SAHRC in its presentation to the Office of the High Commissioner of Human Rights (OHCHR) Panel Discussion on 'Vulnerability of Migrants to Racism, Xenophobia and Discrimination' in New York, drew attention to the vulnerable state of undocumented and unauthorised migrants.⁸¹

Legal Developments

In the 2010 case of the 'Reitz Four', former students of the University of the Free State were convicted of *crimen injuria* and each sentenced to a R20 000 fine or 12 months imprisonment. The charges related to a video showing five black workers eating food that had been allegedly urinated on by the students. In 2011 the sentence was appealed at the Free State High Court and resulted in reduced sentences being imposed with fines varying between R10 000-R15 000 or a prison sentence.⁸² The appeal judge reached his decision on the basis of two principal factors. Firstly, it emerged that the food was not actually urinated on; the action of urination was simulated and secretly filmed. Secondly, in the opinion of the High Court judge, the magistrate who delivered the sentence in the first instance was deeply hurt by the actions of the students, as it evoked memories of South Africa's recent apartheid past. This caused the original

⁷⁹ "Reporting Status: International Convention on the Elimination of All Forms of Racial Discrimination," Office of the High Commissioner for Human Rights, accessed on 16 March 2012 at <http://www.unhchr.ch/tbs/doc.nsf/b4c81a0dcc2c0e64c1256a2a0027ba2d/3be3989f30cac0e7c1257220005fd729?OpenDocument>.

⁸⁰ "It's dangerous out there". The struggles of Zimbabweans in South Africa," The Africa Report (8 April 2011), accessed on 16 March 2012 at <http://www.theafricareport.com/typerighter/index.php?post/2011/04/08/%22It-s-dangerous-out-there%22.-The-struggles-of-Zimbabwean-immigrants-in-South-Africa>.

⁸¹ "Vulnerability of Migrants - in particular Woman & Children - to Xenophobic Violence (Speaking Notes)," Joyce Tlou, OHCHR Panel Discussion on Vulnerability of Migrants to Racism, Xenophobia and Discrimination, New York, South Africa Human Rights Commission (4 May 2011), accessed on 12 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkMenuID=16&ipkArticleID=55>. Also look at chapter on ICRMW in this report.

⁸² *Vann der Merwe and Others v S* (A366/10) [2011] ZAFSHC 88, SAFLII (23 June 2011), accessed on 16 March 2012 at <http://www.saflii.org/za/cases/ZAFSHC/2011/88.html>.

sentence to be harsher that it should have been.⁸³ In February 2011 at a Reconciliation Seminar held at the University, the Deputy Chairperson of the SAHRC, Dr. Pregs Govender, having spoken with the victims of the incident, focussed her reconciliation message on forgiveness and reconciliation and shared with the audience that a Centre for Human Rights and Reconciliation would be established at the university.⁸⁴

Legislative Developments

In September 2010, the Draft Bill on the Prohibition of Racism, Hate Speech, Xenophobia, and Related Intolerance was introduced to Parliament by the Department of Justice and Constitutional Development (DoJCD).⁸⁵ The draft Bill aims to define xenophobia and other forms of hatred in order that law enforcement officials are given the necessary power to act in these circumstances.⁸⁶ To date, the DoJCD is yet submitted the Bill to the Cabinet. It must be noted that currently, racial discrimination is defined and prohibited by PEPUDA, which provides civil remedies for victims of racial discrimination.⁸⁷ During the course of 2011, the SAHRC hosted dialogues in each province focussing on the delineation between freedom of expression and hate crimes in South Africa.⁸⁸

⁸³ Ibid.

⁸⁴ "Reconciliation Message," South African Human Rights Commission Deputy Chairperson Govender, P., delivered at the Reconciliation Seminar, University of the Free State, South Africa Human Rights Commission (25 February 2011), accessed on 8 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkMenuID=16&ipkArticleID=40>.

⁸⁵ "Legislative Programme 2010: Bills to be Submitted to Cabinet and Parliament in 2010," Parliamentary Monitoring Group (10 February 2010), accessed on 16 March 2012 at www.pmg.org.za/node/19946.

⁸⁶ "Racism Bill Expected Soon," SabinetLaw (12 August 2010), accessed on 16 March 2012 at <http://www.sabinetlaw.co.za/justice-and-constitution/articles/racism-bill-expected-soon>.

⁸⁷ *Promotion of Equality and Prevention of Unfair Discrimination Act 4/2000*, Republic of South Africa: Government Gazette (9 February 2000), South Africa Government Online, accessed on 16 March 2012 at <http://www.info.gov.za/view/DownloadFileAction?id=68207>.

⁸⁸ See Chapter 1 – International Covenant on Civil and Political Rights for more discussion about hate crimes and freedom of expression.

CHAPTER 4

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The International Convention on the Elimination of Discrimination Against Women (ICEDAW) was adopted in 1979 by the UN General Assembly. ICEDAW defines discrimination and gender equality and sets an agenda for state action to ensure women's enjoyment of equal rights with men. The Optional Protocol to ICEDAW was adopted in 1999 and entered into force in December 2000.⁸⁹ The Optional Protocol incorporates a complaints mechanism into ICEDAW. The Optional Protocol is mandated to receive complaints from individuals or groups of individuals submitting claims of violation to ICEDAW and to initiate inquiries into the situation.

The Committee on the Elimination of Discrimination Against Women

The Committee on the Elimination of Discrimination Against Women (CEDAW) is the body that monitors ICEDAW compliance and is comprised of 23 independent experts who meet two to three times annually in Geneva or New York. The members include individuals from Algeria (Mr. Meriem Belmihoub-Zerdani) and Egypt (Ms. Naela Mohamed Gabr).⁹⁰ States Parties' reports must be submitted to CEDAW one year after ratification and every four years thereafter.

Recent Developments

On 20 September 2011, Palau became a signatory to ICEDAW, while Nauru acceded to it on 23 June 2011.⁹¹ In 2011, Ghana and Seychelles ratified the Optional Protocol, while Cape Verde acceded to it.⁹² CEDAW reviewed 23 reports during the three sessions held in 2011, including the report submitted by South Africa.

⁸⁹ "Optional Protocol to the Convention on the Elimination of All Discrimination Against Women," Division for the Advancement of Women: Department of Economic and Social Affairs (21 December 2000), accessed on 5 December 2011 at <http://www.un.org/womenwatch/daw/cedaw/protocol/>.

⁹⁰ Other members of the CEDAW Committee are Ms. Ayse Feride Acar (Turkey), Ms. Nicole Ameline (France), Ms. Olinda Bareiro-Bobadilla (Paraguay), Ms. Magalys Arocha Dominguez (Cuba), Ms. Violet Tsisiga Awor (Kenya), Ms. Barbara Evelyn Bailey (Jamaica), Mr. Niklas Bruun (Finland), Ms. Ruth Halperin-Kaddari (Israel), Ms. Yoko Hayashi (Japan), Ms. Ismat Jahan (Bangladesh), Ms. Indira Jaising (India), Ms. Soledad Murillo de la Vega (Spain), Ms. Violeta Neubauer (Slovenia), Ms. Pramila Patten (Mauritius), Ms. Silvia Pimentel (Brazil), Ms. Maria Helena Lopes de Jesus Pires (Timor Leste), Ms. Victoria Popescu (Romania), Ms. Zohra Rasekh (Afghanistan), Ms. Patricia Schulz (Switzerland), Ms. Dubravka Šimonović (Croatia), Ms. Zou Xiaojiao (China).

⁹¹ "Status as at: 15-12-2011, Convention on the Elimination of All Forms of Discrimination against Women," Chapter IV: Human Rights, United Nations Treaty Collection, accessed on 15 December 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

⁹² "Status as at: 05-12-2011, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women," Chapter IV: Human Rights, United Nations Treaty Collection, accessed on 15 December 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

CEDAW also considered reports from Chad, Cote d'Ivoire, Mauritius, Djibouti, Ethiopia, Zambia and Kenya.⁹³ CEDAW's Concluding Observations noted a persistence of stereotyping and discrimination against women. Common issues were the prevalence of human trafficking, exploitation and prostitution. Countries were urged to enter into bilateral treaties with neighbouring states to harmonize legal procedures and to tackle trafficking and exploitation trans-nationally.⁹⁴ Further issues were the lack of action taken against domestic violence,⁹⁵ lack of participation by women in public life,⁹⁶ women's levels of access to health care,⁹⁷ greater rights in employment and access to education.⁹⁸ Finally, many African states, such as Zambia, Kenya and Chad, were urged to harmonize religious and customary law with the ICEDAW so as to prohibit discriminatory practices such as giving *lobola*, sexual cleansing and polygamy.⁹⁹

South Africa and CEDAW

In January 1993 South Africa signed ICEDAW and ratified it in December 1995. In March 2010, South Africa submitted a combined report to CEDAW.¹⁰⁰ In July 2010 the Commission for Gender Equality (CGE), another of South Africa's constitutionally established independent state institutions created to support constitutional democracy specifically in relation to the promotion, protection and attainment of gender equality, submitted a shadow report to CEDAW. The CGE's report highlighted flaws in the current legal system, including the failure of PEPUDA to protect women from harmful practices and societal reluctance to change South Africa's fundamentally patriarchal system. On 18 October 2005 South Africa acceded to the Optional Protocol.¹⁰¹

On 5 April 2011 CEDAW released its Concluding Observations for South Africa. CEDAW's recommendations to South Africa include, amongst others: enhancing the visibility of the ICEDAW and its Optional Protocol to the women of South Africa; improving access to justice through an efficient judicial system; amending the Traditional Courts Bill to bring it in line with constitutional principles of anti-discrimination; encouraging the prohibition of harmful practices such as *ukuthwala*, polygamy, killing of 'witches' and virginity testing; increasing public awareness and education about sexual violence; expediting the promulgation of the Prevention and Combating of Trafficking in Persons Bill (Trafficking Bill); conducting comparative studies

⁹³ All States Parties' reports to the CEDAW Committee and its Concluding Observations and Recommendations can be accessed through the Office of the High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>.

⁹⁴ Ibid. (Cote d'Ivoire, CEDAW/C/CIV/CO/1-3).

⁹⁵ Ibid. (Kenya, CEDAW/C/KEN/CO/7).

⁹⁶ Ibid. (Ethiopia, CEDAW/C/ETH/CO/7).

⁹⁷ Ibid. (Lesotho, CEDAW/LSO/CO/1-4).

⁹⁸ Ibid. (Israel, CEDAW/C/ISR/CO/5).

⁹⁹ Ibid. (Zambia, CEDAW/C/ZMB/CO/5-6).

¹⁰⁰ "Committee on the Elimination of Discrimination against Women, 44th session (20 July - 7 August 2009)," Office of the United Nations High Commissioner for Human Rights, accessed on 17 December 2011 at <http://www2.ohchr.org/english/bodies/cedaw/cedaws44.htm>.

¹⁰¹ Ibid.

and collection of data to identify the root causes of human trafficking; ensuring that girls and young women receive equal access to all levels of education; ensuring equal opportunities are provided to women in the labour market; continuing and sustaining measures to address the issue of HIV/AIDS, including awareness campaigns to eliminate discrimination and violence faced by sufferers; and ensuring that rural women enjoy human rights in all spheres of life, including the right to own property.¹⁰²

Legislative Developments

South Africa has indicated to the UN that it is likely to achieve the third Millennium Development Goal (MDG) to promote gender equality and empower women by 2015.¹⁰³ South Africa also aims to achieve the Southern African Development Community (SADC) goal for 50/50 gender representation in government by 2015. As of October 2011, South Africa is ranked fifth on the global leader board for the number of women in parliament, with 44.5% of permanent seats occupied by women.¹⁰⁴ However, the disparity between genders is more striking in private sector jobs, where women constitute less than 10% of Chief Executive Officers and hold only 21% of executive management positions therein.¹⁰⁵

The Gender Equality Bill (Gender Bill) seeks to address the target of 50/50 gender parity by providing the government with the appropriate legislative authority to empower women in the workplace and ensure compliance with anti-discrimination laws.¹⁰⁶

¹⁰² "Concluding Observations of the Committee on the Elimination of Discrimination Against Women," United Nations: Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/ZAF/CO/4, Office of the United Nations High Commissioner for Human Rights (4 February 2011), accessed on 16 December 2011 at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZAF-CO-4.pdf>.

¹⁰³ "Committee on the Elimination of Discrimination Against Women, 48th Session (17 January 2011 - 4 February 2011)," Office of the United Nations High Commissioner for Human Rights, accessed on 16 March 2012 at <http://www2.ohchr.org/english/bodies/cedaw/cedaws48.htm>.

¹⁰⁴ "Women in national parliaments," Situation as of 31 October 2011, Inter-parliamentary Union, accessed on 20 November 2011 at <http://www.ipu.org/wmn-e/classif.htm>

¹⁰⁵ "Gender Equality Bill Still a "work in progress,"" SabinetLaw (30 March 2011), accessed at <http://www.sabinetlaw.co.za/social-affairs/articles/gender-equality-bill-still-work-progress>.

¹⁰⁶ "Gender Equality Bill will provide Government with Legislative authority to Hasten Women's Empowerment," SabinetLaw (8 June 2011), accessed on 26 November 2011 at <http://www.sabinetlaw.co.za/social-affairs/articles/gender-equality-bill-will-provide-government-legislative-authority-hasten-wo>.

The Department for Women, Children and People with Disabilities (DWCPD) expects the final draft bill to be submitted to the cabinet for approval by March 2012.¹⁰⁷ The Gender Bill attempts to address the inefficiencies in current legislation, such as the implementation of the Sexual Offences Act (2007)¹⁰⁸ and the Domestic Violence Act (1998), due to lack of training and resources.

In 2011, the DoJCD released a draft of the Muslim Marriages Bill for public comment, following its approval by Cabinet.¹⁰⁹ The Bill comes in response to the Constitutional Court decision *Fatima Gabie Hassam v. Johan Hermanus Jacobs and Others*, which ruled that a Muslim woman in a polygamous marriage had inheritance rights if her husband died intestate.¹¹⁰ The Muslim Marriages Bill provides statutory recognition to Muslim marriages in an attempt to regulate them. The Bill has been the subject of intense debate between religious leaders and women's rights activists.¹¹¹ Women's rights activists welcomed the Bill as a means of ensuring access to courts for women and ensuring the enforcement of the rights of women in Muslim marriages. Conversely, Islamic leaders argue that the Bill is at odds with Sharia law because a judge will interpret the legislation using the constitutional principles of the country rather than Islamic principles.¹¹²

Violence against women

Gender-based sexual and domestic violence remains a significant problem in South Africa. Despite the adoption of the Domestic Violence Act,¹¹³ Children's Act¹¹⁴ and Sexual Offences Act,¹¹⁵ reported incidents of rape continue to escalate.¹¹⁶ Entrenched social norms add to the difficulty in prosecuting perpetrators of rape. Even more alarming are the results of studies conducted by the government-funded Medical Research Council in 2009 and 2010, which found that 28% of men in the research group admitted to committing a rape.¹¹⁷

Human Trafficking

Women and children are often victims of human trafficking, particularly for the purposes of forced prostitution. Although South Africa is a signatory to the Protocol to Prevent, Suppress

¹⁰⁷ Ibid.

