



**SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

**National Human Rights Institution (NHRI) Report to the List of  
Issues Prior to Reporting regarding the South African  
Government's obligations under the International Covenant on  
Civil and Political Rights**

*Submitted to the United Nations Committee on Civil and Political Rights (Human Rights Committee) for consideration at the 142<sup>nd</sup> session (14 Oct to 7 Nov 2024)*

## **1. Introduction and SAHRC Mandate**

1.1 The South African Human Rights Commission (SAHRC) welcomes the opportunity to provide a report for consideration by the UN Human Rights Committee, in preparation of the List of Issues Prior to Reporting (LOIPR) during the 142<sup>nd</sup> session, regarding the South African government's obligations under the International Covenant on Civil and Political Rights (ICCPR).

1.2 The SAHRC is mandated by Section 184 of the Constitution of the Republic of South Africa of 1996, (Constitution), which states that:

184. (1) The South African Human Rights Commission must –

(a) promote, respect for human rights and a culture of human rights;

(b) promote the protection, development, and attainment of human rights; and

(c) monitor and assess the observance of human rights in the Republic.

1.3 Regarding the promotion of international human rights law standards, Section 13(1)(b)(vi) of its enabling legislation, the South African Human Rights Commission Act 40 of 2013 (SAHRC Act), specifically mandates the SAHRC to monitor the implementation of, and compliance with, international and regional human rights instruments.<sup>1</sup>

1.4 As a NHRI, the SAHRC is additionally guided by the Principles relating to the status of National Institutions (the Paris Principles), as adopted by the United Nations General Assembly in 1993. Since 1999, the SAHRC has consistently been accredited with an 'A-status' by the Global Alliance of National Human Rights Institutions (GANHRI) and was recently re-accredited in 2024.

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<sup>1</sup> It is worth noting that the SAHRC is currently advocating for amendments to the SAHRC Act to further strengthen its ability to adequately discharge its mandate.

- 1.5 Financial constraints have limited the SAHRC in expanding its reach to the less urbanised and rural areas of South Africa. Currently, the Commission holds offices in the large cities in each of the nine provinces of the country. The Commission needs to expand its reach throughout the country to ensure easier access of its services to the public. For this it requires a larger workforce but lacks the ability to expand in this area due to fiscal constraints.
- 1.6 The SAHRC highlights to the Committee that in August 2024, the Supreme Court of Appeal (SCA) passed judgment upholding a lower court’s decision that the institution does not have the authority to issue binding directives. Instead, that all the SAHRC’s directives ought to be enforced through a court of law.<sup>2</sup> In September 2024, the SAHRC filed papers at the Constitutional Court to appeal the SCA judgment, with a view to obtain legal clarity on the interpretation of the SAHRC’s mandate as contained in the Constitution and enabling legislation.
- 1.7 The SAHRC brings to the Committee's attention that, under Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the institution has been designated as the Independent Monitoring Mechanism (IMM). However, the State has not provided the necessary resources for the SAHRC to fully execute its IMM mandate.

### **Recommended Issues**

- 1.8 The South African government should allocate appropriate financial resources to enable the SAHRC to discharge its mandate effectively.
- 1.9 Additional resources are required to enable the SAHRC to reach peri-urban and rural areas.

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<sup>2</sup> <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/4125-media-statement-sahrc-takes-judgment-on-its-powers-to-the-constitutional-court>

- 1.10 What measures are being taken by the State to educate the public, the Judiciary (and other branches of State) regarding the role afforded to the SAHRC and similar independent State institutions developed to support constitutional democracy.
- 1.11 The State should provide an update on capacitating the SAHRC with the necessary human and financial resources to fully execute its mandate as the designated IMM.

## **2. July 2021 Unrest**

- 2.1 In July 2021, the country was confronted with civil unrest in the provinces of Gauteng and Kwa-Zulu Natal. Over 350 lives were lost due to the unrest and its related violence, which was characterised by widespread destruction of public and private property and the loss of billions of Rands to South Africa's economy. The events also threatened fragile race relations between neighbouring communities. These incidents of unrest raised numerous questions and concerns about the State's ability to protect the public from harm and assert law and order.
- 2.2 In the immediate aftermath of the unrest, the SAHRC hosted an Imbizo (Dialogue) as part of its efforts to understand and respond to the unrest and the subsequent human rights violations arising from it.<sup>3</sup> This served as a catalyst for the SAHRC's National Investigative Hearing into the July 2021 Unrest which took place between November 2021 to June 2022.<sup>4</sup> The hearing sought to investigate the causes of the unrest and assess its impact on human rights. The investigative hearing further focused on the causes of the alleged racially motivated attacks and killings in two provinces;<sup>5</sup> the causes of the apparent lapses in law and order, and failure of the various state security agencies; the role of private security companies and law enforcement agencies in the unrest; and the social, economic, spatial and

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<sup>3</sup> The report of the Imbizo is available on the Commission's website, available at <https://www.sahrc.org.za/home/21/files/Imbizo%20-%20Report%202021.pdf>.

