



HUMAN RIGHTS IN SOUTH AFRICA: PROGRESS AND AREAS FOR IMPROVEMENT

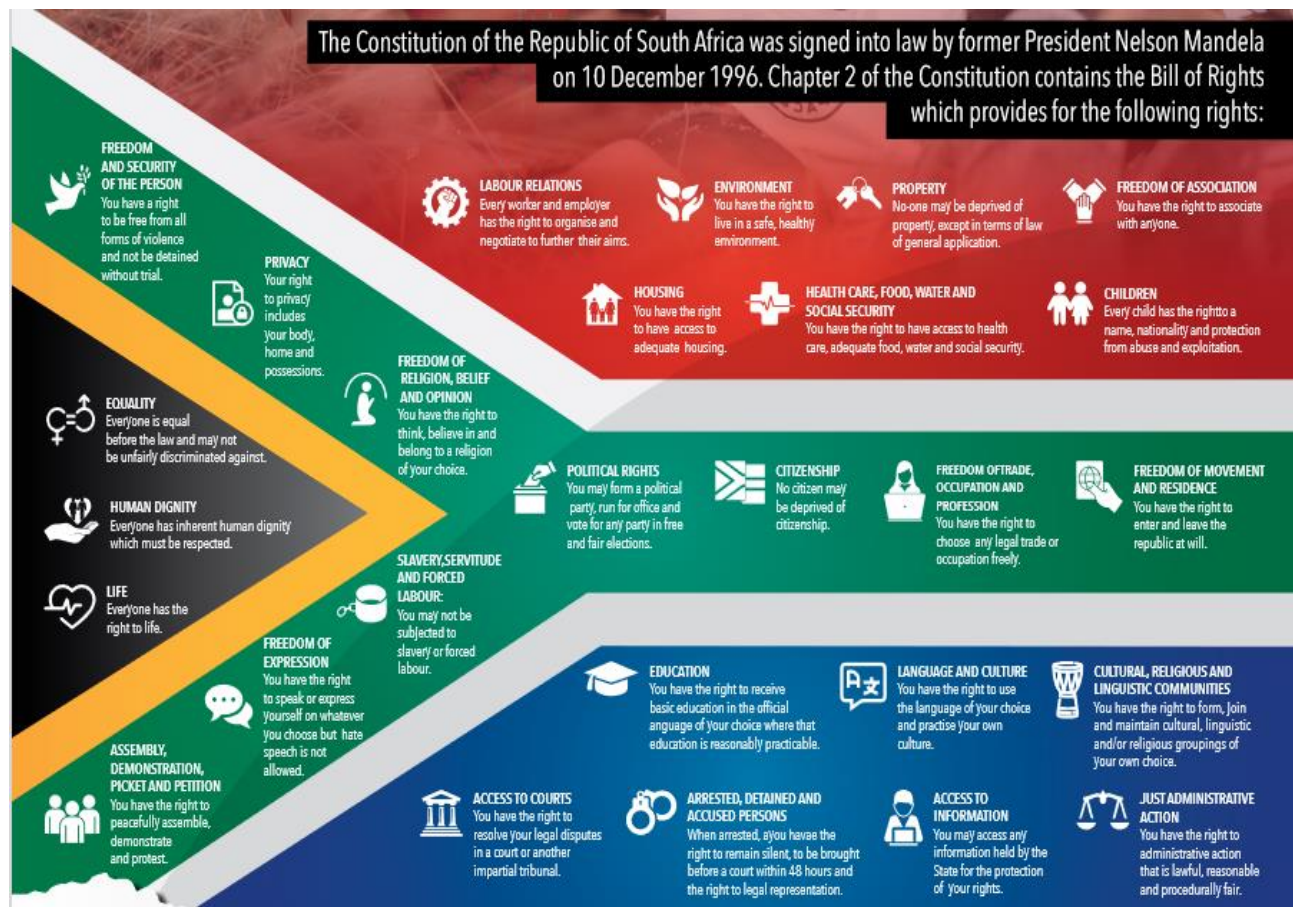


Human Rights Day is commemorated annually in South Africa on 21 March. It is a commemoration of the events of 21 March 1960 where 69 people died and scores more were injured in Sharpeville during protests against apartheid laws in the country at the time. Following this event a state of emergency was imposed and detention without trial implemented¹ – further limiting the already minimal rights available to the majority of South Africans. Twenty-five years later, on 21 March 1985, at least 20 people were killed and several others injured in the Eastern Cape township of Langa for attending a funeral which had been banned by the apartheid government. The date of 21 March is

Following the abolition of apartheid, the democratic government sought to create and foster a human rights culture. This was done through the development of a human rights-based constitution, various pieces of human rights legislation, and the establishment of independent constitutional bodies to promote and protect human rights. These include the South African Human Rights Commission and the Commission for Gender Equality.

| Parliamentary Research Unit

The Bill of Rights in Chapter 2 of the Constitution of South Africa provides that:



While much has been done post-apartheid, tangible change remains elusive for many South Africans as they experience high levels of crime, gender-based violence, unemployment, delayed access to justice and the impact of corruption, amongst others.