¹⁰⁸ *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.*

¹⁰⁹ See <http://www.pmg.org.za/files/bills/110117muslim-marriages-bill.pdf>.

¹¹⁰ *Fatima Gabie Hassam v. Johan Hermanus Jacobs NO and Others*, (CCT 83/08).

[2009] ZACC 19, SAFLII (15 July 2009), accessed on 17 March 2012 at

<http://www.saflii.org/za/cases/ZACC/2009/19.html>

¹¹¹ "Rift looms over Muslim marriage Bill," Times Live (5 March 2011), accessed at

<http://www.timeslive.co.za/sundaytimes/article949955.ece/Rift-looms-over-Muslim-marriage-bill>.

¹¹² Ibid.

¹¹³ *Domestic Violence Act 116 of 1998.*

¹¹⁴ *Children's Act 38 of 2005.*

¹¹⁵ *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.*

¹¹⁶ Some suggest that this escalation is attributable to the expanded definition of rape in the Act. See "South Africa: Back prevention, NGOs Say as Sixteen Day Campaign Kicks Off," Gender Links (25 November 2009), accessed at <http://www.genderlinks.org.za/article/south-africa-back-prevention-ngos-say-as-sixteen-day-campaign-kicks-off-2009-11-25-1>.

¹¹⁷ Rachel Jewkes, Yandisa Sikweyiya, Robert Morrell, Kristin Dunkle. *Understanding Men's Health and Use of Violence: Interface of Rape and HIV In South Africa*, 2009, accessed at <http://www.mrc.ac.za/gender/interfaceofrape&hivsarpt.pdf>

and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol),¹¹⁸ Parliament has yet to pass comprehensive legislation criminalizing trafficking. The National Prosecuting Authority has prosecuted an increased number of trafficking perpetrators under legislation relating to sexual offences and organized crime but few of these have resulted in convictions due to the lack of a specific legal framework relating to human trafficking.¹¹⁹ The Prevention and Combating of Trafficking in Persons Bill (Trafficking Bill) was introduced in Parliament by the Minister of Justice and Constitutional Development on 15 March 2010 and is currently before the National Assembly.¹²⁰ The Trafficking Bill seeks to close gaps in existing criminal legislation used to prosecute human traffickers by providing a clear definition of the crime. The Trafficking Bill also sets forth a comprehensive approach to combating human trafficking including the identification and protection of victims, and introduces the concept of in-country human trafficking.¹²¹ Concerns remain over the ability of government to effectively implement the Trafficking Bill once it is passed.¹²²

Discriminatory cultural practices

An additional area of concern for the rights of women in South Africa is the traditional cultural practice of *ukuthwala*, in which older men abduct young women for the purposes of marriage. In the village of Lusikisiki in the Eastern Cape, where this practice is known to occur, 46% of girls drop out of school to 'focus on their marriage'.¹²³ It appears that societal pressures, such as poverty and cultural expectations, force the child to remain in the marriage. In most cases, the parents of the child are not able to repay the *lobola* (dowry) in the event of marriage breakdown.¹²⁴

Maternal health

Maternal care received attention during 2011. The experiences of Abeba M., an Ethiopian refugee, with the healthcare system while she was pregnant, demonstrate the high incidences of abuse and neglect of pregnant women seeking maternal care in government facilities. After giving birth, Abeba left the hospital without treatment because of the poor care she received. Abeba was told to clean up her own 'mess', and a vital scan for the baby's health was delayed for 10 days because the doctor 'forgot'. Abeba's situation demonstrates the need to focus on the

¹¹⁸ "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children," supplementing the United Nations Convention against Transnational Organized Crime, adopted by the UN General Assembly in Resolution 55/25, Office of the United Nations High Commissioner for Human Rights (15 November 2000), accessed on 8 December 2011 at <http://www2.ohchr.org/english/law/protocoltraffic.htm>.

¹¹⁹ "Trafficking in Persons Report 2011," U.S. Department of State (27 June 2011), accessed on 5 December 2011 at <http://www.state.gov/j/tip/rls/tiprpt/2011/>.

¹²⁰ "Bills before Parliament", Parliament of the Republic of South Africa as at 8 December 2010, accessed at http://www.parliament.gov.za/live/content.php?Category_ID=72&BillStart=10&BillStart=20

¹²¹ For a comprehensive look at issues related to trafficking in persons in South Africa, see "Trafficking in Persons Report 2009: South Africa," UNHCR/ Refworld (16 June 2009), accessed on 16 December 2011 at <http://www.unhcr.org/refworld/docid/4a42149128.html>.

¹²² "Human Trafficking Legislation: Status and Prospects," Briefing Paper 220, South African Catholic Bishops' Conference: Parliamentary Liaison Office (October 2009), accessed on 17 March 2012 at http://www.noelimits.co.za/staging/CPLO/index.php?option=com_rokdownloads&view=file&Itemid=19&id=113:bp-220-human-trafficking-legislation-oct-09

¹²³ "3rd Degree: Ukuthwala Turns to Statutory Rape," Makisto, TVSA (10 November 2010), accessed on 7 December 2011 at <http://www.tvsa.co.za/default.asp?blogname=FranklySpeaking&articleID=15607>.

¹²⁴ Ibid.

human rights of pregnant women in the healthcare facilities. Although the majority of South Africans have access to reliable healthcare services, the poor and rural communities often continue to suffer.¹²⁵

¹²⁵ "Keeping Health Systems Accountable: A Critical Component of the Every Woman, Every Child Campaign," Odhiambo, A., Human Rights Watch (October 20, 2011), accessed at <http://www.hrw.org/news/2011/10/20/keeping-health-systems-accountable-critical-component-every-woman-every-child-campai>.

CHAPTER 5

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is the international treaty body tasked with ensuring that states implement measures to prevent the use of torture and that they do not return persons to a country where they are likely to be tortured.

The Committee against Torture

The Committee Against Torture (CAT) is comprised of 10 independent experts who meet twice a year in Geneva to review the reports of member states.¹²⁶ States Parties to CAT are required to submit reports within a year of ratification and every four years thereafter.

Recent Developments

In October 2011, five CAT members were elected to replace members with terms expiring on 31 December 2011.¹²⁷ Those elected were Satyabhooshun Gupt Domah (Mauritius), Felice Gaer (United States of America), Abdoulaye Gaye (Senegal), Claudio Grossman (Chile) and George Tugushi (Georgia). Of these five, Felice Gaer, Abdoulaye Gaye and Claudio Grossman were existing CAT members who were re-elected. The new term will expire on 31 December 2015 and the five remaining members' terms will conclude on 31 December 2013. In May and June 2011, CAT reviewed the reports of a further eight States Parties, including the African states of Ghana and Mauritius.¹²⁸ Both of these states were urged to either incorporate the crime of torture into domestic law or to adopt a definition of torture reflective of the definition contained in Article 1 of the Convention.¹²⁹

Key issues raised by CAT during its consideration of all fourteen state reports included ending impunity for public officials accused of torture; ensuring independence of the judiciary; collection of greater quantities of statistical data relevant to the monitoring of the implementation of the convention; providing appropriate redress for victims of torture, including compensation and rehabilitation, ensuring that coerced confessions are not admissible in court; and strengthening efforts to combat violence against women and children.

¹²⁶ "Committee against Torture: Monitoring the prevention of torture and other cruel, inhuman or degrading treatment or punishment," The Office of the High Commissioner for Human Rights, accessed on 27 November 2011 at <http://www2.ohchr.org>.

¹²⁷ "Committee against Torture: Membership elections 2011," Child Rights International Network, accessed on 29 January 2012 at <http://www.crin.org/resources/infodetail.asp?ID=25590>.

¹²⁸ Other states reviewed included: Finland, Ireland, Kuwait, Monaco, Slovenia and Turkmenistan.

¹²⁹ *Ibid.*

With particular reference to women and children, CAT issued recommendations regarding increasing efforts to prevent abduction and internal trafficking of women and children; ensuring victims have access to fundamental legal safeguards; eradicating corporal punishment, especially against children; improved training of public officials in places of detention; ending harmful traditional practices such as female circumcision and ensuring adherence to the principle of non-refoulement.¹³⁰

On 5 August 2011, the United Nations General Assembly released an interim report prepared by Juan Mendez, the Special Rapporteur on torture and other cruel, inhuman, or degrading punishment. In the interim report, the Special Rapporteur asserts that solitary confinement is practised in a majority of states and concludes that this scenario can amount to cruel, inhuman or degrading treatment or punishment and even torture. The physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering when used as a punishment during pre-trial detention, indefinitely, prolonged, or on juveniles or persons with mental disabilities. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman, or degrading treatment or punishment will go undetected and unchallenged. The report sets out a number of general principles to help encourage and guide states in re-evaluating and minimizing its use and, in certain cases, abolishing the practice of solitary confinement altogether. The Special Rapporteur further emphasizes the need for minimum procedural safeguards, both internally and externally, to ensure that all persons deprived of their liberties are treated with humanity and respect for the inherent dignity of the human person.¹³¹ An example of a safeguard recommended by the Special Rapporteur is a 15-day limit on solitary confinement, because 15 days is accepted as the point at which harmful effects from confinement can become irreversible.¹³²

¹³⁰ "Report of the Committee against Torture, 45th session (1-19 November 2010), 46th session (9 May – 3 June 2011)," Annual Report 2011, Office of the United Nations High Commissioner for Human Rights, accessed at <http://www2.ohchr.org/english/bodies/cat/reports.htm>.

¹³¹ "Torture and other cruel, inhuman, or degrading treatment or punishment," Report A/66/268, United Nations General Assembly (5 August 2011), accessed on 15 December 2011 at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

¹³² "Special Rapporteur on Torture calls for global ban on prolonged solitary confinement," International Service for Human Rights (25 October 2011), accessed on 6 January 2012 at http://www.ishr.ch/general-assembly/1189-special-rapporteur-on-torture-calls-for-global-ban-on-prolonged-solitary-confinement?utm_source=ISHR+Publications+and+News&utm_campaign=cc5e8dc926-RSS_Email_Campaign_General_Assembly&utm_medium=email.

OPCAT and the Subcommittee on the Prevention of Torture

The Optional Protocol to the Convention against Torture (OPCAT) was introduced in 2003 and aims to prevent torture by establishing a National Preventive Mechanism (NPM) under which a series of regular visits are made to all facilities where persons are deprived of their liberty. The 10-member Subcommittee on the Prevention of Torture convenes for a one-week session, three times a year, at the United Nations Office in Geneva and is authorised to visit detention facilities in countries where OPCAT has been ratified. South Africa is yet to ratify and implement OPCAT, a measure that would force the country to establish an NPM as a tool in preventing torture.¹³³

Recent Developments

In 2011 the Subcommittee held sessions in February, June, and November. The February meeting was the first meeting of the Subcommittee since its expansion from 10 to 25 members. The reason for the expansion was that in 2010 the number of States Parties to OPCAT increased above 50 States Parties. This expansion enabled it to broaden its activities, ranging from unannounced visits to places of detention to the provision of technical advice in the establishment of national independent preventive mechanisms. The purpose of the November meeting was to discuss the common obligation of CAT and the Subcommittee in the prevention of torture, the two bodies' evolving approach to their work, and information sharing and coordination. On 10 May 2011, the Subcommittee held a meeting with CAT to discuss its fourth annual report and to pinpoint potential areas of collaboration.

In 2011, OPCAT was signed by four states, including the African nations of Cape Verde and Mauritania. A further four states, including Tunisia, ratified the instrument.¹³⁴ On 9 November 2011, the Association for the Protection of Torture (APT) held a Strategic Consultative Meeting on OPCAT in Geneva. The conference aimed to revive momentum for the ratification and implementation of OPCAT on the African continent. In particular, it was intended to support States Parties to establish and ensure the effective functioning of NPMs by encouraging the exchange of experience and good practices in preventing torture. It also aimed to lay the foundations for cooperation between NPMs emerging in Africa as well as to create synergies between these and other national, regional and international actors involved in torture prevention.

¹³³ "Optional Protocol to the Convention Against Torture other Cruel, Inhuman or Degrading Treatment or Punishment," UN Doc A/RES/57/199, Office of the United Nations High Commissioner for Human Rights (22 June 2006), accessed on 19 March 2012 at <http://www2.ohchr.org/english/law/cat-one.htm>

¹³⁴ "Status as at: 22-11-2011, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," United Nations Treaty Collection, accessed on 22 November 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en.

The Strategic Consultative Meeting preceded the OPCAT Global Forum, which took place on 10 and 11 November 2011 to facilitate reflection on the achievements and challenges in prevention of torture since OPCAT came into force in June 2006. To date, almost 100 countries have signed OPCAT; 61 have ratified and 37 have designated an NPM. Whilst there have been a number of successes, there are also challenges, for example, not all NPMs have been designated in a manner that guarantees their independence and not all are sufficiently resourced or capacitated.¹³⁵ A representative of the SAHRC attended the Strategic Consultative Meeting on OPCAT and delivered an address on the subject of using channels of cooperation and interaction between national, regional and international actors to enhance the effectiveness of NPMs.¹³⁶

South Africa, UNCAT and OPCAT

Torture is an issue of historic significance in South Africa given that the practice was widespread and institutionalised during the apartheid era. In fact, the mysterious circumstances surrounding the death of Steve Biko in 1977 provided the impetus for the finalisation of UNCAT itself.¹³⁷ South Africa signed UNCAT in 1993 and ratified it in 1998. In 2005, South Africa submitted its initial report to the CAT, by which time the report was five years overdue. The following year, the Committee reviewed the report and requested that South Africa provide additional information within a year of its request. South Africa failed to adhere to the request and therefore the second periodic report, due on 31 December 2009, is yet to be submitted to the Committee. In October 2010, the Committee criticised South Africa for failing to provide urgent feedback following the review in 2006 and for failing to submit its second report. The Committee expressed concern that South Africa has failed to eliminate torture in police cells and has not criminalised torture in its national legislation.¹³⁸

On 26 September 2006, the South African government signed the Optional Protocol to the Convention against Torture, but has not yet ratified it. In August 2011 the SAHRC Section 5 Committee on Torture met once again to advise the SAHRC and to discuss the best ways to promote the ratification and implementation of UNCAT and OPCAT in South Africa.