<sup>4</sup> Report available at:

[https://www.sahrc.org.za/home/21/files/JULY%20UNREST%20REPORT%20FINAL\\_29%20JAN%202024.pdf](https://www.sahrc.org.za/home/21/files/JULY%20UNREST%20REPORT%20FINAL_29%20JAN%202024.pdf)

<sup>5</sup> Namely Gauteng and KwaZulu-Natal provinces, respectively.

political factors prevalent in the various affected areas and the extent to which these played a role in the unrest. During the hearing, the SAHRC heard testimony of violations of the rights to equality, freedom of movement and the systemic failures on the part of the State's security forces and law enforcement agencies to protect the right to freedom and security of the person.<sup>6</sup>

2.3 In January 2024, the SAHRC released its report on the investigation which revealed that the unrest was 'a well-orchestrated and a violent culmination of deep-rooted political and social challenges' that South Africa had been facing.<sup>7</sup> Through the report, the SAHRC issued several recommendations which identified the need for significant changes in the intelligence, policing, security and the justice sector. The SAHRC's recommendations were sent to implicated state departments and organisations, including the Presidency; the State Security Agency (SSA); the South African Police Service (SAPS); the National Prosecuting Authority (NPA); the Department of Justice and Constitutional Development (DOJ&CD); the Private Security Industry Regulatory Authority (PSIRA), and the Department of Trade, Industry, and Competition (DTiC). Despite affording these institutions 90 days in which to respond to the implementation of the SAHRC's recommendations, the responses remain outstanding.

**Recommended Issues:**

2.4 The State should, as a matter of urgency, respond to the SAHRC's recommendations as contained in the July 2021 Unrest Report, and provide reasons for the delay in response.

2.5 The State should provide information on what measures the State has taken, (particularly the Justice, Crime Prevention, and Security Cluster), to identify and prosecute the primary instigators / orchestrators of the July 2021 Unrest.

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<sup>6</sup> <https://www.sanews.gov.za/south-africa/sahrc-releases-july-2021-unrest-report>

<sup>7</sup> <https://www.sanews.gov.za/south-africa/sahrc-releases-july-2021-unrest-report>

### 3. Indigenous peoples

- 3.1 The SAHRC highlights to the Committee that since the issuance of the Concluding Observations in 2015, there have been progressive steps taken by the State to address the rights of indigenous people. In 2019, the Traditional and Khoi-San Leadership Act was promulgated to assist in the process of restoration of the dignity of the Khoi-San people through the advancement of the integrity and legitimacy of the institutions of traditional and Khoi-San leadership, in line with customary law and practices.<sup>8</sup> However, in 2023, the Act was subject to a Constitutional Court challenge in the case of *Mogale and Others v the Speaker of the National Assembly and Others*.<sup>9</sup> The Court found that the State had failed to comply with its constitutional obligation to facilitate public consultation prior to passing the Act which was subsequently ruled as unconstitutional. The Constitutional Court has given the State 24 months to re-enact the Act.
- 3.2 It should be noted that between 2015 and 2017, the SAHRC undertook several investigative hearings into the human rights of the indigenous Khoi-San people. In 2018, the SAHRC released its *Report on the National Hearing on the Human Rights Situation of the Khoi and San peoples in South Africa*<sup>10</sup> which contains several concerns and recommendations directed to the State.

#### **Recommended Issues**

- 3.3 Information should be provided on the measures taken by the State to implement the findings from the SAHRC's Report on the National Hearing on the Human Rights Situation of the Khoi and San peoples in South Africa.
- 3.4 An update is required about the State's progress in the re-enacting the Traditional and Khoi-San Leadership Act.

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<sup>8</sup> <https://www.gov.za/news/media-statements/president-cyril-ramaphosa-signs-law-traditional-and-khoi-san-leadership-act>

<sup>9</sup> (CCT 73/22) [2023] ZACC 14.

<sup>10</sup> Available at:

[https://www.sahrc.org.za/home/21/files/National%20Hearing%20Report%20on%20the%20Humn%20Rights%20of%20the%20Khoi-San%20-%202014%20March%202018%20\(003\).pdf](https://www.sahrc.org.za/home/21/files/National%20Hearing%20Report%20on%20the%20Humn%20Rights%20of%20the%20Khoi-San%20-%202014%20March%202018%20(003).pdf)

3.5 The State should advise on what measures are being taken to promote and preserve the indigenous languages of the Khoi-San community.

**4. Violence against women, children and lesbian, gay, bisexual, transgender and intersex persons, including domestic violence (arts 2; 7 and 24)**

**4.1 LGBTI (*Conversion practices*)**

4.1.1 Corrective rape remains a widely reported phenomenon in South Africa, in which queer women and transgender men are sought to be ‘cured’ through coerced sex with cisgender men. These practices are often perpetrated by family members, intimate partners, community members, religious figures, or strangers.<sup>11</sup>

4.1.2 In a survey conducted on the subject matter, it was revealed that out of 303 respondents from South Africa’s nine provinces, 58% had experienced ‘conversion practices’.<sup>12</sup> These conversion practices often include compulsion or coercion from family members. It is reported that these conversion practices include non-physical methods such as, professional psychological therapy, prayer and counselling; and physical tactics including beatings and corrective rape.<sup>13</sup> Furthermore, approximately 40% of the respondents confirmed that their first conversion practice occurred before the age of 18.<sup>14</sup>

4.1.3 The SAHRC has identified the fight against conversion practices as a key initiative within its equality portfolio and is currently exploring collaborative efforts to combat conversion practices.

**Recommended Issue**

4.1.4 The Committee should inquire from the State what measures are in place to combat the prevalence of the conversion practices.

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<sup>11</sup> Outright International, ‘Eradicating Conversion Practices in South Africa: Legal and Policy Approaches’ (2024), p.14

<sup>12</sup> Ibid, p.13

<sup>13</sup> Ibid, p.14

<sup>14</sup> Ibid

## 4.2 *Queerphobia*

4.2.1 The SAHRC has noted with great concern the prevalence of ‘Queerphobia’ within the school settings, which is perpetuated by heteronormative cultures that are protected by supportive policies and laws.<sup>15</sup> In collaboration with civil society, the SAHRC is actively working on establishing a human-rights based National Schools Code of Conduct as well as a Diversity Education and Sensitivity Training Programme. Furthermore, the SAHRC is exploring the development of a mandatory human-rights based diversity and social justice module to be taught at tertiary (university) education level.