This brief provides key messages from President Cyril Ramaphosa's 2022 human rights day address and is followed by an overview of the progress and areas for improvement in terms of human rights in South Africa based on various national and international reports from the South African Human Rights Commission, the United Nations Office on Human Rights, Human Rights Watch and Amnesty International.

In 2022, Government calls on all South Africans to:

Use Human Rights Month to foster greater social cohesion, nation-building and a shared national identity. It is our duty as a nation to strive for inclusive socio-economic development while ensuring that we combat scourges such as racism, racial discrimination, xenophobia and all related intolerances as well as gender-based violence and femicide, which are undermining our human rights culture

<https://www.gov.za/HumanRightsMonth2022>

KEY COMMENTS FROM PRESIDENT CYRIL RAMAPHOSA'S 2022 HUMAN RIGHTS DAY ADDRESS

On 21 March 2022 President Cyril Ramaphosa made his Human Rights Address at the Reagile Community Centre in Koster, North West Province. The following are some of the key points made by the President:²

-  Our Constitution calls for the advancement and protection of human rights for all.
-  It does not matter whether they are men or woman, adult or child, rich or poor, landed or landless, urban or rural dwellers, earners or unemployed, workers or employers, citizens or non-citizens.
-  The Constitution obliges the state to protect and uphold these rights, and to ensure that everyone's basic needs are progressively met.
-  The Constitution is founded on the achievement of equality.
-  Today, a quarter of a century since the Constitution came into effect, we are confronted by a stark reality.
-  We are a free people, but we are still a long way from being a nation of equals.
-  Our Constitution calls for the advancement and protection of human rights for all.
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-  The Constitution is founded on the achievement of equality.
-  Today, a quarter of a century since the Constitution came into effect, we are confronted by a stark reality.
-  We are a free people, but we are still a long way from being a nation of equals.
-  We cannot reduce poverty and inequality as long as public money is being plundered.
-  We cannot transform our society when people are confronted with arrogance or indifference. The Constitution reminds us to strive for a society that is not only free and equal, but one in which corruption has no place.
-  There can be no dignity if our children continue to go to bed hungry.
-  There can be no dignity if our young people are unemployed.
-  There can be no dignity if access to adequate housing, healthcare, food, water and social assistance is determined by race and class.
-  The Constitution is not a mere piece of paper. It is a document that empowers you.
-  As much as it places responsibilities on the state, the Constitution also confers duties of citizenship.
-  We can only win the war against poverty, inequality and unemployment if we rid our society of the ills that continue to set back our progress.
-  These ills include crime, substance abuse, gender-based violence, damage to essential infrastructure and violence in our schools.
-  Reclaiming the Constitution must be our common task.

From the address it is clear that there is an acknowledgement that significant obstacles remain for the attainment of human rights for all in South Africa. The President makes mention of amongst others, corruption, poverty, inequality, unemployment, crime, substance abuse and gender-based violence as ills that prevent and hinder progress.

² <https://www.gov.za/speeches/president-cyril-ramaphosa-human-rights-day-21-mar-2022-0000>, Address by President Cyril Ramaphosa on Human Rights Day, Reagile Community Centre, Koster, North West, 21 March 2022

HUMAN RIGHTS OBLIGATIONS IN SOUTH AFRICA

“All human beings are born free and equal in dignity and rights.”³

South Africa is signatory to an array of international and regional conventions and treaties aimed at promoting and protecting human rights in all spheres.

These include the following:



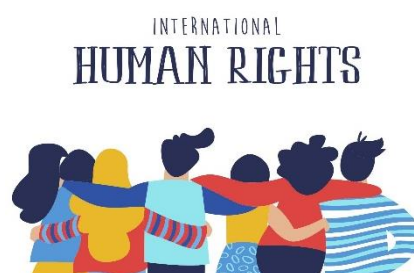
Convention on the Prevention and Punishment of the Crime of Genocide (1948)

- *The Convention criminalises genocide*
- State Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
- Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
 - a) *Killing members of the group;*
 - b) *Causing serious bodily or mental harm to members of the group;*
 - c) *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
 - d) *Imposing measures intended to prevent births within the group;*
 - e) *Forcibly transferring children of the group to another group*



International Convention on the Elimination of All Forms of Racial Discrimination (1965)

- *The Convention defines and prohibits discrimination in all spheres of public and private life*
- In terms of the Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
- State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races,
- State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.