¹³⁵ "Concept note: APT Strategic Consultative Meeting on the OPCAT in Africa, Geneva, 9 November 2011," APT (17 October 2011), accessed on 15 January 2012 at http://www.apr.ch/region/africa/AfricaOPCAT_ConceptNoteEn.pdf.

¹³⁶ "APT Strategic Consultative Meeting on the OPCAT in Africa, 9 November 2011, Geneva, prior to the 10-11 November OPCAT Global Forum," APT, accessed on 15 December 2011 at http://www.apr.ch/region/africa/AfricaOPCAT_ProgrammeEn.pdf.

¹³⁷ "The betrayal of Steve Biko – South Africa's Initial Report to the UN CAT and responses from civil society," Muntingh, L., AJOL, accessed on 15 November 2011 at <http://ajol.info/index.php/idd/article/view/52879/41480>.

¹³⁸ "The Problem of Torture in South African Prisons," Institute of Security Studies (2 August 2011), accessed at http://www.iss.co.za/iss_today.php?ID=1328.

The Section 5 Committee includes representation from civil society, academia and independent institutions such as the Judicial Inspectorate of Correctional Services (JICS) and the Independent Complaints Directorate (ICD).¹³⁹

During 2011, a number of torture-related incidents were reported in the press. On 20 July 2011, the SAHRC condemned the alleged torture of a prisoner awaiting trial at the Pretoria Central Prison. According to a report from a Johannesburg-based radio station, the complainant alleged that he was tortured by six warders who claimed to have found him in possession of a smuggled cell phone. The radio station also reported that this incident was not a first because other allegations of torture at the prison had been brought to its attention by members of the public.¹⁴⁰

Another recent incident of torture in South Africa which received attention during 2011 involved police brutality at the Kimberley Prison. Video surveillance footage from the prison from 3 August 2010 shows prison security allegedly assaulting prisoners and making them bend over after stripping them naked in an apparent bid to humiliate them. The video also appears to show prisoners being tear-gassed, although this has not been confirmed. The footage has since been forwarded to the chairperson of Parliament's Correctional Services Portfolio Committee, Vincent Smith, but has not yet been discussed in great detail by the Portfolio Committee. Zach Modise, former Correctional Services Commissioner for the Free State and Northern Cape and now Deputy National Commissioner of Correctional Services, stated that this was a 'serious incident'. In his view the footage provided to him by the investigating team showed no human rights abuses or that prisoners had been stripped naked or tear-gassed. Smith insisted that the protesting prisoners had burned mattresses in their cells and that the destruction of state property could not be condoned. However, he added that if the prisoners had been tear-gassed, then the actions of the prison guards would be condemned.¹⁴¹

¹³⁹ "Minutes of the Section 5 Torture Committee Meeting," held at South African Human Rights Commission, (25 August 2011).

¹⁴⁰ "SAHRC condemns the alleged torture of an awaiting trial prisoner at the Pretoria Central Prison," South African Human Rights Commission (20 July 2011), accessed on 23 November 2011 at <http://www.sahrc.org.za/home/index.php?ipkArticleID=71>.

¹⁴¹ "Interrogation of Special Investigations Unit reports: South African Social Security Agency & Department of Correctional Services," Parliamentary Monitoring Group, accessed on 11 December 2011 at <http://www.pmg.org.za/report/20100805-hearing-department-social-development-south-african-social-security-a>; Also see, "Prison brutality caught on video," Mail & Guardian Online (1 April 2011), accessed on 11 December 2011 at <http://mg.co.za/article/2011-04-01-prison-brutality-caught-on-video>.

The UN Special Rapporteur on Torture has drawn attention to conditions of detention in prison and in police cells in South Africa. The former Special Rapporteur, Mr Manfred Nowak, noted in reference to a discussion on torture and ill treatment of detainees that, apart from a small number of exceptions, conditions of detention in many facilities that he had visited qualified as inhuman and degrading.¹⁴² The Special Rapporteur expressed particular concern with the treatment and conditions of remand detainees.¹⁴³

During 2011, the Combating of Torture Bill remained with the DoJCD. The SAHRC has repeatedly urged the Department to fast track the draft bill, which criminalises acts of torture in South Africa in order that instances of torture may be dealt with appropriately through the criminal justice system. This will ensure that South Africa complies with its international obligations in terms of the UN Convention against Torture (UNCAT). The draft bill does not directly address the designation of a national preventive mechanism as required by OPCAT.

¹⁴² "Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment: Study on the phenomenon of torture and other cruel, inhuman and degrading treatment or punishment in the world, including as assessment of conditions of detention," Nowak, M., A/HRC/13/39/Add.5 para. 230, United Nations General Assembly (5 February 2010), accessed on 14 December 2011 at http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5_en.pdf.

¹⁴³ *Ibid*, para. 235.

CHAPTER 6

CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (UNCRC) defines the universal rights and legal and social status of children. There are two Optional Protocols to the UNCRC, the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), and the Optional Protocol on the Sale of Children, Child Pornography, and Child Prostitution (OPSC). South Africa acceded to the OPSC in 2003 and ratified the OPAC in 2009. South Africa's initial OPSC and OPAC reports are also outstanding. The UNCRC is the most widely ratified human rights treaty body with only Somalia and the United States which has not ratified it.

The Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC), which monitors the implementation of the Convention of the Rights of the Child, is comprised of 18 independent experts. The CRC holds three sessions per year, each consisting of a three-week plenary and a one-week pre-session working group. States Parties to the UNCRC are required to submit reports two years after accession to the Convention and every five years thereafter.

Recent Developments

During 2011, St. Lucia signed OPAC, Djibouti and San Marino ratified OPAC and Saudi Arabia, St Vincent and the Grenadines acceded to OPAC. During 2011, seven States Parties ratified the OPSC.¹⁴⁴ In January 2011, at the 56th session of CRC, the nine newly elected members were welcomed, including Mr. Madi of Egypt. Ms. Agnes Akosua Aidoo (Ghana) and Mr. Hatem Kotrane (Tunisia) are among those re-elected,¹⁴⁵ with Mr. Awich Pollar (Uganda) and Ms. Kamlah Devi Varmah (Mauritius) continuing their existing terms.

In 2011, CRC held three sessions and reviewed the reports of 20 States Parties,¹⁴⁶ five of which included reports under the OPSC and OPAC.¹⁴⁷

¹⁴⁴ Djibouti, Jamaica, Luxembourg, Mauritius, New Zealand, Pakistan and San Marino, accessed on 27 November 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

¹⁴⁵ Members of the Committee can be viewed at <http://www2.ohchr.org/english/bodies/crc/members.htm>.

¹⁴⁶ Reports from Afghanistan, Belarus, Denmark, Lao People's Democratic Republic, New Zealand, Singapore and Ukraine were discussed at the 56th session; Bahrain, Cambodia, Costa Rica, Cuba, Czech Republic, Egypt and Finland had reports considered at the 57th session; and the 58th session involved evaluation of reports from Iceland, Italy, Syrian Arab Republic, Panama, Republic of Korea and Seychelles, accessed on 17 December 2011 at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

¹⁴⁷ OPSC reports were submitted by Belarus, Mexico, Egypt and Sweden. OPAC reports came from Belarus, Mexico, Ukraine and Egypt, accessed on 27 November 2011 at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

The recommendations submitted to States Parties under review this year have been wide-ranging.¹⁴⁸ States Parties were frequently criticised for their failure to fully implement respective recommendations made by CRC at previous reviews, as well as omitting to fully align domestic legislation with the provisions contained in the UNCRC.

A number of States Parties received comments and recommendations in respect of equality and discrimination issues with female children, children of migrant workers, refugee children and children living in poverty of particular concern, especially with regard to lack of access to education and lack of data collected by States Parties regarding children with disabilities. Moreover, CRC raised issues of direct relevance to South Africa in its Concluding Observations to Egypt, referring to such issues as awareness in adolescents of HIV/AIDS and socio-economic inequalities between urban and rural areas, particularly in terms of access to water, sanitation and basic healthcare.¹⁴⁹ Child mortality in rural areas was a further point of note, with the more general problem of maternal and infant mortality arising in a number of States Parties. Juvenile justice and the trafficking of children were problems identified in a majority of States Parties, and harmful cultural practices were identified in Egypt and Afghanistan in particular. CRC commonly made reference to the best interests of the child principle and expressed apprehension that the views of children do not appear to be given sufficient attention in many States Parties.

CRC has kept abreast of developments concerning the possible creation of a third Optional Protocol to the Convention that would establish a communication procedure. Most recently, it was acknowledged that the Human Rights Council had adopted the draft Optional Protocol in June.¹⁵⁰

¹⁴⁸ All Concluding Observations issued by the Committee on the Rights of the Child can be accessed through the website of the Office of the High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

¹⁴⁹ "Committee on the Rights of the Child, 57th Session (30 May - 17 June 2011)," at 46, 72-73, Office of the United Nations Commissioner for Human Rights (20 October 2008), accessed on 8 December 2011 at <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>

¹⁵⁰ "Opening address by Ms. Carla Edelenbos, Chief, Office of the UN High Commissioner for Human Rights at the 58th session of the Committee on the Rights of the Child," Office of the United Nations High Commissioner for Human Rights (19 September 2011), accessed on 27 November 2011 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11442&LangID=E>.

During 2011, General Comment No. 13 was issued in respect of the right of “[t]he child to freedom from all forms of violence”.¹⁵¹ The General Comment was developed as a result of concerns that violence against children persists in multiple forms despite action taken by governments globally to combat the problem. It relates to Article 19 of UNCRC, contextualising it, setting out the scope of its application and advising how to put it into practice. Furthermore, it calls on States Parties to expeditiously implement the recommendations of the 2006 report of the independent expert for the United Nations study on violence against children.¹⁵² In addition, the comment emphasises the importance of a child rights approach, rather than a welfare approach in measures to tackle violence against children and requests cooperation between states to give effect to Article 19.

On 30 September 2011, the CRC held a Day of General Discussion.¹⁵³ The topic selected for the day was ‘Children of Incarcerated Parents’. The event focused on Article 9 of the UNCRC, relating to the rights of children whose parents are incarcerated. The recommendations issued are yet to be published.

South Africa and UNCRC

South Africa signed the UNCRC in 1993 and ratified the UNCRC in 1995. South Africa submitted its initial report to CRC in 1999 but South Africa has not submitted its second or third periodic reports. South Africa’s fourth periodic report will be due on 15 June 2012.

From 24 - 25 March 2011, SAHRC and the United Nations Children Fund (UNICEF) hosted the seminar entitled ‘Equity in the Realisation of Child Rights in South Africa’. This seminar marked the launch of the report entitled ‘South Africa’s Children – A Review of Equity and Child’s Rights’.¹⁵⁴ On conclusion of the seminar, the SAHRC and UNICEF issued a joint statement¹⁵⁵ which adopted a number of recommendations, including a commitment to monitoring budget allocations to assess, *inter alia*, whether they effectively address inequities in the realisation of child rights. The Joint Statement further recommends that government take legislative steps to protect children from harmful cultural, traditional and religious practices and that regular collection of data on the realisation of child rights should take place.

¹⁵¹ “General comment No. 13 (2011): The right of the child to freedom from all forms of violence,” United Nations: Convention on the Rights of the Child, CRC/C/GC/13, Office of the United Nations High Commissioner for Human Rights (18 April 2011), accessed on 14 December 2011 at <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

¹⁵² “Report of the Independent Expert for the United Nations study on violence against children,” UN Report A/61/299, United Nations General Assembly, UNICEF (29 August 2006), accessed on 17 March 2012 at http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf.

¹⁵³ For further information, see <http://www2.ohchr.org/english/bodies/discussion2011.htm>.

¹⁵⁴ “South Africa’s Children – A Review of Equity and Child’s Rights,” UNICEF (2011), accessed on 11 December 2011 at http://www.unicef.org/southafrica/resources_8101.html.

¹⁵⁵ “Statement of the Seminar on Equity in the Realization of Child Rights,” UNICEF (25 March 2011), accessed on 11 December 2011 at http://www.unicef.org/southafrica/SAF_resources_midranddeclaration.pdf.

Corporal Punishment

In the context of corporal punishment and the wider area of violence against children, South Africa has not yet removed the common law defence of ‘reasonable chastisement’ from domestic law. This defence is perceived as reducing the efficacy of the legal framework for protection of children from domestic violence since it directly allows the use of less severe physical violence against children which would be considered abuse or assault when committed against an adult.¹⁵⁶ It was reported in the media earlier this year that, despite the ban on corporal punishment in schools over 10 years ago, up to 70% of primary school and 50% of high school pupils may continue to receive corporal punishment.¹⁵⁷

*Education*¹⁵⁸

According to the Department of Basic Education’s (DBE) Report on the Annual National Assessments of 2011 (2011 National Assessments), only 15% of South African grade 6 learners scored at or above the minimum proficiency in language and only 12% of grade 6 learners were at or above the minimum proficiency in mathematics.¹⁵⁹ The results of the 2011 National Assessments are consistent with previous years and illustrate that the vast majority of primary school learners graduate from primary school without being proficient in reading, writing and mathematics.¹⁶⁰ The National Planning Commission has identified the education crisis as the second most serious challenge facing South Africa, after unemployment.¹⁶¹

It is estimated that there are over 400 ‘mud schools’ in South Africa that are overcrowded, have limited access to water and sanitation, are in a dilapidated condition and have insufficient desks and reading materials for its learners.¹⁶² During 2011, the Legal Resources Centre reached a landmark settlement with the Eastern Cape provincial Department of Education, in respect of seven mud schools situated in the Eastern Cape province.

¹⁵⁶ “Linking Domestic Violence and Corporal Punishment,” Waterhouse, S. and Nagia-Luddy, F., Community Law Centre (December 2009), accessed on 17 March 2011 at <http://www.communitylawcentre.org.za/clc-projects/childrens-rights/article-19/archives/article19%20Dec09.pdf>.

¹⁵⁷ “Corporal punishment still in schools,” News24 (20 April 2011), accessed on 5 December 2011 at <http://www.news24.com/SouthAfrica/News/Corporal-punishment-still-in-schools-20110420>.

¹⁵⁸ For more information on the right to education see the International Covenant on Economic, Social and Cultural Rights, Chapter 2.