4.2.2 While legislation such as the Children’s Act, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) and the South African Schools Act form part of the legal framework that ought to effectively protect queer learners in schools, these laws have been criticised as being outdated. Furthermore, that these laws offer generic protection against discrimination and fail to fully consider the diversity of transgender identities and sexual orientations.

### **Recommended Issue**

4.2.3 The State should provide information on whether specific laws, addressing queer children (and their protection), will be developed. Alternatively, whether there would be amendments to existing laws to specifically protect queer and queer-gender learners.

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<sup>15</sup> In 2022, 16-year-old Tiro Moalusi was mocked in class by his teacher because of his sexual orientation. Later that day, he took his own life. It was alleged that, the mockery from the teacher may have been the final straw to Tiro’s long-suffering experience of queerphobia. Research shows that Tiro’s experience of queerphobia is not isolated, and he is not the only learner to have committed suicide as a result. See, <https://www.dailymaverick.co.za/opinionista/2022-12-13-theres-a-deadly-silent-war-in-our-schools-and-it-is-called-queerphobia/>



### 4.3 *Transgender rights*

4.3.1 The SAHRC notes that the South African government has not formalised gender-affirming public health systems that can safely facilitate the medical transition of transgender persons. Currently, only six government hospitals provide gender-affirming care, with waiting lists for gender-affirming surgeries reaching up to twenty-five years. Gender-affirming public health systems and specialised transgender units are limited, severely limiting trans persons' access, especially those dependent on state resources.<sup>16</sup>

#### **Recommended Issues:**

4.3.2 The State should provide information on measures regarding an equitable gender-affirmative healthcare system, particularly for transgender persons.

4.3.3 What measures are in place to educate and sensitise healthcare professionals regarding gender-affirming healthcare, transgender rights and misgendering.

### 4.4 *Intersex rights*

4.4.1 By way of update, the SAHRC specifically highlights to the Committee that in May 2024, the Grand Chamber at the European Court of Human Rights (ECHR) heard the case of South African athlete in the matter of *Caster Semenya v Switzerland*.<sup>17</sup>

4.4.2 The case dates back to February 2021 when Semenya, a multiple Olympic gold medallist and World Champion, lodged an application with the ECHR challenging regulations issued by the International Association of Athletics Federations (IAAF). The contested IAAF regulations on Differences of Sex Development (DSD) required Semenya, and other intersex people with high testosterone, to lower their natural testosterone levels through hormone treatment to be eligible to compete as a woman in international sporting events. This was required by the IAAF though athletes and medical experts have suggested that the hormonal treatments have

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<sup>16</sup> For example, only one hospital in the Western Cape province currently offers a dedicated Transgender Unit,

<sup>17</sup> *Semenya v. Switzerland* (application no. 10934/21).

a negative effect on the health, particularly, the sexual and reproductive health of those who are subjected to it.<sup>18</sup>

4.4.3 In July 2023, the ECHR handed down judgment in favour of Semenya, ruling that her rights, (as enshrined in the European Convention for Human Rights), to non-discrimination, respect for private life, and to an effective remedy had been violated. The SAHRC was granted leave to intervene in the matter as a third-party intervener. While Switzerland has appealed the initial ruling and the matter is still under consideration by the Grand Chamber, the SAHRC remains hopeful that this case will contribute to the human rights of intersex people being further respected and protected, including the right of intersex people to pursue the sporting profession on an equal basis with other people.

## 4.5 **Children**

4.5.1 Violence against children is a deeply entrenched social ill in South Africa. Children are exposed to violence in schools, at home and in the community. The forms of violence in schools include, but are not limited to, corporal punishment or physical violence by teachers, physical abuse by other learners or verbal abuse by either the teachers or other learners. In addition, there has been a recent trend of learners being violent with their teachers.

4.5.2 While the State has adopted legislation to prohibit corporal punishment both at school and at home, statistics reflect that it remains pervasive. In 2021, Statistics South Africa released a report entitled, *Child Series Volume I: Children Exposed to Maltreatment*, which revealed that at the national level, close to 10% of households with children aged 5–17 years were unaware that corporal punishment was illegal in South Africa. Another report released by Statistics South Africa entitled, *Child Series Volume II: Crime Against Children* further reflects that rape cases for children increased by 6,3 percentage points between 2015/16 and 2019/20, whilst both common assault and assault with grievous

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<sup>18</sup> <https://www.sahrc.org.za/index.php/sahrc-media/opinion-pieces/item/4012-opinion-caster-semenya-v-switzerland-a-global-struggle-for-rights-of-intersex-and-other-marginalised-people>

bodily harm (GBH) decreased by 2,1 and 3,5 percentage points, respectively. At the same time, sexual assault cases for children increased by 1,4 percentage points.

4.5.3 The SAHRC developed a thematic discussion paper to educate the public on ending corporal punishment in the home and held dialogues on the need to establish Afro-centric positive discipline methods.

4.5.4 Through complaints received at its offices, the SAHRC has also noted a new phenomenon where children are abused through use of the legal system, particularly during contentious divorce proceedings. As a result, the outcomes of the proceedings are often not aligned to the international principle which places the 'best interest of the child first'.

#### **Recommended Issues:**

4.5.5 Information should be provided on the measures taken by the State to change stereotypes about corporal punishment in the home and at school.

4.5.6 Information should be provided on the measures taken by the State to address all forms of violence in the family, schools and the community.

4.5.7 Information should be provided on the steps taken to ensure that children's voices are incorporated in custody cases.