International Covenant on Economic, Social and Cultural Rights (1967)

- *The Convention ensures the enjoyment of economic, social and cultural rights, including the right to education, fair conditions of work and an adequate standard of living.*
- The State Parties to the Convention undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights
- The State Parties to the Convention recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

³ Universal Declaration of Human Rights, 1948, Article 1



International Covenant on Civil and Political Rights (1966)

- *The Convention commits State Parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.*
- All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- State Parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Convention.
- Everyone shall have the right to recognition everywhere as a person before the law - all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
- Everyone shall have the right to freedom of thought, conscience and religion.
- Every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives and to have access, on general terms of equality, to public service in his country.



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- *The Convention aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment*
- "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.



African Charter on Human and Peoples' Rights (1981)

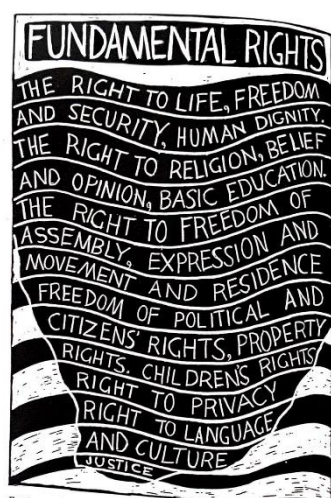
- *The Charter sets standards and establishes the groundwork for the promotion and protection of human rights in Africa - the Charter recognises the indivisibility of all rights*
- Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.
- Every individual shall be equal before the law
- Every individual shall be entitled to equal protection of the law
- Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
- Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

While South Africa was one of eight abstentions at the adoption of **the Universal Declaration of Human Rights in 1948**, it incorporated its primary tenets in the country's first democratic constitution in 1996.

The 1948 Universal Declaration of Human Rights acknowledged the interdependence of all human rights (civil, political, economic, social and cultural), all inherent in the human person.⁴ The Declaration recognises that human rights are an inalienable entitlement to all people across the globe regardless of race, ethnicity, creed, language, nationality, disability status, gender, age, sexual orientation etc. The Declaration also acknowledges, amongst others, that everyone has the right to life, liberty and security of the person, and that no one shall be held in slavery or servitude or be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The Constitution of South Africa, adopted in 1996, following the advent of a new democratic dispensation in 1994, acknowledges the injustices suffered by many during the apartheid era and encapsulates a set of principles to improve the quality of life of all citizens.

In the words of the Constitutional Court of South Africa: "The Bill of Rights is arguably the part of the Constitution that has had the greatest impact on life in this country. As the first words of this chapter say: this Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom."⁵



The Constitution of South Africa is founded on the following values:

⁴ <https://legal.un.org/avl/ha/udhr/udhr.html>

⁵ <https://www.concourt.org.za/index.php/constitution/your-rights/the-bill-of-rights>

-  Human dignity, the achievement of equality and the advancement of human rights and freedoms.
-  Non-racialism and non-sexism.
-  Supremacy of the constitution and the rule of law.
-  Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

The Constitution states that the State must respect, protect, promote and fulfil the rights in the Bill of Rights. The Bill of Rights does not only apply vertically, between the state and its citizens, it also applies, where applicable, horizontally between one citizen or private body and another.

South Africa is one of only a few countries in the world to entrench first, second and third generation human rights in its constitution.

 First generation human rights are civil and political rights with two main sub-categories of political liberties i.e.,

- i) freedom of expression, conscience and beliefs, association and assembly as well as political participation in one's society, etc.
- ii) physical and civil security that prohibit torture, slavery, inhumane treatment, arbitrary arrests and equality before the law.

 Second generation human rights are socio-economic rights. These mainly compel government to meet or create conditions for the fulfilment of some basic needs to enhance human dignity. These require the government to provide social-economic necessities such as shelter, health, clean water, education and social infrastructure.

 Third generation human rights are mainly on collective developmental rights. These include self-determination, environmental laws, humanitarian assistance, right to peace, as well as rights of linguistic and cultural communities.⁶

⁶ Makhanya, M, 2019, Three generations of human rights: Balanced application will protect our poor and vulnerable

STATUS OF HUMAN RIGHTS IN SOUTH AFRICA

While the Constitution is one of the most progressive in the world, much more needs to be done to improve its implementation and ensure that the quality of life of citizens are improved in all spheres.