¹⁵⁹ “Report on the Annual National Assessments of 2011,” Department: Basic Education – Republic of South Africa, accessed on 7 December 2011 at <http://www.education.gov.za/LinkClick.aspx?fileticket=1U5igeVjiqg%3D&tabid=358&mid=1325>.

¹⁶⁰ “Education: Can we fix it? Yes we can,” Leader (19 July 2011), accessed on 7 December 2011 at <http://www.leader.co.za/article.aspx?s=1&f=1&a=2981>.

¹⁶¹ *Ibid.*

¹⁶² “In South Africa, attending school in a mud hut,” Independent Education (5 April 2011), accessed on 8 December 2011 at <http://www.ieducation.co.za/in-south-africa-attending-school-in-a-mud-hut/>.

The national Department of Basic Education made R8.2 billion available for repairs and upgrading of schools of which the Eastern Cape received R6.3 billion for the construction of permanent buildings for schools in the Eastern Cape.¹⁶³ Despite the allocation of funds and deadlines set by the Court, the Education Department failed to adhere to the deadlines.¹⁶⁴

Despite the current state of education, South Africa reported a series of positive developments in the field of education during 2011. The Department of Women, Children and People with Disabilities (DWCPD) presented its 'Techno Girls' programme in a statement to the UN's 55th Session of the Commission on the Status of Women (CSW) in New York on 24 February 2011.¹⁶⁵ The programme has been successful in supporting more than 4 500 girls in the study of science and technology across four provinces in South Africa. Also, during March, the Department of Basic Education launched the National Education and Evaluation Unit (NEEDU), established to evaluate school performance and develop the education system, using best practice models from around the world, particularly Europe.¹⁶⁶ The launch of the NEEDU initiative was followed in April by the introduction of the Integrated Strategic Planning Framework for Teacher Education and Development in South Africa, which is to run over the next 15 years. The initiative's goals include providing support for teachers in under-performing schools and improvements in teacher training at universities.¹⁶⁷ In September, the department signed the Accord on Basic Education, in partnership with the leaders of organised labour. The agreement was designed to improve the quality of education in public schools, and to complement the existing Quality Learning and Teaching Campaign. The Accord features a campaign entitled 'Adopt-a-School', where underprivileged schools can be assisted by stakeholders. The Department is making a concerted effort to involve parents, educators and learners in the process of strengthening the education system in South Africa.¹⁶⁸

¹⁶³ *The Centre for Child Law and Others v The Government of Eastern Cape Province and Others* 2010, (ZAECBHC) (Case No. 504/2010), "Memorandum of Agreement," Lebanese Friends Red Cross Society (4 February 2011), accessed at http://www.lrc.org.za/images/stories/issues/MudSchools/2011_02_04_Memorandum_of_Agreement_SIGNED_version_State_Attorney.pdf.

¹⁶⁴ "Eastern Cape's mud schools failure," Boya, S., Legal Resource Centre (5 July 2011), accessed on 9 December 2011 at <http://www.lrc.org.za/lrc-in-the-news/1494-eastern-capes-mud-schools-failure>

¹⁶⁵ "Statement by H.E. Ms. Xingwana, L., Minister of Women, Children and People with Disabilities to the 55th Session of the Commission on the Status of Women," United Nations Head Quarters, New York, United Nations (24 February 2011), accessed on 15 December 2011 at http://www.un.org/womenwatch/daw/csw/csw55/statements/South_Africa.pdf.

¹⁶⁶ "Media Statement: Launch of the National Education and Evaluation Unit (NEEDU), 17 March 2011," Department: Basic Education – Republic of South Africa, accessed on 23 January 2012 at <http://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/1389/ItemID/3093/Default.aspx>.

¹⁶⁷ "Media Release: New Planning Framework to Boost Teacher Quality, 5 April 2011," Department: Basic Education – Republic of South Africa, accessed on 7 December 2011 at <http://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/1389/ItemID/3109/Default.aspx>.

¹⁶⁸ "Accord on Basic Education and Partnerships with Schools," South Africa Government Online, accessed on 30 November 2011 at <http://www.info.gov.za/speeches/docs/2011/Basic%20Education%20Accord.pdf>.

Child and infant mortality

Concerning the issues of child and infant mortality, South Africa is far from reaching the SADC target of reducing maternal mortality rates by 2015; conversely, the current trend suggests it is increasing.¹⁶⁹ In addition, the United Nations reported that the mortality rate of children under 5 years old in South Africa is at the same level as in 1990.¹⁷⁰ A news article summarises the UN report's findings, highlighting that deaths of under-fives per 1000 live births in 2010 was 57, indicating that much is to be done if South Africa's Millennium Development Goal of reducing this figure to 20 per 100 live births is to become achievable.¹⁷¹ The SAHRC has repeatedly called for an investigation into child and maternal mortality by the Department of Health to determine the reasons for the upward trend.

¹⁶⁹ "Economic and Social Rights 7th Report 2006-2009: Millennium Development Goals and the progressive realisation of economic and social rights in South Africa," South African Human Rights Commission (14 December 2010), accessed on 23 November 2011 at

<http://www.info.gov.za/view/DynamicAction?pageid=623&myID=301071>.

¹⁷⁰ "Levels & Trends in Child Mortality: Report 2011," Childinfo, accessed on 23 November 2011 at http://www.childinfo.org/files/Child_Mortality_Report_2011.pdf.

¹⁷¹ "South Africa not moving fast enough to improve infant mortality," Sowetan Live (15 September 2011), accessed on 23 November 2011 at <http://www.sowetanlive.co.za/news/2011/09/15/south-africa-not-moving-fast-enough-to-improve-infant-mortality>.

CHAPTER 7

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) protects the rights of workers and their families seeking employment in countries of which they are not nationals. The ICRMW recognises the specific vulnerabilities of migrant workers and promotes humane working and living conditions. It provides guidance on the elaboration of national migration policies and sets out provisions to combat exploitation of migrant workers in their countries of departure, transit and arrival.¹⁷² Since its adoption by the United Nations General Assembly on 18 December 1990, the ICRMW has been ratified by 45 states and signed by another 17 states. In 2011 Palau and Venezuela became signatories to the ICRMW and Bangladesh ratified the ICRMW.¹⁷³

The Committee on Migrant Workers

The Committee on Migrant Workers (CMW) meets twice a year in Geneva to review state reports, consider complaints, and conduct days of general discussion. States Parties must submit an initial report one year after ratification followed by a periodic report every five years thereafter. The CMW is composed of 14 independent experts who are elected by States Parties for terms of four years. CMW members include representatives from six African nations, namely Mali, Egypt, Morocco, Algeria, Burkina Faso and Senegal.¹⁷⁴ On 31 December 2011, the terms of three African members expired, namely those from Egypt, Morocco and Burkina Faso.¹⁷⁵ The fifth meeting of States Parties to the ICRMW took place on 8 December 2011 at the United Nations Headquarters in New York. One of the purposes of the meeting was to elect seven new members to the CMW to replace those whose terms had set to expire in December 2011. At this meeting the representatives from Egypt, Morocco and Burkina Faso were all re-elected and the member from Algeria was elected to his first term. All members elected at this meeting hold terms set to expire in 2015.¹⁷⁶

¹⁷² "Committee on Migrant Workers: Monitoring the protection of the rights of all migrant workers and members of their families," Office of the United Nations High Commissioner for Human Rights, accessed at <http://www2.ohchr.org/english/bodies/cmw>.

¹⁷³ "Status as at : 19-01-2012, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families," Chapter IV: Human Rights, United Nations Treaty Collection, International Convention on the Protection of All Migrant Workers and Members of their Families, accessed at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en.

¹⁷⁴ Members of the Committee are Mr. Jose Brillantes (Philippines), Mr. Francisco Carione Mena (Ecuador), Ms. Fatoumata Abdourhamana Diko (Mali), Mr. Ahmed Hassan El-Borai (Egypt), Mr. Abdelhamid El Jamri (Morocco), Mr. Migel Angel Angarra Gonzalez (Guatemala), Mr. Prasard Kariyawasm (Sri Lanka), Ms. Khedidia Lajel (Algeria), Ms. Andrea Miller-Stennet (Jamaica), Mr. Marco Nunez-Melgar MAguina (Peru), Mr. Mehmet Seyvim (Turkey), Ms. Myriam Poussi (Burkina Faso) and Mr. Azad Taghizadet (Azerbaijan), Mr. Ahmadou Tall (Senegal).

¹⁷⁵ Nations of other members with expiring terms are Mexico, El Salvador, Ecuador and Azerbaijan

¹⁷⁶ Nations of other members elected are Ecuador, Peru and Azerbaijan.

Recent Developments

In 2011, CMW considered reports from Argentina, Chile, Guatemala, Paraguay, Tajikistan and Mexico. Principal recommendations made by CMW included ensuring that due process is carried out in the case of deportation; ratification of the International Labour Organisation (ILO) Conventions; providing adequate protection for migrant workers through domestic legislation and ensuring that this is in line with the ICRMW; improved data collection methods to gain a better understanding of migrant workers and subsequently improve public policy; elimination of racial discrimination in the workplace; and implementing or strengthening measures to combat xenophobic crime against migrant workers.¹⁷⁷

The CMW held its 14th and 15th sessions in April and November respectively. A Day of General Discussion was held on 19 September 2011 in Geneva. The topic of the day of discussion was 'The rights of migrant workers in an irregular status and members of their families'.¹⁷⁸ The issues addressed at the day of general discussion included the criminalisation of undocumented migrant workers and members of their families and their vulnerability to exploitation; abuse and arbitrary detention; protection and restrictions regarding economic and social rights of migrant workers in irregular status and their family members; and international cooperation for the protection of the rights of undocumented migrant workers and members of their families.

In June 2011, the CMW welcomed the recent adoption by the ILO of the International Convention Concerning Decent Work for Domestic Workers, a landmark legal instrument aimed to protect the rights and improve the conditions of the life of domestic workers, millions of whom are migrants. The new ILO standards denote that domestic workers around the world who care for families and households must have the same basic labour rights as those afforded to other types of workers: reasonable hours of work, weekly rest for at least 24 consecutive hours, a limit on payment in-kind, clear information on the terms and conditions of employment, as well as respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining. Countries that are yet to ratify the ICRMW, such as South Africa, were strongly encouraged to do so at this meeting.¹⁷⁹

¹⁷⁷ See "Committee on the Protection of All Migrant Workers and Members of their Families, 14th Session, (4-8 April 2011)," Concluding Observations (Mexico), CMW/C/MEX/CO/2, Office of the United Nations High Commissioner for Human Rights, accessed at <http://www2.ohchr.org/english/bodies/cmw/cmws14.htm>.

¹⁷⁸ "Day of General Discussion on the Rights of migrant workers in an irregular situation and members of their families," Office of the United Nations High Commissioner for Human Rights (19 September 2011), accessed on 23 November 2011 at <http://www2.ohchr.org/english/bodies/cmw/dgd19092011.htm>.

¹⁷⁹ "UN committee on migrants' rights hails new International Convention on Domestic Workers", United Nations Office of the High Commissioner for Human Rights (21 June 2011), accessed on 16 December 2011 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11175&LangID=E>

South Africa and the ICRMW

Despite attracting significant numbers of migrant workers from countries such as Zimbabwe, Lesotho, Somalia and the Democratic Republic of the Congo, South Africa has neither signed nor ratified the ICRMW. Domestic legislation such as the Labour Relations Act ¹⁸⁰ aims to protect the rights of employees; however, migrant workers are often subject to ill treatment and discrimination. Furthermore, failure to enforce domestic immigration laws and a succession of xenophobic attacks have left migrant workers undocumented, unsafe and in a generally precarious position. Migrant workers without proper work permits are particularly vulnerable

Legal Developments

In December 2011, The North Gauteng High Court handed down a judgement that set aside the Department of Home Affairs' decision not to open a refugee reception office in Johannesburg and directed the Director-General to reconsider his decision. Various NGO groups challenged the decision by the Department of Home Affairs not to open a new refugee reception office in Johannesburg after the existing office was closed down at the end of May 2011. The Department claimed that it had made no such decision and was in fact ordered to close the refugee reception office by another court application brought by the surrounding businesses in Crown Mines. The Court found that a decision had indeed been taken in line with an apparent policy pronouncement by the Cabinet to move all asylum services to border posts. It was agreed between all parties that if a decision was found to have been taken, the necessary public consultation and consultation with the Standing Committee for Refugee Affairs had not taken place as required by the law. ¹⁸¹

¹⁸⁰ *Labour Relations Act* 66 of 1995.

¹⁸¹ "Victory in Crown Mines Case," Consortium for Refugees and Migrants in South Africa," CorMSA (15 December 2011) accessed on 16 December 2011 at <http://www.cormsa.org.za/2011/12/15/victory-in-crown-mines-case/>.

Legislative Developments

In August 2011, President Jacob Zuma signed the Immigration Amendment Act 13 of 2011 and Refugees Amendment Act 12 of 2011 into law. The Immigration Amendment Act will come into operation on a date yet to be determined by the president. The Refugees Amendment Act will come into operation 'immediately after the commencement of the Refugees Amendment Act 33 of 2008'.¹⁸²

According to a press report from November 2011, nearly half a million asylum seekers in South Africa may lose their right to earn a living or study while their refugee status is being determined, after indications that the government plans to amend legislation governing those rights.¹⁸³ The Cabinet announced that it is reviewing the minimum rights of immigrants, including the right to work and study, as it is believed that the asylum seeker system has been abused. Civil society groups argue that the review is a precursor to the withdrawal of rights that will 'force more asylum seekers underground, thus making them liable to exploitation'.¹⁸⁴ South Africa's 1998 Refugees Act is silent on the question of whether someone who has been issued an asylum seeker permit can work or study while awaiting a decision on his or her refugee status.

Protection of Migrants

The former UN Special Rapporteur on the human rights of migrants, Jorge A. Bustamante, conducted an official visit to South Africa from 24 January to 1 February 2011, meeting with government ministers, members of parliament, central and provisional government officials, migrant workers and others. While recognising that the government has taken steps to protect migrant workers, such as the regularisation process of Zimbabweans, he paid particular attention to the xenophobic attacks directed against migrants in townships. Mr. Bustamante made several recommendations to the government, including the need to organise detailed collections of data and statistics focusing on labour demand; the arrest and detention of foreign nationals; migrants' levels of access to social services, in particular health care; and the issue of unaccompanied foreign children, all in the context of the absence of a comprehensive immigration policy that respects the human rights of migrants and ensures their integration into South African society.