## **5. Prohibition of torture and cruel, inhuman or degrading treatment and treatment of persons deprived of their liberty (arts. 7, 9 and 10)**

5.1 To give effect to its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), South Africa passed the Prevention and Combatting of Torture of Persons Act, 13 of 2013. Similarly, South Africa recently ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The ratification of the OPCAT places an obligation on the state party to designate, maintain or establish its National Preventive Mechanism (NPM).

- 5.2 The SAHRC highlights to the Committee that the government selected a cooperative NPM model constituted by pre-existing constitutional and statutory institutions to regularly visit all places where persons may be deprived of liberty. However, the SAHRC carries the coordination and residual functions in the NPM. While the OPCAT related functions are being executed via the SAHRC and functional institutions, the legislative mandates are not fully aligned to the requirements yet.
- 5.3 It is then mandatory for the SAHRC to conduct visits to places of deprivation of liberty. Other than the 243 correctional centres where the Judicial Inspectorate for Correctional Services (JICS) has a presence, there are approximately 1 200 police stations, 12 psychiatric institutions, 29 secure care centres, immigration facilities & other places of detention (social care, ports of entry, places of safety, older persons etc) that require monitoring.
- 5.4 The SAHRC highlights to the Committee that for the prevention of torture to be effective, the NPM must fully comply with the Paris Principles with great emphasis on independence, institutional, financial and operational autonomy. These necessary independence safeguards are entrenched in Article 18 (1) of the OPCAT.
- 5.5 While the NPM has been established, is concerned about:
- a) Systemic overcrowding in correctional centres which invariably may amount to inhuman treatment. This leads to pressure on existing infrastructure.<sup>19</sup> To this end, the state needs to consistently explore long-term strategies to reduce overcrowding in correctional centres including through the use of alternatives to incarceration for low-risk pre-trial detainees and those arrested for petty offences in line with Sustainable Development Goal 16;<sup>20</sup> the Principles on the

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<sup>19</sup> UN Committee Against Torture (CAT), Concluding Observations on the Second Periodic Report of South Africa, 07 June 2019, CAT/C/ZAF/CO/2, paras 14 to 18.

<sup>20</sup> Sustainable Development Goal 16 seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions

Decriminalisation of Petty Offences in Africa;<sup>21</sup> the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa<sup>22</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).<sup>23</sup>

- b) Chronic shortage of bed space in specialised psychiatric institutions for state patients and other persons with psychosocial and mental health challenges leading to their detention in places with limited rehabilitative expertise and infrastructure such as correctional centres.
- c) Material conditions of police detention facilities continue to be of concern to the SAHRC. Many cells in police stations suffer from poor maintenance and neglect, resulting in deteriorated infrastructure and unsanitary conditions. These conditions raise significant concerns regarding the well-being and dignity of detained persons, officials and visitors.

5.6 Importantly, the United Nations Subcommittee on Prevention of Torture (SPT) visited South Africa between 28 February and 10 March 2023 to assess the situation of people deprived of their liberty. The SPT also met with the NPM, as well as with public authorities and civil society organisations. The SPT submitted its report to the government of the of South Africa in December 2023. Pursuant to article 12 (d) of the OPCAT, the state party is required to respond to the SPT within six months from December 2023. The response of the state party gives a full

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at all levels. Target 16.3 asks states to promote the rule of law at national and international-levels and ensure equal access to justice for all. Indicator 16.3.2 focuses on the number of persons in pre-trial detention with emphasis on the presumption of innocence and unnecessary use of pretrial detention. It expands its attention on the economic and social impact of prolonged pre-trial detention.

<sup>21</sup> See, Principle 4 of the Principles on the Decriminalisation of Petty Offences in Africa adopted by the African Commission on Human and Peoples' Rights (the "African Commission") meeting at its 61st Ordinary Session held from 1 to 15 November 2017 in Banjul, Gambia.

<sup>22</sup> Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa.

<sup>23</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) Adopted by General Assembly resolution 45/110 of 14 December 1990.

account of the actions taken to implement the recommendations which the report contains.

5.7 The SPT concluded that:

“There is an urgent need for South Africa to fully establish a national preventive mechanism. This would ensure the country’s compliance with its commitment made in 2019 to the Optional Protocol to the Convention against Torture. Such a national preventive mechanism should be a fully independent monitoring body empowered to visit all places of detention, which “is key to prevent torture and ill-treatment in the country”.<sup>24</sup>

5.8 While the SPT recommends that the state party makes the report public, the report remains confidential in accordance with article 16 of the OPCAT until such time that the government makes it public. The website of the SPT suggests that the state has not responded to the report.

5.9 The SAHRC highlights to the Committee that in collaboration with other NPMs in Africa, a Network of African NPMs was launched in Cape Town June 2024. The NPM Network will serve as peer-to-peer learning platform on torture prevention in Africa.

5.10 The SAHRC also highlights to the Committee that it has noted an upward trend of torture cases as reported by the Independent Police Investigative Directorate (IPID).

**Recommended Issues:**

5.11 What measures have the State taken to ensure the domestication of the OPCAT into domestic law and what type of support has been provided in this regard?

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<sup>24</sup> <https://news.un.org/en/story/2023/03/1134527>

- 5.12 Please provide information on the NPM's compliance with the OPCAT, including on independence, institutional, operational and financial autonomy.
- 5.13 The State should provide statistical data on reported torture cases, including the status of investigations and/ or prosecution and the number of officials prosecuted since the previous reporting?
- 5.14 The State should provide information on measures taken to raise awareness with State officials on the prevention of torture and other ill-treatment.
- 5.15 The State should provide information on measures taken to categorise torture as a serious crime with a mandatory minimum sentence, as compared to other serious crimes under criminal law such as assault, assault with intent to do grievous bodily harm, murder and various sexual offences, commensurate to the gravity of the crime?
- 5.16 The State should provide information on measures taken to provide for claims for redress by victims of torture in line with General Comment No. 3 of the Committee against Torture?