¹⁸² Also see Refugees Amendment Bill, Immigration Amendment Bill adoption; Public Service Commission & Departments' own performance reports, & 4th quarter 2010 report;

"Immigration Amendment Act and Refugees Amendment Act Signed into Law," SabinetLaw (29 August 2011), accessed on 15 December 2011 at <http://www.sabinetlaw.co.za/home-affairs/articles/immigration-amendment-act-and-refugees-amendment-act-signed-law>.

¹⁸³ "South Africa: "Harsher regime" for asylum seekers," IRIN Humanitarian News and Analysis (29 November 2011), accessed on 6 December 2011 at <http://www.irinnews.org/report.aspx?ReportId=94337>.

¹⁸⁴ Ibid.

Mr. Bustamente recommended that the South African government should tackle the number of undocumented immigrants or face a repeat of the widespread attacks on migrants in 2008. Those attacks, prompted by high unemployment, resulted in sixty deaths and the displacement of thousands.¹⁸⁵

On 4 May 2011, the UN Office of the High Commissioner for Human Rights held a panel discussion in New York on the vulnerability of migrants to racism, xenophobia and discrimination. At the discussion, the SAHRC Commission delivered a speech on xenophobia and the mainstreaming of gender and age into various aspects of the migration debate. Drawing on the example of the highly publicised xenophobic violence throughout South Africa in May 2008, it was pointed out that, despite the country having ratified key international human rights instruments and an array of domestic legislation to promote equality, the government was failing to adequately protect the rights of migrants. Very few people involved in the 2008 attacks were prosecuted. A call was made for the state to develop legislation relating to hate crime and prejudice, which could then be used to tackle xenophobic crime.¹⁸⁶

¹⁸⁵ "First mission to South Africa by a UN independent expert on migrants," United Nations Human Rights Office of the High Commissioner of Human Rights, accessed on 6 December 2011 at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10662&LangID=E>.

¹⁸⁶ "Vulnerability of Migrants - in particular women & children – to Xenophobic Violence (Speaking Notes)," Panel Discussion on vulnerability of migrants to racism, xenophobia and discrimination, New York, United Nations Human Rights Office of the High Commissioner of Human Rights (4 May 2011), accessed on 8 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkArticleID=55>.

CHAPTER 8

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The International Convention on the Rights of Persons with Disabilities (ICRPD) seeks to combat discrimination against and stereotypes towards persons with disabilities and to facilitate the full participation of persons with disabilities in society. Adopted on 13 December 2006, the ICRPD entered into force on 3 May 2008, with 107 States Parties as of 2011. By the end of 2011, 153 countries had signed the ICRPD, with Belize, Kyrgyzstan, Micronesia, Papua New Guinea, and St. Lucia signing in 2011. By the end of 2011, 110 states had ratified the Convention, including Cape Verde, Togo and seven other non-African countries that year.¹⁸⁷

The Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities (CRPD) monitors the implementation of the ICRPD. There are currently 18 members on the CRPD, nine of whom are holding terms set to expire at end of 2012.¹⁸⁸ The CRPD includes members from three African nations, namely Algeria, Tunisia and Kenya.¹⁸⁹ All States Parties are required to submit their initial report to the CRPD within two years of ratifying the ICRPD and periodic reports are due every four years thereafter.

Recent Developments

In 2011, the CRPD met twice in Geneva for its 5th and 6th sessions in April and September, respectively. The CRPD considered the first state report of Tunisia and issued Concluding Observations during its 5th session. The CRPD also adopted a list of issues after reviewing Spain's report at this session.¹⁹⁰ During the 6th session, the CRPD reviewed reports from China, Peru and Spain, issued Concluding Observations for Spain, and adopted a list of issues

¹⁸⁷ "Status as at: 6-12-2011, Convention on the Rights of Persons with Disabilities," United Nations Treaty Collection, accessed on 6 December 2011 at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en.

¹⁸⁸ "Election of six Members of the Committee on the Rights of Persons with Disabilities to replace those whose terms are due to expire on 31 December 2010, and to increase the membership of the Committee by six members to attain a maximum number of eighteen members," UN Office of the High Commissioner for Human Rights, accessed on 15 December 2011 at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDElections.aspx>.

¹⁸⁹ Committee members are Ms. Amna Ali Al-Suwaidi (Qatar), Mr. Mohammed Al-Tarawneh (Jordan), Mr. Monsur Ahmed Chowdhury (Bangladesh), Ms. Maria Soledad Cisteras Reyes (Chile), Ms. Theresia Degener (Germany), Mr. Gabor Gambos (Hungary), Ms. Fathia Hadj-Salah (Algeria), Mr. Hyung Shik Kim (Republic of Korea), Mr. Lofti Ben Lallhom (Tunisia), Mr. Stig Langvad (Denmark), Ms. Eda Wangechi Maina (Kenya), Mr. Mc Callum (Australia), Ms. Ana Pelaez Narvaez (Spain), Ms. Silvia Judith Quang-Chang (Guatemala), Mr. Carlos Rios Espinosa (Mexico), Mr. Damjan Tatic (Serbia), Mr. German Xavier Torres Correa (Ecuador), Ms. Jia Yang (China).

¹⁹⁰ "Committee on the Rights of Persons with Disabilities, 5th session (11-15 April 2011)," Office of the United Nations High Commissioner for Human Rights, accessed at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx>.

for Peru and China.¹⁹¹ In its response to Tunisia, the CRPD made several references to increased accessibility, specifically noting accessibility to legal aid.¹⁹² This is an area requiring attention in South Africa and was specifically discussed in the Section 5 Committee meeting on persons with disabilities at the SAHRC this year.¹⁹³

Further key recommendations raised by the CRPD during the 5th and 6th sessions include incorporation of the definition of 'reasonable accommodation' into national law in accordance with Article 2 of the ICPRD; taking further steps to ensure the rights of women and children with disabilities; awareness raising campaigns regarding the principles of the ICPRD; equal recognition of persons with disabilities before the law; repealing of laws that deprive liberty on the basis of disability; accommodation for persons with disabilities in education; enhanced opportunities for education and employment for persons with disabilities and improved collection of statistical data on persons with disabilities.

The International Day of Persons with Disabilities takes place on 3 December each year. In 2011, the UN Department of Economic and Social Affairs (DESA) requested suggestions from its partners and the general public in respect of a theme for the day.¹⁹⁴ The official theme adopted was 'Together for a Better World for All: Including Persons with Disabilities in Development'.¹⁹⁵ This was the first time the day was commemorated using a general theme, with supporting sub-themes to draw attention to key areas that would work in synergy to mainstream disability in all development processes.¹⁹⁶

¹⁹¹ "Committee on the Rights of Persons with Disabilities, 6th session, (19-23 September 2011)," United Nations Office of the Commissioner for Human Rights, accessed on 22 November 2011 at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx>.

¹⁹² Ibid.

¹⁹³ "Minutes of the Section 5 Committee Meeting on Disabilities," held at South African Human Rights Commission, (24 October 2011).

¹⁹⁴ "International Day of Persons with Disabilities 2011," United States International Council on Disabilities, accessed on 23 November 2011 at http://www.usicd.org/detail/event.cfm?event_id=117&id=182.

¹⁹⁵ "Highlighting World Disability Day," bizcommunity.com (25 November 2011), accessed on 26 November 2011 at <http://www.bizcommunity.com/Article/196/330/67763.html>.

¹⁹⁶ "International Day of Persons with Disabilities 2011," United States International Council on Disabilities, accessed on 17 January 2012 at http://www.usicd.org/detail/event.cfm?event_id=117&id=182.

South Africa and the CRPD

On 30 November 2007, South Africa became the eighth country to ratify the CRPD and its Optional Protocol. Within South Africa, the DWCPD is responsible for the advancement of the rights of these vulnerable groups.¹⁹⁷

The SAHRC has formed a Section 5 Committee to facilitate advocacy around the rights of persons with disabilities, and to strengthen their protection. The SAHRC hosted the 8th Biennial Conference of the Network of African National Human Rights Institutions (NANHRI) in Cape Town from 19 - 21 October. The theme of the event was 'Advancing the human rights of older persons and persons with disabilities: the role of National Human Rights Institutions'.¹⁹⁸ Those in attendance examined ways of engaging with state and non-state actors for the promotion and protection of the human rights of older persons and persons with disabilities in Africa. Article 33 of the CRPD requires States Parties to establish an independent monitoring mechanism distinct from their implementation mechanisms, and NHRIs have been identified as the ideal bodies to perform this role. The conference concluded with the unanimous adoption of the Cape Town Declaration, which sets out the ways in which African NHRIs have resolved to play a more effective role in the implementation of the CRPD.¹⁹⁹

In March 2011, the UN Special Rapporteur on Disability, Shuaib Chaulken, stated that the fact that South Africa had ratified the CRPD was a positive sign of progress in the area. Chaulken, a South African, said he plans to use his global mandate to push for better transport facilities for persons with disabilities.²⁰⁰

One of the main areas of concern affecting persons with disabilities is unemployment. The World Health Organisation's 2011 World Report on Disability placed the global disability population at about 15%. In South Africa, the 2011 Employment Equity Commission Report highlighted that persons with disabilities still lag behind at most levels when measured against the Economically Active Population (EAP).²⁰¹

¹⁹⁷ "Background", Department of Women and Children with Disabilities, accessed on 15 December 2011 at <http://www.dwcpd.gov.za/about/background/>.

¹⁹⁸ "8th Biennial Conference of the Network of African National Human Rights Institutions (NANHRI) Conference Theme: "Advancing the Human Rights of Older Persons and Persons with Disabilities – the Role of African National Human Rights Institutions," Cape Town, Network of African National Human Rights Institutions (19-21 October 2011), accessed on 8 December 2011 at http://www.nanhri.org/index.php?option=com_content&task=view&id=217.

¹⁹⁹ "Eighth Conference of African National Human Rights Institutions, Cape Town Declaration," Cape Town, Network of African National Human Rights Institutions (19-21 October 2011), accessed on 8 December 2011 at <http://www.nanhri.org/index.php?option=content&task=view&id=233>.

²⁰⁰ "Capetonian gets things moving for disabled", Taylor, T., IOL, (23 March 2011), accessed on 6 December 2011 at <http://www.iol.co.za/capetonian-gets-things-moving-for-disabled-1.1045737>.

²⁰¹ "Commission for Employment Equity Report 2010 – 2011," Ramutloa, L., Department: Labor – Republic of South Africa, accessed on 23 November 2011 at <http://www.labour.gov.za/downloads/documents/annual-reports/employment-equity/2010-2011/CEE%20Annual%20Report%202011a.pdf/view>.

The Department of Local and Provincial Government of South Africa has established a framework under which it aims for persons with disabilities to constitute 2% unemployment of the public and private sector workforce by 2014.²⁰² The Minister for Women, Children and Persons with Disabilities, Lulu Xingwana, has urged state owned enterprises and industry to take concrete steps to exceed the 2% target within their institutions by December 2012. There is a strong link between disability and poverty in South Africa and achieving the 2% goal would be a step in the right direction in offsetting this trend.²⁰³

Legal Developments

In September 2011, a Western Cape High Court Judge delivered a judgement in the case of *Ives v. Rajah* that addressed the issue of alternative accommodation in property matters involving disabled persons.²⁰⁴ In the *Ives* matter, Rajah brought an eviction application against Ives after Rajah had purchased the property in which Ives lived at a sale in execution. Ives, who suffers from acute arthritis that constrains her to a wheel chair, had occupied the property for many years and averred that because of her disability her sole monthly income was a state disability grant of R1010 a month and that she was a single 51 year old woman with no family that could accommodate her. The court granted an eviction order despite Ives' disability. Ives appealed the court decision. In its judgement the High Court suggested that where disabled persons are concerned, courts should consider their disability and the availability of alternative accommodation when determining if eviction orders should be issued.²⁰⁵

In December 2010, the SAHRC commended the Witbank Equality Court on its decision to compel the St. Thomas Aquinas private school to re-admit a former learner that wished to return to the school after the school had declined her readmission on account of her physical disabilities. The learner was originally admitted into the school with the school's full knowledge of her physical disability. However, despite certain efforts made towards increased accessibility the learner still experienced significant challenges navigating the school. When the school failed to make additional alterations to enable her to learn, her mother took her out of the school and provided her with home schooling.

²⁰² "Disability Framework for Local Government 2009 – 2014," Department of Provincial and Local Government, accessed on 8 December 2011 at <http://www.info.gov.za/view/DownloadFileAction?id=107417>.

²⁰³ "Xingwana: Employ people with disabilities," News24 (4 December 2011), accessed on 8 December 2011 at <http://www.news24.com/SouthAfrica/Politics/Xingwana-Employ-people-with-disabilities-20111204>.

²⁰⁴ *Ives v. Rajah* 2011 (WCC) (Case No. A205/2011), accessed on 8 December 2011 at <http://www.saflii.org/za/cases/ZAWCHC/2011/390.html>.

²⁰⁵ *Ibid.*

Her mother later decided that she should go back to the school, but this time she was denied admittance. Her mother approached the SAHRC's Mpumalanga Provincial Office for assistance with the matter at the Equality Court. The court found in favour of the complainant and ordered the school to re-admit the learner. The decision was welcomed, particularly in light of its message to building owners and those responsible for them to ensure that the premises are in compliance with building regulations. The court held that in terms of Section 9(1) of the Constitution, everyone is equal before the law and has the right to equal protection and benefit from the law. No person may unfairly discriminate, directly or indirectly, against another person on the grounds of physical disability. Moreover, 'disability' is one of the prohibited grounds for discrimination under Section 1 of the Equality Act. In addition to ordering the school to re-admit the learner, the court compelled the school to take reasonable steps to remove all obstacles in order to ensure that the learner would have wheelchair access to all the classrooms and a toilet allocated to her.²⁰⁶

Social Developments

Disability seriously affects access to basic education. It is estimated that 10% of children with disabilities do not attend school.²⁰⁷ Furthermore, lack of accessibility to schools is a prevalent issue. Only 108 public schools in South Africa offer fully inclusive education for disabled learners, leaving most public schools incapable of providing a fully accessible learning environment.²⁰⁸ Children with disabilities often face discrimination at mainstream schools within South Africa due to the attitudes of teachers and learners and the largely inaccessible environment in which they are expected to learn. Despite the challenging learning environment facing disabled learners, little is being done to create more open and accessible schools for disabled learners. The needs of disabled learners were not addressed in the National Development Plan that was released in November 2011.²⁰⁹

²⁰⁶ "Media statement issued by the South African Human Rights Commission to welcome the decision of the Witbank Equality Court to order the St Thomas Aquinas Private School to re-admit a girl learner living with disabilities," South African Human Rights Commission (13 December 2010), accessed on 6 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkMenuID=16&ipkArticleID=43>.

²⁰⁷ "Selected Development Indicators 2009 Statistical Release (P0318.2)," Statistics South Africa (June 2009), accessed at <http://www.statssa.gov.za/publications/P03182/P03182June2009.pdf>.

²⁰⁸ "Only 108 SA schools offer inclusive education," Bongani, N., Mail & Guardian Online (6 December 2011), accessed on 08 December 2011 at <http://mg.co.za/article/2011-12-06-only-108-sa-schools-offer-inclusive-education>.

²⁰⁹ "Pupils with disabilities ignored," Combrink, H. and Wakefield, L., Mail & Guardian Online (2 December 2011), accessed on 08 December 2011 at <http://mg.co.za/article/2011-12-02-pupils-with-disabilities-ignored>. For more information on disability issues, see Convention on the Rights of Persons with Disabilities, Chapter 8.

With regard to accessibility, new measures were instituted to allow greater voter accessibility to persons with disabilities in April 2011. Persons with disabilities and older persons who require a special vote are now able to vote from home if they have successfully completed the application forms and submitted these to their Municipal Electoral Office. In 2011, the Independent Electoral Commission (IEC) announced that it has procured the necessary equipment to make ballot papers available in Braille in all polling stations. This means that blind persons will be able to vote in secret during local and general elections for the first time, and the move is in keeping with requests for increased accessibility from the CRPD in response to States Parties' reports.²¹⁰

²¹⁰ "People with Disabilities can vote at home," Ministry for Women, Children and People with Disabilities (17 April 2011), accessed on 8 December 2011 at http://www.wcpd.gov.za/images/uploads/Disability_elections.doc.

CHAPTER 9

INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

On 20 December 2006, at the 61st session of the UN General Assembly, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) became the most recent human rights treaty to be adopted by the United Nations. The ICPED prohibits enforced disappearances under any circumstances and places the obligation on the State to protect its citizens from enforced disappearances.²¹¹

Recent Development and the Committee on Enforced Disappearances

Following the coming into force of the ICPED in late 2010, the first meeting of States Parties to the ICPED was held at the United Nations Headquarters in New York on 31 May 2011. The main purpose of the meeting was to elect ten members to the Committee on Enforced Disappearances (CED). In accordance with Article 26 of the ICPED, States Parties elected these members by secret ballot. Mr. Mohammed al-Obaidi (Iraq), Mr. Mamadou Badio Camara (Senegal) and Mr. Enoch Mulemebe (Zambia) were amongst the newly elected members.²¹² The CED will be the body of independent experts that monitors the implementation of the ICPED by States. In future the CED will meet twice a year in Geneva. The CED is independent and impartial and is also mandated to receive complaints from individuals when national authorities fail to fulfil their obligations.

The election of members to the CED was followed by a panel discussion entitled 'The International Convention on Enforced Disappearances: ending impunity and preventing new victims' was conducted. The panel discussion sought to raise the visibility and promote ratification of the ICPED.

The first session of the CED was held on 11 November 2011. The CED has, *inter alia*, agreed to appoint a Special Rapporteur, a Deputy and an Alternate to consider urgent requests and issue interim or protection measures between sessions; to establish a working group to develop a 'user's manual' on individual communications; and to establish a working group to develop

²¹¹ "International Convention for the Protection of All Persons from Enforced Disappearance," Office of the United Nations High Commissioner for Human Rights, accessed on 7 December 2011 at <http://www2.ohchr.org/english/law/disappearance-convention.htm>.

²¹² Other elected members are Mr. Emmanuel Decaux (France), Mr. Alvaro Garce Garcia Y Santos (Uruguay), Mr. Luciano Hazan (Argentina), Mr. Rainer Huhle (Germany), Ms. Suela Janina (Albania), Mr. Juan Jose Lopez Ortega (Spain), Mr. Kimio Yakushiji (Japan); see <http://www.ohchr.org/EN/HRBodies/CED/Pages/Elections2011.aspx>.

treaty-specific reporting guidelines.²¹³ The following steps were identified as priorities for the CED: encouraging states to ratify or accede to the ICPED, encouraging states to submit their initial reports as soon as possible and establishing the Committee's procedure for considering urgent requests under Article 30 of the ICPED. By the end of 2011, 90 countries had signed the ICPED with 27 countries ratifying it and three countries acceding to it.²¹⁴ In 2011, there were three new signatories²¹⁵ and eight new ratifications to the ICPED.²¹⁶

On 30 August 2011, the CED held its first UN International Day of Victims of Enforced Disappearances. The statement released by the United Nations Working Group on Enforced or Involuntary Disappearances on this day outlined that states often use enforced disappearances as a tool to deal with conflict and internal unrest. The statement draws particular attention to the families of persons who have disappeared over the last 31 and their right to know the truth about the circumstances around their loved one's disappearance and the fate of the disappeared person.²¹⁷

South Africa and CED

Despite the SAHRC's continued encouragement to government, South Africa is yet to sign or ratify the ICPED²¹⁸ despite that during the apartheid era, there were many incidents of enforced disappearances including targeted abduction operations, abductions of detainees from police stations, disappearance of prisoners due to be released and disappearances during periods of unrest in townships.²¹⁹ Under the apartheid regime, a series of laws to root out 'terrorism' was established that made enforced disappearances possible. Many family members of persons who disappeared still don't know the fate of their loved one.

²¹³ "Report of the Committee on Enforced Disappearances on its First Session," Committee on Enforced Disappearance, 1st Session, Geneva, Office of the United Nations High Commissioner for Human Rights (8-11 November 2011), accessed on 16 December 2011 at

http://www.ohchr.org/Documents/HRBodies/CED/Draft_report_CED_1st_session.pdf.

²¹⁴ "Status as at: 16-12-2011, International Convention for the Protection of All Persons from Enforced Disappearance," Chapter IV: Human Rights, United Nations Treaty Collection, accessed on 16 December 2011 at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

²¹⁵ Mauritania, Palau and Switzerland.

²¹⁶ Armenia, Gabon, Montenegro, the Netherlands, Panama, Serbia, Tunisia and Zambia.

²¹⁷ "First UN International Day of the Disappeared, Tuesday 30 August 2011," Office of the United Nations High Commissioner for Human Rights, accessed on 23 November 2011 at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11340&LongID=E>

²¹⁸ "UN experts welcome entry into force of treaty on enforced disappearance," UN News Centre (23 December 2010), accessed on 7 December 2011 at

<http://www.un.org/apps/news/story.asp?NewsID=37150&Cr=disappearance&Cr1>.

²¹⁹ "Enforced disappearances South Africa," Enforced Disappearances Information Exchange Centre, accessed on 23 November 2011 at <http://www.ediec.org/world-map/map/country/south-africa/>.

On 30 August 2011, a ceremony was held by Khulumani Support Group for 10 members of families affected by enforced disappearances to mark the International Day of Victims of Enforced Disappearances. The Khulumani Support Group (Khulumani) is a NGO that provides support for the survivors of gross human rights violations during the apartheid-era and lobbies the government to provide reparations. The Khulumani's Apartheid Reparations Database contains the stories and records of the disappearances of 1 200 South Africans.²²⁰

²²⁰ "Khulumani Remembers the Unresolved and Pain of Families Affected by Enforced Disappearances on this Anniversary of International Day for the Disappeared," Khulumani Support Group (30 August 2011), accessed on 7 December 2011 at <http://www.khulumani.net/truth-a-memory/item/519-khulumani-remembers-the-unresolved-loss-and-pain-of-families-affected-by-enforced-disappearances-on-this-anniversary-of-international-day-for-the-disappeared.html>.

CHAPTER 10

HUMAN RIGHTS COUNCIL

The Human Rights Council is an inter-governmental body within the UN system, comprised of 47 states responsible for strengthening the promotion and protection of human rights around the globe. The Human Rights Council was created by the UN General Assembly on 15 March 2006 and was tasked principally with addressing situations of human rights violations and making relevant recommendations. The President of the Human Rights Council for the sixth cycle (2011-2012) is Laura Dupuy Lasserre, who serves as a Permanent Representative of Uruguay to the United Nations Office in Geneva.²²¹

Recent Developments

In 2011, the Human Rights Council held its 16th, 17th and 18th sessions, examining issues such as the right to adequate housing, combating discrimination against people of African descent,²²² the use of force during protests,²²³ the severe drought in the Horn of Africa, environmental sustainability, racial violence, rights of indigenous peoples and elimination of forced child labour.²²⁴

South Africa and Human Rights Council

In June 2011, the SAHRC welcomed news that the South African government had tabled a resolution at the Human Rights Council requesting a report to be issued concerning the position of LGBTI citizens across the world.²²⁵ During its 17th session, the Human Rights Council adopted “Resolution 17/19 Human Rights, sexual orientation and gender identity”, which requested the UN High Commissioner for Human Rights to commission a study documenting discriminatory laws, practices and acts of violence against individuals based on their sexual

²²¹ “The Human Rights Council - President of the 6th Cycle,” UN Human Rights Council, Office of the United Nations High Commissioner for Human Rights, accessed on 17 November 2011 at <http://www2.ohchr.org/english/bodies/hrcouncil/HRCPresident6thcycle.htm>.

²²² “16th Session of the Human Rights Council, Geneva, (28 February - 25 March 2011),” UN Human Rights Council, Office of the United Nations High Commissioner for Human Rights, accessed on 7 December 2011 at <http://www2.ohchr.org/english/bodies/hrcouncil/16session/>.

²²³ “17th Session of the Human Rights Council, Geneva, (30 May - 17 June 2011),” UN Human Rights Council, Office of the United Nations High Commissioner for Human Rights,” accessed on 7 December 2011 at <http://www2.ohchr.org/english/bodies/hrcouncil/17session/>.

²²⁴ “18th Session of the Human Rights Council, Geneva, (12 - 30 September 2011),” UN Human Rights Council, Office of the United Nations High Commissioner for Human Rights, accessed on at <http://www2.ohchr.org/english/bodies/hrcouncil/18session/>.

²²⁵ “SAHRC welcomes the proactive involvement of the SA government in the decision of the UNHRC to pass a resolution to protect LGBTI people,” South Africa Human Rights Commission (21 June 2011), accessed on 6 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkMenuID=16&ipkArticleID=65>.

orientation and gender identity²²⁶ by the end of 2011. The resolution passed by 23 to 19 votes, with three abstentions.²²⁷ During the run up to the tabling of the Resolution in Geneva, the SAHRC hosted a civil society consultative meeting in South Africa focusing on LGBTI discrimination, voicing concerns over the level of violence suffered by members of these communities. The High Commissioner issued the requested report on 17 November 2011.²²⁸ The report recalls the Concluding Observations of the CRC, the CAT the CEDAW in relation to South Africa, recommending the elimination of discrimination based on sexual orientation and gender identity. South Africa was specifically mentioned in relation to killings of LGBTI persons.

The UN Special Rapporteur on Violence against Women Ms Rashida Manjoo of South Africa has also highlighted the targeted murder of lesbian women in South Africa. The Special Rapporteur, recently reported alleged incidents of gang rapes and murder experienced by lesbian, bisexual and transgender women in South Africa,²²⁹ and noted that 'lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths', including 'for instance, that lesbian women would change their sexual orientation if they are raped by a man'.²³⁰

On 28 September 2011, the Human Rights Council held a panel discussion on the promotion and protection of human rights through tolerance and reconciliation, in commemoration of Nelson Mandela International Day. Non-discrimination was the strategic theme for the

²²⁶ "UN Human Rights Council passes gay rights resolution," International Law Observer (24 June 2011), accessed on 4 December 2011 at <http://internationallawobserver.eu/2011/06/24/un-human-rights-council-passes-gay-rights-resolution/>.

²²⁷ Burkina Faso, China and Zambia abstained. Mauritius was the only African country to vote in favor of the resolution and Angola, Cameroon, Djibouti, Gabon, Ghana, Maldives, Mauritania, Nigeria, Senegal and Uganda were the African countries that voted against the Resolution.

²²⁸ "UN General Assembly, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity," United Nations General Assembly, UN Report A/HRC/19/41, Office of the United Nations High Commissioner for Human Rights (17 November 2011), accessed on 22 January 2012 at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/a.hrc.19.41_english.pdf

²²⁹ "Report of the Special Rapporteur on violence against women, its cause and consequences, Rashida Manjoo: Addendum - Mission to Kyrgyzstan," United Nations General Assembly, UN Report A/HRC/14/22/Add.2, paras. 37-38, Office of the United Nations High Commissioner for Human Rights (28 May 2010), accessed on 6 December 2011 at http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.Add.2_en.pdf ; and "Report of the Special Rapporteur on violence against women, its cause and consequences, Rashida Manjoo: Addendum - Follow-up mission to El-Salvador," United Nations General Assembly, A/HRC/17/26/Add.2, Office of the United Nations High Commissioner for Human Rights (14 February 2011), paras. 28-29, accessed on 6 December 2011 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/112/37/PDF/G1111237.pdf?OpenElement>.

²³⁰ "Discriminatory laws and practices and violence against individuals based on their sexual orientation and gender identity," UN Doc. A/HRC/19/4, Office of the United Nations High Commissioner for Human Rights (17 November 2011), accessed on 16 December 2011 at http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_en.pdf.

discussion, inspired by Nelson Mandela and his concept of the rainbow nation.²³¹ In the course of the discussion, speakers said that it was important for individuals to promote the values of tolerance and reconciliation in their respective countries, building on the example of Nelson Mandela. Participants stated that generating a culture of peace, tolerance and respect for human rights was necessary, without which, no effort for development or harmony could be preserved. States also remembered Nobel Laureate Wangari Maathai of Kenya, who passed away two days prior to the event and who had worked on empowering impoverished Africans. Speakers referred to the 10th anniversary of the Durban Declaration and Programme of Action noting that the international community continues to experience increased instances of racism, racial discrimination, xenophobia and related intolerance and agreeing that the fight against racism, racial discrimination, xenophobia and related intolerance remains a global challenge that requires a multi stakeholder approach.