## **6. Treatment of migrants and asylum seekers (arts. 6, 7, 9, 10, 13 and 14)**

- 6.1 The treatment of migrants and asylum seekers in South Africa has been a complex and contentious issue, marked by a mix of legal frameworks, social challenges, and periodic violence. The country's history of migration, economic pressures, and social dynamics have all influenced how migrants and asylum seekers are treated.
- 6.2 Some of the challenges migrants and asylum seekers encounter in the country are:
  - a) Application process: the application process takes unnecessarily long periods which impacts the right to education, right to health and right to work. Sometimes the adjudication of an asylum process takes up to 20 years and the result might be a rejection. The grounds for rejection most times are not well articulated nor are they founded on legal principles.

- b) **Exploitation and Corruption:** migrants and refugees in the process of securing documentation have been exploited. Officials have been known to collect bribes from migrants and refugees and issue fake documentation.
- c) **Xenophobia:** South Africa has experienced several waves of xenophobic violence, particularly against African migrants. These incidents are often driven by economic frustration, high unemployment, and competition for jobs and resources. Politicians are quick to blame migrants for a range of issues, such as unemployment, crime, and pressure on public services, to deflect attention from broader systemic problems and to garner political support.
- d) **Access to Services:** While the law grants certain rights to migrants and asylum seekers, access to healthcare, education, and employment can be inconsistent.
- e) **Policies and regulations:** the department develops policies and regulations that are not aligned with the constitution or the Refugee Convention.

6.3 Understanding the fact that violating the human rights of migrants and refugees hinders social cohesion, the SAHRC over the years, has taken the following steps to ensure these rights:

- a) After the large-scale attacks on non-nationals in 2008, the SAHRC conducted a national hearing to investigate the nature and causes of xenophobia. The investigation culminated in a report that which contains recommendations to the State to ensure the rights of migrants and promote social cohesion.
- b) One recommendation in particular, was that the State should develop systematic mechanisms to monitor and respond to xenophobic attacks. Based on this recommendation, UNHCR established the United Nations Promotion Working Group (UNPWG). The UNPWG comprises civil society, government departments (DOJ, DHA and SAPS), UN agencies and the SAHRC.



- c) The SAHRC also drafts policy briefs and engages with government departments on existing policies that negatively impact the rights of migrants. In 2019, the Commission drafted a policy brief on access to Basic Education for Undocumented Learners in South Africa.
- d) The SAHRC continues to lobby for the right to birth registration for all children irrespective of their parent's documentation status.

**Recommended Issues:**

- 6.4 What measures are in place to prevent and respond to xenophobic violence and discrimination against migrants and asylum seekers?
- 6.5 The State should provide data on incidents of xenophobic violence, including prosecutions and convictions of perpetrators?
- 6.6 The State should provide information on how it intends to improve community integration to reduce xenophobia?
- 6.7 The State should provide information on the measures taken to ensure that migrants and asylum seekers have access to justice, including the right to fair and timely hearings for asylum applications and legal recourse in cases of rights violations?
- 6.8 The State should indicate what mechanisms are available for migrants to report human rights abuses, including by law enforcement officials, and how does the government ensure accountability for such abuses?
- 6.9 The State should provide information on the measures taken by the State to ensure social cohesion between nationals and non-nationals.
- 6.10 The State should indicate the measures taken by the State to ensure that applications are determined within a reasonable time?

**7. Right to life, liberty and security of person and treatment of persons deprived of their liberty (arts. 6, 9, 10, 14 and 23)**

- 7.1 South Africa's blueprint for development, the National Development Plan envisages a society where safety and security are paramount for human development. However, data from the quarterly crime statistics of the South African Police Service suggests that various forms of violence including murder, rape, hijacking, violence against women and children is unabated. About 91 incidents of rape were reported as having taken place at an educational institution, while 12 murders were reported.
- 7.2 The SAHRC highlights to the Committee that the government recently promulgated the Prevention and Combating of Hate Crimes and Hate Speech Act, 16 of Act 2023 to assist in preventing hate crimes and hate speech and to criminalise conduct that amounts to hate crimes and hate speech.
- 7.3 The SAHRC equally notes and commends government's efforts towards the implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) by establishing the first gender-responsive correctional centre in Atteridgeville, Johannesburg.<sup>25</sup>

**Recommended Issues:**

- 7.4 The State should provide information on the steps taken by the government to implement the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).
- 7.5 The State should provide information on measures designed to address gender-based violence and femicide.

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<sup>25</sup> Deputy Minister Holomisa launches the first Gender Responsive Centre for incarcerated women in South Africa – Department of Correctional Services (dcs.gov.za).

## 8. Harmful cultural traditions and practices

- 8.1 Child marriage in South Africa is deeply rooted in gender inequality and the belief in the inferiority of women and girls. Practices such as *Ukuthwala / Funelani Nganeno* involve the abduction of girls for marriage to older men, though illegal, persist in some provinces as a distortion of traditional cultural practices.<sup>26</sup> These issues underscore the urgent need for comprehensive strategies and legal reforms to protect children.
- 8.2 While South Africa has committed itself to eliminating child, early, and forced marriage by 2030, aligning with the Sustainable Development Goals and ratifying several international treaties aimed at protecting children's rights, and setting the minimum age of marriage at 18, there remains inconsistencies and challenges in enforcement and gaps in national legislation.
- 8.3 Recent cases of *Ukuthwala* have drawn attention to the severe consequences of child marriage, including educational disruption, health complications, and the perpetuation of poverty and gender-based violence. The arrest of individuals involved in such cases highlights the legal actions being taken, yet also underscores the need for a more robust response to protect vulnerable children.
- 8.4 The SAHRC highlights to the Committee that in February 2024, its Mpumalanga Provincial Office undertook a series of stakeholder engagements following a petition calling for the institution's intervention in raising awareness on child rights; gender equality; and ending the practice of *Funelani Nganeno* (look this side for your daughter is not lost, but *iganile* (betrothed)).<sup>27</sup>

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<sup>26</sup> Daily Maverick 20 August 2023 [Child marriages in South Africa – when wedlock turns to padlock \(dailymaverick.co.za\)](https://www.dailymaverick.co.za).