Universal Periodic Review

On 15 March 2006 resolution 60/251 of the UN General Assembly created the Universal Periodic Review (UPR) mechanism. The UPR is a state-driven process that reviews the human rights records of all UN member states once every four years.²³² Under the auspices of the Human Rights Council, the UPR process addresses human rights violations and provides technical assistance to help enhance state capacity to tackle human rights challenges. The UPR further allows for sharing of best human rights practices across the globe. There is currently no other similar mechanism in existence.²³³

The Universal Periodic Review Working Group

According to the Human Rights Council's 'institution-building package', the Universal Periodic Review Working Group (Working Group) will hold three two-week sessions per year. On 21 September 2007, the Human Rights Council adopted a calendar detailing the order in which the 192 UN member states will be considered during the first four-year cycle. Each review is facilitated by groups of three states, or 'troikas' who act as rapporteurs.²³⁴

²³¹ "Council holds discussion on the protection of human rights through tolerance and reconciliation in commemoration of Nelson Mandela day," UN Office of the High Commissioner for Human Rights (28 September 2011), accessed at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11444&LangID=E>.

²³² "Universal Periodic Review," United Nations Office of the High Commissioner for Human Rights, accessed on 6 December 2011 at <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

²³³ "Basic Facts about the UPR," United Nations Office of the High Commissioner for Human Rights, accessed on 6 December 2011 at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

²³⁴ "UPR Sessions," United Nations Office of the High Commissioner for Human Rights, accessed on 6 December 2011 at <http://www.ohchr.org/en/hrbodies/upr/pages/UPRSessions.aspx>.

Recent Developments

In 2011, the Working Group held their 10th, 11th and 12th sessions. By the end of 2011 the entire UN membership had been reviewed over the course of the first UPR cycle, which began in 2008.²³⁵ During 2011, many African countries were reviewed, including Rwanda, Oman, Namibia, Niger, Mozambique, Somalia, Seychelles, Sierra Leone, Sudan, United Republic of Tanzania, Swaziland, Togo, Syrian Arab Republic, Zimbabwe and Uganda.

Major themes emerging from state reviews in 2011 included torture and ill treatment in prisons; protection of women and children from trafficking and domestic violence;²³⁶ eliminating social inequality;²³⁷ the manner in which the government guarantees the rights enshrined in the Universal Declaration of Human Rights; the need for greater engagement with civil society;²³⁸ and access to education.²³⁹

South Africa and UPR

South Africa submitted its first UPR report by way of an oral presentation at the UPR hearing on 15 April 2008, during the first session. South Africa emphasised its commitment “to the principle of progressive realisation of all human rights,”²⁴⁰ and remarked on its unique history of colonialism and apartheid that has been challenging to overcome in attempts to fulfil its human rights obligations. Most country delegations at the review commended South Africa on its ability to make considerable progress in the field of human rights in spite of this history and the obstacles that it poses. South Africa is yet to indicate if it accepts or rejects the recommendations.

South Africa is due to appear before the Human Rights Council as part of the second cycle of review during 2012. During 2011, the SAHRC has submitted a stakeholder report to the Human Rights Council as part of the process.

²³⁵ Countries under review during the 7th session were Qatar, Nicaragua, Italy, El Salvador, Fiji, San Marino, Gambia, Bolivia, Kazakhstan, Angola, Iran, Madagascar, Iraq, Slovenia, Egypt and Bosnia Herzegovina. At the 8th Session, Kyrgyzstan, Kiribati, Guinea, Laos, Spain, Lesotho, Kenya, Armenia, Guinea-Bissau, Sweden, Grenada, Turkey, Guyana, Kuwait and Belarus were reviewed. During the 9th Session, the panel reviewed Liberia, Malawi, Mongolia, Panama, Maldives, Andorra, Bulgaria, Honduras, United States of America, Marshall Islands, Croatia, Jamaica, Libya, Micronesia, Lebanon and Mauritius.

²³⁶ “Report of the Working Group on the Universal Periodic Review: Mozambique,” United Nations General Assembly, UN Doc. A/HRC/17/16, Office of the United Nations High Commissioner for Human Rights (28 March 2011), accessed on 16 December 2011 at http://www.upr-info.org/IMG/pdf/a_hrc_17_16_mozambique_e.pdf.

²³⁷ “Report of the Working Group on the Universal Periodic Review, Namibia,” United Nations General Assembly, UN Doc. A/HRC/17/14, Human Office of the United Nations High Commissioner for Human Rights (24 March 2011), accessed on 16 December 2011 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/122/97/PDF/G1112297.pdf?OpenElement>.

²³⁸ “Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1:Nauru,” UN Doc. A/HRC/WG.6/10/NRU/2, Human Office of the United Nations High Commissioner for Human Rights (24 January-4 February 2011), accessed on 16 December 2011 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/170/28/PDF/G1017028.pdf?OpenElement>.

²³⁹ “Report of the Working Group on the Universal Periodic Review: Rwanda”, United Nations General Assembly, UN Doc. A/HRC/17/4, Human Office of the United Nations High Commissioner for Human Rights (14 March 2011), accessed on 16 December 2011 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/117/93/PDF/G1111793.pdf?OpenElement>.

²⁴⁰ “South Africa’s Country Report to the Human Rights Council’s Universal Periodic Review Mechanism,” Office of the United Nations High Commissioner for Human Rights (15 April 2008), accessed on 8 December 2011 at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ZA/A_HRC_WG6_1_ZAF_1_E.pdf.

CHAPTER 11

ECONOMIC AND SOCIAL COUNCIL

The Economic and Social Council (ECOSOC) was established under the United Nations Charter as the organ responsible for coordinating the economic, social, and related work of the 14 UN specialised agencies, functional commissions and regional commissions. The Council also receives reports from 11 UN funds and programmes. ECOSOC serves as the central forum for discussion of international economic and social issues, and for formulation of policy recommendations addressed to member states and the United Nations system.²⁴¹ The Council holds a four-week substantive session each July, alternating between New York and Geneva. Each session consists of the High-level Segment, Coordination Segment, Operational Activities Segment, Humanitarian Affairs Segment and the General Segment.

The 2011 Annual Ministerial Review (AMR) was held during a High-level Segment of the substantive session of the ECOSOC in July. It focused on 'Implementing the internationally agreed goals and commitments in regard to education'. Ten countries made National Voluntary Presentations in the 2011 AMR.²⁴²

THE COMMISSION ON THE STATUS OF WOMEN

The Commission on the Status of Women (CSW) is a functional commission of ECOSOC. CSW is the principal global policy-making body dedicated exclusively to gender equality and advancement of women. Every year, representatives of member states gather at the United Nations Headquarters in New York to evaluate progress on gender equality, identify challenges, set global standards and formulate concrete policies to promote gender equality and women's empowerment worldwide.

The Commission was established by ECOSOC Resolution 11(II) of 21 June 1946 with the aim to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields. The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights.

²⁴¹ "Information about the Council," United Nations Economic and Social Council, accessed on 7 December 2011 at <http://www.un.org/en/ecosoc/about/index.shtml>.

²⁴² The ten countries are Bangladesh, Republic of Belarus, Germany, Mauritius, Pakistan, State of Qatar, Senegal, Turkey, and the Bolivarian Republic of Venezuela; "2011 ANNUAL MINISTERIAL REVIEW," United Nations Economic and Social Council, accessed on 16 March 2012 at <http://www.un.org/en/ecosoc/newfunct/amr2011.shtml>

The 55th session of the CSW was held in New York City during February and March 2011. The priority theme of the session was access and participation of women and girls to education, training, science and technology, including the promotion of women's equal access to full employment and decent work. The session's review theme was the elimination of all forms of discrimination and violence against the girl child.²⁴³

In terms of South Africa's participation in the 55th session, media attention was directed at South African government officials who were present for the session, failed to attend many of the session's events. It was reported that, Correctional Services Minister, Bathabile Dlamini, failed to attend any of the sessions.²⁴⁴ The SAHRC is following up on these reports via the CGE which is constitutionally mandated to attend to matters concerning the promotion, protection and attainment of gender equality.

²⁴³ "United Nations Entity for Gender Equality and the Empowerment of Women," UN Women, accessed on 8 December 2011 at www.un.org/womenwatch/daw/csw/55sess.htm.

²⁴⁴ "Five Star Junket Shock", Times Live (26 March 2011), accessed on 16 December 2011 at www.timeslive.co.za/Politics/article988985.ece/Five-Star-junket-shock.

PART B
THE REGIONAL SYSTEM

CHAPTER 12

AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter on Human and Peoples' Rights (African Charter) is Africa's regional human rights mechanism. The African Charter was adopted on 27 June 1981 by the Organisation of African Unity.²⁴⁵ The African Charter emphasises the rights and the duties of African citizens, which include duties towards family, society, the state and the international community. One such duty imposed on the individual is to exercise his or her rights with due regard for the rights of others and the common interest.²⁴⁶

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (African Women's Protocol) was adopted by the African Union in 2003 and on 25 November 2005 became binding on countries who signed and ratified it.²⁴⁷ The African Women's Protocol broadly promotes women's rights and equality in marriage and divorce, land tenure, inheritance rights and 'traditional' practices. It contains specific protections for older women, disabled women and women in distress.

African Commission on Human and Peoples' Rights

The African Charter establishes the African Commission on Human and Peoples' Rights (ACHPR). The ACHPR consists of 11 members chosen from 'amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence'.²⁴⁸ These members serve six-year renewable terms. The ACHPR is charged with investigating allegations of human rights violations and responding to written communications from states and individuals.²⁴⁹ Further, in accordance with Article 62 of the African Charter, States Parties are required to submit a report every two years on legislative and other actions taken to give effect to the rights and freedoms contained in the African Charter. South Africa is currently represented on the ACHPR by Faith Pansy Tlakula whose term was renewed for a second term in 2011. Ms. Tlakula also serves as the Special Rapporteur on Freedom of Expression and Access to Information in Africa for the ACHPR. She is the current CEO of South Africa's IEC and is a former SAHRC Commissioner.

²⁴⁵ African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), [hereinafter "African Charter"].

²⁴⁶ African Charter, Article 27(2). See also African Charter, Article 29(7) ([duty] "to preserve and strengthen positive cultural values in relation with other members of the society...").

²⁴⁷ "Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa," African Union, accessed on 6 December 2011 at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>.

²⁴⁸ African Charter, Article 31.

²⁴⁹ African Charter, Articles 47, 55-56.

Mr. Med S.K Kaggwa, the Chairperson of the Ugandan Human Rights Commission, an A status NHRI, has recently been appointed to the ACHPR and is the Special Rapporteur on Prisons and Places of Detention in Africa.

Recent Developments

In February 2011, the ACHPR held its 9th Extra-Ordinary Session in Banjul, The Gambia. The purpose of the meeting was to discuss a number of matters, particularly the urgent human rights situation in North Africa, and to respond to communications that had not been considered during the 48th Ordinary Session. The ACHPR adopted resolutions concerning the human rights situations in Egypt, Tunisia and Algeria, calling for transitional authorities to accelerate the establishment of the Republican institutions and to embark on appropriate reforms to facilitate inclusive dialogue and sustainable peace.²⁵⁰

During 2011, the ACHPR held its 49th and 50th Ordinary Sessions in The Gambia. The main objective of the 49th session was to foster cooperation between NGOs, as well as the African Commission, with the aim of promoting and protecting human rights in Africa.²⁵¹ During the session the periodic reports of Burkina Faso, Namibia, Uganda and Libya were considered.²⁵²

A Commissioner of the SAHRC attended the 50th session held 24 October to 5 November 2011. The SAHRC congratulated the government of South Africa on becoming the eighth country to ratify the African Union Charter on Democracy, Governance and Elections, having previously briefed the Portfolio Committee on International Relations and Cooperation on the implications of ratifying the African Charter. The SAHRC noted that the promotion and protection of human rights in Africa has greatly improved over the years, despite the numerous social, economic, and political challenges that continue to confront the African continent. To this end, the SAHRC called upon the African Union to encourage states to ratify, domesticate and implement international and regional instruments. The SAHRC also drew attention to the Working Group on People with Disabilities and the Elderly recently established by the ACHPR, noting that the issues that affect these two vulnerable groups are distinct and advocating for the working group to be split in two in order to deal effectively with the two vulnerable groups separately.²⁵³

²⁵⁰ "Final Communiqué of the 9th Extra-ordinary session of the African Commission on Human and Peoples' Rights, held in Banjul, the Republic of Gambia, from 23 February to 3 March 2011," African Commission on Human and Peoples' Rights, accessed on 7 December 2011 at <http://www.achpr.org/english/communiques/9th%20EOS.pdf>.

²⁵¹ "49th Ordinary Session of the ACHPR is slated for April 25", The Daily Observer (Gambia) (19 April 2011), accessed on 6 December 2011 at <http://observer.gm/africa/gambia/article/49th-ordinary-session-of-the-achpr-slated-for-april-25>.

²⁵² The concluding observations are yet to be placed on the African Commissions website.

²⁵³ "Statement by the Commission at the opening session of the African Commission on Human and Peoples' Rights 49th Ordinary Session," South African Human Rights Commission, accessed on 6 December 2011 at <http://www.sahrc.org.za/home/index.php?ipkArticleID=60>.

South Africa and the ACHPR

On 9 July 1996, South Africa acceded to the African Charter. A declaration accompanying the instrument of accession contained South Africa's view that consultation should take place between States Parties on a number of issues, including measures to strengthen enforcement mechanisms of the African Charter and criteria for the justified restriction of the rights and freedoms contained in the African Charter.²⁵⁴

On 17 December 2004, South Africa signed and ratified the African Women's Protocol, with three reservations. The first reservation, in respect of Article 4(2)(j), deals with the imposition of the death penalty on pregnant and nursing mothers. The South African government has stated that this article is irrelevant to South Africa because the death penalty has been abolished. The second reservation is in relation to Article 6(d) on the registration of marriages and has been rejected by South Africa due to the prevalence of customary marriages. The third reservation on Article 6(h) concerning the right of parents to pass nationality to their children has also been rejected by the South African government, which holds that a child has an inherent right to citizenship and nationality.²⁵⁵

South Africa submitted its initial report in October 1998 its 2nd report in May 2005 combining the 3rd and 4th reports to the ACHPR. Subsequent reports remain outstanding.

²⁵⁴ South Africa's declaration also sought to bring the Charter in line with UN resolutions related to the characterization of Zionism: see "African Charter on Human and Peoples' Rights," Department: Justice and Constitutional Development – Republic of South Africa, accessed on 6 December 2011 at <http://www.doj.gov.za/policy/african%20charter/africancharter.htm>.

²⁵⁵ For further information relating to gender in South Africa, please see the CEDAW section of this report.

CHAPTER 13

THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The African Charter on the Rights and Welfare of the Child (ACRWC) is a region-specific children's rights instrument which builds on the CRC. As of November 2010, all member states of the AU have signed the Children's Charter and all but eight have ratified it.²⁵⁶

Committee of Experts on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child (CERWC) was established by the ACRWC. It is mandated under Article 42 of the ACRWC to promote and ensure the protection of the rights of the child enshrined therein. The CERWC holds two sessions per year. Sessions normally consist of representatives from partner organisations providing a brief presentation, consideration of state reports and discussion of other critical issues. The CERWC is comprised of 11 experts who serve in their individual capacity for a term of five years.

In accordance with Article 62 of the African Charter, States Parties to the ACRWC are required to submit a report to the CERWC every two years on the legislative or other measures taken to give effect to the rights and freedoms recognised and guaranteed by the ACRWC.

The CERWC is empowered to receive and examine reports submitted by State Parties on the measures they have adopted to give effect to the provisions of the ACRWC and the progress achieved in the exercise of the rights recognised. Initial reports are expected to be submitted two years after the CERWC starts its work, and every three years thereafter. The CERWC is the only child rights treaty body in the world with competence to receive complaints against states. Grievances against States Parties may relate to any issue covered by the ACRWC and may be submitted by any individual, group or non-governmental organisation recognised by the AU, a member state, or the UN. The CERWC may investigate or conduct fact-finding missions in States Parties to discover systematic or gross violations of child rights.²⁵⁷

²⁵⁶ As at November 2010, the 8 member states which have signed but not yet ratified the Charter are: Central African Republic, Djibouti, Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, Sao Tome and Principe, Swaziland and Tunisia. See further "The African Charter on the Rights and Welfare of the Child (ACRWC)" African Committee of Experts on the Rights and Welfare of the Child, accessed on 7 December 2011 at <http://www.acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/>.

²⁵⁷ African Committee of Experts on the Rights and Welfare of the Child, accessed on 7 December 2011 at <http://www.acerwc.org/>.

Recent Developments

In 2011, the 17th and 18th sessions of the CERWC were held in Addis Ababa. During the 17th session, Professor Julia Sloth-Nielsen,²⁵⁸ Dean of South Africa's University of the Western Cape law faculty, was introduced as a newly elected member. Her term will expire in January 2016.²⁵⁹

South Africa and the ACRWC

South Africa has been a signatory to the ACRWC since 1997 and ratified it in 2000. South Africa's Initial Report to the ACERWC is still outstanding. At the 17th meeting of the CERWC the theme for the Celebration of the Day of the African Child celebrated on 16 June was chosen as 'All Together for Urgent Action in Favour of Street Children'.²⁶⁰

On 16 November 2011, Prof. Sloth-Nielsen presented a briefing on the ACRWC to the parliamentary Portfolio Committee on Women, Children and People with Disabilities. Prof. Sloth-Nielsen outlined that the ACERWC was drawn up in response to the sentiment shared by many African states that the continent had been marginalised during the 10-year drafting process of the UNCRC. The ACRWC set some higher standards than the UNCRC, for instance by having a higher minimum age of 18 years for children to be recruited into the armed forces, compared with UNCRC's age of 15. The ACRWC also focused on both the rights and responsibilities of children.

²⁵⁸ Prof. Sloth-Nielsen is Dean of Law at the University of the Western Cape and runs the Children's Rights and Advocacy Project at the Community Law Centre.

²⁵⁹ "Meet the Committee's Experts", African Committee of Experts on the Rights and Welfare of the Child, accessed on 16 December 2011 at www.acerwc.org/experts/.

²⁶⁰ "Sessions & Session Reports," African Committee of Experts on the Rights and Welfare of the Child, accessed on 16 December 2011 at www.acerwc.org/sessions/.

CHAPTER 14

THE REGIONAL AND SUBREGIONAL COURT SYSTEMS

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Court on Human and Peoples' Rights (AfCHPR) is a regional court that was created to make judgments on African Union states' compliance with the African Charter. The AfCHPR came into being on 25 January 2004 with the ratification by 15 member states of the Protocol to the African Charter.

The first judges of the AfCHPR were elected in 2006 from among African jurists and judges of proven integrity, qualifications and experience, having been nominated by African Union member states.²⁶¹ The election was also based on equitable representation of the five African Union regions, the major legal systems and gender. Elections have since been held in July 2008 and July 2010 to re-elect and/or replace judges whose terms had lapsed. The AfCHPR has sat in Arusha, Tanzania since August 2007 and has held 21 Ordinary Sessions and two Extra-Ordinary Sessions since its establishment. During the first of these sessions, between 2006 and 2008, the AfCHPR dealt with issues including the development of the structure of the court's registry and development of its budget. The AfCHPR now has final Rules of Court and has been receiving cases since June 2008.²⁶²

Justice Gérard Niyungeko of Burundi is the current President of the AfCHPR and was elected judge in 2006 for a term of six years. Vice President Justice Sophia A. B. Akuffo from Ghana was first elected as a judge in 2006 for a two-year term, being subsequently re-elected in 2008 for a six-year term. The remaining judges are Justices Bernard Makgabo Ngoepe (South Africa), Modibo Tounty Guindo (Mali), Fatsah Ouguergouz (Algeria), Joseph Nyamihana Mulenga (Uganda), Augustino S. L. Ramadhani (United Republic of Tanzania), Duncan Tambala (Malawi), Elsie Nwanwuri Thompson (Nigeria) and Sylvain Oré (Côte d'Ivoire).

²⁶¹ "Institutional Background", African Court on Human and Peoples' Rights, accessed on 6 December 2011 at <http://www.african-court.org/en/court/about-the-court/institutional-background/>.

²⁶² *Ibid.*

Recent Developments

In 2011, the AfCHPR held three ordinary sessions,²⁶³ during which 10 cases were heard.²⁶⁴

South Africa and the AfCHPR

From 24 to 26 October 2011, the AfCHPR, in collaboration with the Government of South Africa and the Southern African Litigation Centre (SALC), conducted a sensitization visit to Johannesburg, Pretoria and Cape Town to raise awareness about the AfCHPR amongst human rights stakeholders in South Africa, and in the process of doing so, to request the government of South Africa to consider depositing a declaration allowing individuals and NGOs to access the AfCHPR.²⁶⁵ The theme of the seminar was 'The African Court on Human and People' Rights – Your New Partner in Human Rights Protection in Africa'.

On 19 to 21 October 2011, the SAHRC hosted the 8th Biennial Conference of the Network of African National Human Rights Institutions under the theme 'Advancing the Rights of Older Persons and Persons with Disabilities: the Role of National Human Rights Institutions'. The conference was attended by representatives from national human rights institutions across Africa, as well as eminent jurists, academics and human rights activists. Ms. Jester Helena from the AfCHPR presented a speech on the role of the AfCHPR in protecting the rights of older persons and persons with disabilities, focusing on the mandate of the African Court and how people may access it.²⁶⁶

African Court of Justice

In July 2008, at its 11th Ordinary Session, the African Union National Assembly signed a protocol that merged the African Court with the still to be established African Court of Justice.

²⁶³ "Judgments and Orders," African Court on Human and Peoples' Rights, accessed on 6 December 2011 at <http://www.african-court.org/en/cases/judgments-and-orders/>.

²⁶⁴ Ibid. Many of the documents pertaining to the cases are only available in French.

²⁶⁵ "Sensitization Visit of the African Court on Human and Peoples' Rights to the Republic of South Africa," African Court on Human and Peoples' Rights (15 November 2011), accessed on 7 December 2011 at <http://www.african-court.org/en/news/record/datum/2011/11/15/sensitization-visit-of-the-african-court-on-human-and-peoples-rights-to-the-republic-of-south-afr/>.

²⁶⁶ "8th Biennial Conference of the Network of African National Human Rights Institutions (NANHRI), Cape Town, South Africa, (19 - 21 October 2011)," Meeting hosted by South African Human Rights Commission. Report will be available at www.sahrc.org.za

The African Court of Justice was adopted by protocol in 2003 and was intended to be the “principal judicial organ of the African Union.”²⁶⁷

The combined African Court on Human and People’s Rights and African Court of Justice, named as the African Court of Justice and Human Rights, will consist of 16 judges and will have binding authority in considering cases involving both human rights violations and general legal matters.²⁶⁸ To date, only three countries have ratified the protocol on the merger, and 15 states are needed for its entry into force. The African Court of Justice and Human Rights will come into effect once 15 African Union member states ratify the Protocol.²⁶⁹

THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY TRIBUNAL

The Tribunal for the Southern African Development Community (SADC Tribunal) was established through a Protocol adopted on 7 August 2000 to consider disputes between states and the SADC, individuals, organisations or institutions and the SADC, and staff of the SADC Secretariat and the community.²⁷⁰

In November 2008, in one of its first human rights cases, the SADC Tribunal ruled on Zimbabwe’s land redistribution strategy. The court found in favour of the plaintiffs, and the Zimbabwean government has refused to enforce the judgment. In August 2010, SADC members at the 13th SADC Summit in Windhoek, Namibia, ordered a review of the tribunal’s role, functions and terms of reference. The SADC instructed the Tribunal to refrain from accepting any new cases, and it blocked the re-appointment of eligible judges. The SADC Tribunal has consequently been unable to function properly. Currently there are only four judges, whereas 10 judges are required for a full bench. Thus the SADC Tribunal cannot constitute itself to hear matters, including those related to fundamental rights and those involving a SADC member state as a party.²⁷¹

²⁶⁷ “Protocol of the Court of Justice of the African Union,” African Union (11 July 2003), accessed on 6 December 2011 at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20to%20the%20African%20Court%20of%20Justice%20-%20Maputo.pdf>.

²⁶⁸ “Protocol on the Statute of the African Court of Justice and Human Rights,” African Union (1 June 2008), accessed on 6 December 2011 at <http://www.africa-union.org/root/au/Documents/Treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf>.

²⁶⁹ “List of Countries which have Signed, Ratified/Acceded to the Protocol on the Statute of the African Court of Justice and Human Rights,” African Union (3 February 2010), accessed on 16 December 2011 at <http://www.africa-union.org/root/au/Documents/Treaties/list/Protocol%20on%20Statute%20of%20the%20African%20Court%20of%20Justice%20and%20HR.pdf>.

²⁷⁰ South African Development Community Tribunal, accessed on 6 December 2011 at www.sadc-tribunal.org/index.html.

²⁷¹ “SADC: Q&A on the Tribunal - Regional Court’s future hangs in the balance,” Human Rights Watch (11 August 2011), accessed on 6 December 2011 at <http://www.hrw.org/news/2011/08/11/sadc-qa-tribunal>.

CHAPTER 15

AFRICAN PEER REVIEW MECHANISM

The African Peer Review Mechanism (APRM) was initiated in 2002 and established in 2003 by the African Union, pursuant to the implementation of the New Partnership for Africa's Development (NEPAD). The APRM is used by member countries to self-monitor all aspects of their governance and socio-economic development. Performance and progress are measured in terms of democratic and political governance, economic governance, corporate governance and socio-economic development.²⁷² After a member state has undergone review at a summit of the APRM Heads of State and Government, a National Programme of Action (NPOA) is implemented. A body is selected to monitor implementation of the NPOA and supply a progress report after six months and one year. A further review takes place after three years.²⁷³

Recent Developments

On 29 June 2011, the 15th Summit of the Forum of Heads of State and Government of the APRM took place in Malabo, Equatorial Guinea. The Chairperson of the African Union (AU) Commission discussed the status of the APRM and laid emphasis on the autonomy that the mechanism requires, despite its institutional affiliation with the African Union. Professor Mohamed Séghir Babès, Chairperson of the APRM Panel of Eminent Persons, presented a progress report and expressed the fervent desire that a new Host Country Agreement be signed between the APRM Forum and South Africa, considering that this is a prerequisite for building the capacity of the APRM Secretariat.²⁷⁴

South Africa and APRM

In 2011, South Africa submitted its 2nd NPOA report entitled 'Implementation of South Africa's APRM Programme of Action' which examines the country's track record in fighting corruption, managing diversity, addressing xenophobia and racism, managing elections, consolidating democracy and upholding the rule of law and effective service delivery.

²⁷² "About APRM," African Peer Review Mechanism, accessed on 6 December 2011 at <http://aprm-au.org/about-aprm>.

²⁷³ Ibid.

²⁷⁴ "Highlights of the 15th APRM Forum," African Peer Review Mechanism (30 June 2011), accessed on 6 December 2011 at <http://aprm-au.org/news/highlights-15th-aprm-forum>.

Key themes pertaining to democracy and political governance include increased civil society participation, advancement of gender equality, access to information on human rights and institutions of justice and tackling corruption. Concerning economic governance and management, the report focuses on unemployment, service delivery challenges, public expenditure management and economic integration in Southern Africa. Finally, the socio-economic development section draws attention to poverty alleviation, the 10-point plan of the health sector to tackle HIV/AIDS and access to education.²⁷⁵ The APRM notes that there are still outstanding matters in the implementation of the NPOA, thus the country shall submit a third report responding to all outstanding matters by the year 2013.

²⁷⁵ “2nd Report on the Implementation of South Africa’s APRM, (African Peer Review Mechanism) Programme of Action,” Parliamentary Monitoring Group (28 January 2011), accessed on 6 December 2011 at <http://www.pmg.org.za/node/24944>.

CONCLUSION

This Annual International Report 2011 has demonstrated how events at an international and regional level find resonance in every day events that occur in South Africa. It is in this manner that the Report seeks to demonstrate the importance of international human rights law to issues that are being grappled with in South Africa. Issues touched on in the report such as xenophobia, gender violence, trafficking in persons, *ukuthwala*, corporal punishment, the right to basic education, the right of access to health care, water, sanitation and housing, and the rights of children, women, the elderly, persons with disabilities and migrants can all be placed within the context of South Africa's international human rights obligations. This Report demonstrates how when addressing these issues, all stakeholders including: government, Parliament, the judiciary, chapter 9 institutions and civil society need to be aware of the international human rights system and the manner in which it both binds and guides us.

This Report also demonstrates that the international human rights system is continuously developing and producing an increasing rich body of interpretive instruments and documents that can provide assistance in ensuring that South Africa complies with its international human rights obligations.

The Report has also highlighted the role that persons from Africa and African States play within the international system, seeking to highlight in particular a number of South Africans who have been recognised for their expertise in a particular area of human rights at an international level.

There are also instances mentioned in the Report where South Africa has received the negative attention of the international human rights community, such as its bad reporting record to international bodies; violence against LGBTI persons and the McCallum matter concerning violence in prisons. This demonstrates how events that occur at a domestic level can impact on South Africa's human rights record and image at an international level.

Finally, it is anticipated that the Report will assist in creating a growing awareness of international human rights law in South Africa by providing an accessible and succinct summary of the most important human rights developments both internationally and domestically.

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