<sup>27</sup> Makho Nkosi 'African indigenous knowledge systems: exploring the differences and similarities between the practices of *ukuthwala* and *ukubaleka* amongst the Zulus' (2016) 15 *Indilinga – African Journal of Indigenous Knowledge Systems* 213. See also Daily Maverick 20 August 2023 [Child marriages in South Africa – when wedlock turns to padlock \(dailymaverick.co.za\)](https://www.dailymaverick.co.za).

8.5 Although scholarship and literature on *Funelani Nganeno* varies, and is said to be a variation of the *Ukuthwala* custom, a consistent description of the practice is as follows:<sup>28</sup>

*“Ukuthwala is a Zulu practice that opens up a marriage negotiation process when it is difficult to have these started. [A prominent scholar] explains the process of ukuthwala as it was taking place in traditional Zulu communities. He states that a young man and his “sib-mates” carried the woman to the young man’s home. On arrival, they would dress the young woman in an isidwaba (leather skirt). ... a thwalwa’d woman must not cry, because if she does, there will be izimpi zezigodi (faction fights). After a young woman was thwalwa’d, a message through abakhongi (marriage negotiators) was sent to her parents telling them that funelani nganeno (search from this side for your missing daughter), which is an expression that simply informs them about where she was. In this case, ilobolo (bride price) negotiations resume and the marriage negotiation process becomes open. This is an indication that the man who thwala’d the young female did not mean harm. Places where ukuthwala takes place and the times of occurrences vary, but it usually happens when the woman is not at home (for example, during traditional ceremonies, or when young women go to fetch water or firewood).”*

8.6 It is pointed out however, that the petition delivered to the SAHRC argued that the *funelani nganeno* is inconsistent with the above description and has violent instances of:<sup>29</sup>

- a) forced and early child marriages;
- b) abductions, assault, rape and human trafficking of young girls;
- c) the violation of reproductive health;
- d) the violation of their human dignity;

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<sup>28</sup> *Ibid.*

<sup>29</sup> See statistics by the Department of Health, on the files of the Commission.

- e) the violation of their right to equality; and
- f) the violation of the right to basic education.

8.7 This is in addition to undermining the right to equality; basic education; human dignity; security and control over their body; health care; and social security.

8.8 The SAHRC's sister organisation, the Commission for Gender Equality (CGE), is also actively investigating forced and early child marriages across provinces, working to develop prevention strategies, raise awareness, and engage with traditional and religious leaders for cultural reform. Their efforts, together with that of the SAHRC, emphasise the importance of community awareness, legal reform, and the need for an effective reporting and response mechanism to protect the rights and futures of young girls.

#### **Recommended Issues:**

8.9 The State should provide information on awareness and education initiatives such as provincial workshops and school programmes designed educate on the impacts of child marriage and *ukuthwala*.

8.10 What measures does the State intend to put in place for strengthening legislation, policy and enforcement mechanisms against child marriage and related abuses.

8.11 What efforts have the State taken to create partnerships and stakeholder engagements, such as, collaborating with traditional and religious leaders, NGOs, etc. to amplify efforts and ensure community-based solutions.

8.12 The State should provide information on measures taken to monitor trends, evaluate the effectiveness of interventions, and inform annual reporting on progress around harmful cultural practices and traditions.

## **9. Human trafficking and labour exploitation**

9.1 South Africa is considered the origin, transit and destination country for trafficked victims. It is often difficult to detect as it is clandestine and complex. Human trafficking in South Africa includes forced labour, sexual exploitation, and child trafficking. Women and children are at high risk of being trafficked for sexual exploitation and forced labour.

9.2 Some of the challenges in combating human trafficking in the country are:

- a) **Insufficient Training:** Law enforcement officials, including police and immigration officers, often lack the specialized training needed to identify and handle trafficking cases effectively. This can result in victims being misidentified as criminals or illegal immigrants.
- b) **Limited Resources:** Police and prosecutors often lack the resources necessary to conduct thorough investigations and prosecutions of trafficking cases. This includes a lack of dedicated personnel, forensic tools, and funding for anti-trafficking operations.
- c) **Misidentification of Victims:** Many victims of trafficking are not recognised as such and are instead treated as illegal immigrants. This can lead to their detention and deportation rather than receiving the protection and support they need.
- d) **Lack of Victim Support Services:** South Africa has a limited number of shelters and rehabilitation services for trafficking victims. Those that do exist are often underfunded and overwhelmed by demand, leading to gaps in care.
- e) **Lack of Public Awareness:** There is limited public understanding of human trafficking, particularly in rural areas. Many people do not recognize the signs of trafficking or understand the rights of victims, which hampers efforts to prevent trafficking and assist victims.
- f) **Inconsistent Data Collection:** Reliable data on the prevalence and patterns of human trafficking in South Africa is lacking. Without accurate data, it is difficult to assess the scope of the problem and to develop effective strategies to combat it.

9.3 The SAHRC has hosted a series of workshops to increase public awareness of human trafficking. The purpose of these workshops was to; provide a forum for exchanging lessons, experiences, and best practices to address human trafficking, discuss potential solutions to combat human trafficking and develop partnerships with relevant stakeholders in combating human trafficking. The SAHRC also commissioned a research report to identify its role in the war against human trafficking.

**Recommended Issues:**

- 9.4 What specialised training programmes are provided to law enforcement, border officials, and the judiciary to improve the identification, investigation, and prosecution of human trafficking cases?
- 9.5 The State should provide data on the number of trafficking cases investigated, prosecuted, and resulting in convictions over the past five years? Further, how it plans to improve the rate of successful prosecutions?
- 9.6 What measures are in place to regularly review and update national policies on human trafficking to address emerging trends and challenges?
- 9.7 What procedures are in place to ensure that victims of trafficking are accurately identified and not mistakenly treated as illegal immigrants or criminals?
- 9.8 How does the State ensure that trafficking victims receive adequate protection, including access to shelters, legal assistance, healthcare, and psychosocial support?
- 9.9 What initiatives has the State undertaken to raise public awareness about human trafficking, particularly in vulnerable communities and among high-risk groups?
- 9.10 How does the State collaborate with civil society organisations, the SAHRC, the private sector, and the media to prevent human trafficking and reduce demand for trafficked labour and services?
- 9.11 How does the State collect and manage data on human trafficking, including disaggregated data on the profiles of victims, traffickers, and trafficking routes?

9.12 What mechanisms are in place for monitoring and evaluating the effectiveness of anti-trafficking programs and policies? How does the government use this data to inform policy decisions?

## **10. Immigration detention**

10.1 The primary purpose of immigration detention centres in South Africa is to hold individuals who do not have legal documentation to reside in the country. This includes people who have overstayed their visas, entered the country without proper documentation, or whose asylum claims have been rejected.

10.2 South Africa's key immigration detention centres are:

a) Lindela Repatriation Centre: The most well-known and largest immigration detention facility in South Africa is the Lindela Repatriation Centre, located in Krugersdorp, near Johannesburg. Lindela is designed to hold undocumented migrants awaiting deportation.

b) Police Holding Cells and Other Facilities: In addition to Lindela, undocumented migrants may be held in police holding cells or other facilities before being transferred to a dedicated immigration detention centre. Conditions in these temporary facilities vary widely and are often inadequate.

10.3 Over the years, the SAHRC has exercised oversight at the Lindela detention centre and police holding cells. It should be noted that many detention centres, particularly the police holding cells, are often overcrowded due to the high number of undocumented migrants and the slow processing of deportations. Despite being designated as migration detention centres, these cells are not equipped to hold undocumented migrants who are often treated as criminal offenders.

10.4 The SAHRC has also observed that detention centres struggle to provide necessities such as adequate food, bedding, and clothing. Detainees often report poor quality or insufficient food, lack of access to fresh air, and overcrowded



sleeping arrangements. Deportation processes are often slow due to bureaucratic inefficiencies, difficulties in obtaining travel documents from detainees' home countries, and logistical challenges. These delays contribute to prolonged detention periods, exacerbating overcrowding and other issues. In addition, detainees do not receive proper legal representation or timely judicial review of their detention. This can result in prolonged or indefinite detention without a clear resolution, violating their right to due process. Furthermore, many detainees face difficulties in repatriation as their nationality is disputed, or they are stateless. This can lead to indefinite detention, as there is no clear path to resolving their immigration status.

- 10.5 The Commission is of the opinion that that one detention migration centre for the whole country is inadequate. While the police holding cells are considered as an interim measure, it should only hold detainees for short periods of time before transported to Lindela.

**Recommended Issues:**

- 10.6 How does the South African government ensure that its immigration detention practices comply with national laws and international human rights obligations, including the United Nations Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR)?
- 10.7 What steps has the State taken to address the issues of overcrowding, poor sanitation, and inadequate healthcare in immigration detention centres?
- 10.8 How does the State ensure that detainees receive adequate medical care, including mental health services, and what protocols are in place for handling detainees with special needs or chronic illnesses?
- 10.9 How does the State handle complaints from detainees regarding mistreatment or poor conditions, and what safeguards are in place to protect detainees from retaliation for filing complaints?
- 10.10 What actions has the State taken to investigate and prosecute cases of abuse, corruption, or misconduct by officials in immigration detention centres?

10.11 How does the State address cases of indefinite detention, particularly for detainees who cannot be deported due to issues such as statelessness or lack of travel documents?

## **11. Juvenile justice**

11.1 Juvenile detention, also known in South Africa as ‘Secure Care Centres (SCC) and Child and Youth Care Centres (CYCCs)’ faces several specific challenges that reflect broader issues within the country's justice system and society. These challenges can hinder the rehabilitation of young offenders and contribute to a cycle of reoffending.

11.2 Through the SAHRC’s work and visits to SCC’s, it has noted some of the key challenges regarding juvenile detention in South Africa. These include:

- a) **Inadequate Infrastructure:** The physical infrastructure of many detention centres is often in poor condition, with insufficient facilities to meet the needs of detained juveniles. This includes a lack of proper ventilation, heating, and sanitation facilities.
- b) **Lack of Vocational Training:** Vocational training, which is crucial for helping juveniles develop skills for employment, is often inadequate or unavailable. Without these programs, detained juveniles are less prepared for life after release, increasing their risk of reoffending.
- c) **Inconsistent Rehabilitation Programs:** Rehabilitation programs aimed at addressing behavioural issues, trauma, or substance abuse are often inconsistent or insufficiently funded. This makes it difficult to address the underlying causes of juvenile offending.
- d) **Many juveniles in detention suffer from mental health issues, including trauma, depression, and anxiety. However, access to mental health care within detention centres is often limited, exacerbating these conditions.**
- e) **Peer violence:** Physical fights, bullying, and gang-related violence are common, contributing to a culture of fear and aggression.

- f) Abuse by Staff: There have been reports of abuse by staff in some South African juvenile detention centres. This includes physical abuse, emotional abuse, and even cases of sexual exploitation. Such abuse can have long-lasting traumatic effects on juveniles.
- g) High Recidivism Rates: Many juveniles who go through the detention system in South Africa end up reoffending. This is often due to the lack of effective rehabilitation and reintegration programs, as well as the stigmatization and limited opportunities they face upon release.

**Recommended Issues:**

- 11.3 What steps is the government taking to improve the living conditions in juvenile detention centres, including sanitation, nutrition, and access to basic necessities?
- 11.4 Violence and Abuse: How does the State monitor and address incidents of violence and abuse within juvenile detention centres? What mechanisms are in place for juveniles to report abuse safely?
- 11.5 What provisions are in place for mental health care in juvenile detention centres? How does the State ensure that juveniles receive appropriate psychological support and treatment?
- 11.6 What efforts are being made to implement and expand alternatives to detention for juveniles, such as diversion programs, community service, and restorative justice initiatives?
- 11.7 How does the government track and address recidivism rates among juveniles who have been detained? What programs are in place to reduce the likelihood of reoffending?

## 12. Older Persons

- 12.1 In October 2022, the Older Persons Amendment Bill was introduced in South Africa's Parliament.<sup>30</sup> The Bill sought to amend the Older Persons Act of 2006, through including updated definitions and provisions for monitoring services and measures for the temporary removal of older persons to safe care without a court order. The Bill specifically aimed to close legislative gaps, improve service delivery, and introduce strict penalties for non-compliance and harmful traditional practices.<sup>31</sup>
- 12.2 The Bill further addressed key issues relating to the care and rights of older persons, including property rights, protection from abuse, and strengthening caregiver roles. Furthermore, it sought to provide support to older persons in the justice system by strengthening the provision of legal aid and intermediary services.<sup>32</sup>
- 12.3 The SAHRC supported the passage of the legislation through Parliament and that it was passed by the National Assembly on, 9 May 2024. However, the SAHRC notes with concern that the Bill had lapsed at the end of the 6<sup>th</sup> Parliament and is and is to be revived under the 7<sup>th</sup> Parliament.<sup>33</sup>

### **Recommended Issue:**

- 12.4 The State should prioritise the revival of the Older Persons Amendment Bill and expedite the processing of the legislation as a matter of urgency under the 7<sup>th</sup> Parliament.

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<sup>30</sup> Older Persons Amendment Bill of 2020 (Section 76 Bill No. B11B of 2022)

<sup>31</sup> <https://pmg.org.za/committee-meeting/39421/>

<sup>32</sup> Ibid

<sup>33</sup> <https://www.gov.za/news/speeches/minister-nokuzola-tolashe-social-development-dept-budget-vote-202425-17-jul-2024>

### **13. Rights of Persons with Disabilities**

- 13.1 For informative purposes, and noting the intersectionality of disability rights, the SAHRC highlights to the Committee that in 2015, the institution developed a Disability Toolkit for Employers. The toolkit is a strategic resource aimed at assisting employers in both the public and private sectors to promote inclusive and accessible workplaces for individuals with disabilities. This toolkit also acts as a guide on best practices, legal frameworks, and practical steps to ensure that workplaces are compliant with South Africa's commitments to disability rights, as outlined in various legislative frameworks, including the Constitution, the Employment Equity Act, and the Promotion of Equality and Prevention of Unfair Discrimination Act.
- 13.2 The SAHRC intends to follow-up and monitor the implementation of the toolkit to assess the current state of disability inclusion and accessibility in the workplace. This review aims to 'take stock' of where the country stands in terms of implementing disability-friendly policies and practices, with a focus on:
- a) Progress Evaluation: The SAHRC will evaluate how effectively public and private sectors have integrated the toolkit's recommendations since its release in 2015. This involves checking compliance with legal obligations, monitoring disability inclusivity, and identifying areas where implementation has fallen short.
  - b) Public and Private Sector Analysis: The review will examine the levels of accessibility and inclusivity in both sectors, highlighting disparities, if any, between public institutions and private enterprises. This will help determine whether equal opportunities for persons with disabilities are being provided across sectors.
  - c) Challenges and Barriers: The exercise will identify obstacles to implementation, including financial constraints, lack of awareness, and inadequate support for employers in addressing the needs of employees with disabilities.
  - d) Benchmarking for Improvement: By taking stock, the SAHRC seeks to create a benchmark for improvement, helping to guide future policies and

programs aimed at enhancing workplace accessibility and inclusion for persons with disabilities.

- e) Stakeholder Engagement: It will involve input from various stakeholders, including employees with disabilities, human rights advocates, and government agencies, to ensure that a wide range of perspectives are considered in evaluating the toolkit's effectiveness.
- f) Future Policy Formulation: The insights gained from this review will likely inform future legislative and policy frameworks, aiming to bridge the gaps identified and enhance South Africa's alignment with international disability rights standards.

#### **14. Conclusion**

- 14.1 Notwithstanding the progress made by the State since its initial report under the ICCPR in 2016, the SAHRC notes with concern that the State's periodic report to the Human Rights Committee is overdue by four years. The SAHRC appreciates the Committee's commitment to submit a LOIPR report to the South African government under the new simplified reporting procedures. As the NHRI, the SAHRC will continue to monitor and assess the State's compliance with its obligations under the Covenant and looks forward to the State's responses to the LOIPR.

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