From the President's address on 21 March 2022, there is an acknowledgement that many gaps exist.

Makhanya (2019) notes that the country makes a good showing insofar as first generation rights are concerned – an array of legislation exists aimed at ensuring equality, non-discrimination and protecting the rights of citizens; an independent judiciary exists and Chapter 9 institutions to monitor and uphold democracy have been established.

In terms of second generation rights, the record of success remains more mixed. While there is growing social protection/grant provisioning, provision of social and physical infrastructure, increased access to education and free basic healthcare, obstacles like corruption and poor institutional capacity have inhibited impact in these areas.

Lastly, high levels of inequality (in terms of spatial planning, distribution of wealth and access to credit), as well as inter-generational poverty and a lack of inclusive, people-centred economic growth and development, has severely limited the application of third generation rights.⁷

The South African Human Rights Commission in its 2017/18 Equality Report states that "extreme economic inequality such as that witnessed in South Africa violates the right to equality itself (which 'includes the full and equal enjoyment of all rights and freedoms'), exacerbates extreme poverty and thereby violates various socio-economic

rights, and causes social instability that leads to crime and the consequent violation of civil and political rights. Given that extreme inequality often correlates to political capture, the equal enjoyment of democratic rights is likewise threatened."⁸

This is echoed by the World Bank, which in its overview of South Africa, states that "South Africa remains a dual economy with one of the highest, persistent inequality rates in the world...high inequality is perpetuated by a legacy of exclusion and the nature of economic growth, which is not pro-poor and does not generate sufficient jobs. Inequality in wealth is even higher and intergenerational mobility is low meaning inequalities are passed down from generation to generation with little change over time."⁹

It is thus clear that while there are impressive and progressive commitments to human rights on paper, high levels of inequality and poverty remain a major challenge to the protection of these rights. This is exacerbated by high levels of unemployment and gender-based violence, which further constrict the attainment of freedom and enjoyment of human rights.

In its 2019/20 Annual Trends Analysis Report, the SAHRC notes that "South Africa's history of colonialism and apartheid entrenched systems of inequality along racial lines has informed deeply entrenched patterns of persisting inequality 25 years since it has embraced a new constitutional dispensation founded on the rule of law."¹⁰

In an analysis undertaken of the types of rights violations reported to the Commission, it finds that the following categories of violations have had the highest and increasing number of reports/complaints:

⁷ Makhanya, M, 2019, Three generations of human rights: Balanced application will protect our poor and vulnerable

⁸ South African Human Rights Commission, 2018, Equality Report

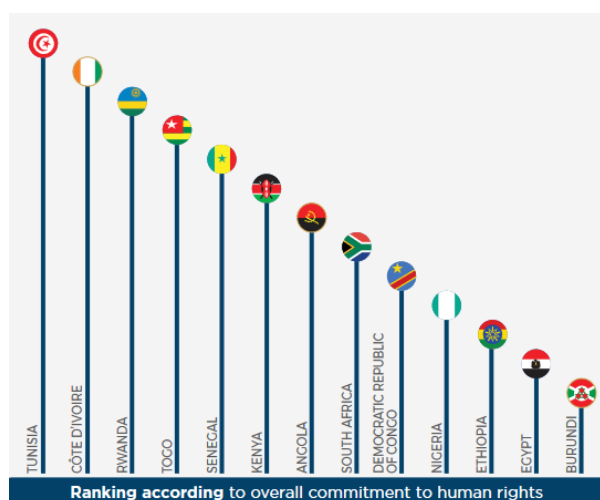
⁹ The World Bank, 2021, The World Bank in South Africa, <https://www.worldbank.org/en/country/southafrica/overview#1>

¹⁰ South African Human Rights Commission, 2020, 2019-2020 Annual Trends Analysis report

-  **Equality** (mostly based on race – 511/827 in 2019-20) and **Human Dignity** (unfair discrimination, hate speech etc.)
-  **Healthcare, food, water and social security rights** (poor facilities and infrastructure, lack of access to services/equipment, discrimination from healthcare workers, challenges accessing education, housing, social grants)
-  **Just administrative action** (non-responsiveness and delays in the provision of services, maladministration)
-  **Labour relations** (unfair discrimination in the workplace, employer/employee relations)

Given that these rights violations fall within the categories of first and second generation rights as enshrined in the Constitution, it is concerning that 26 years after its adoption and 28 years after the advent of democracy, these violations continue to exist and increase.

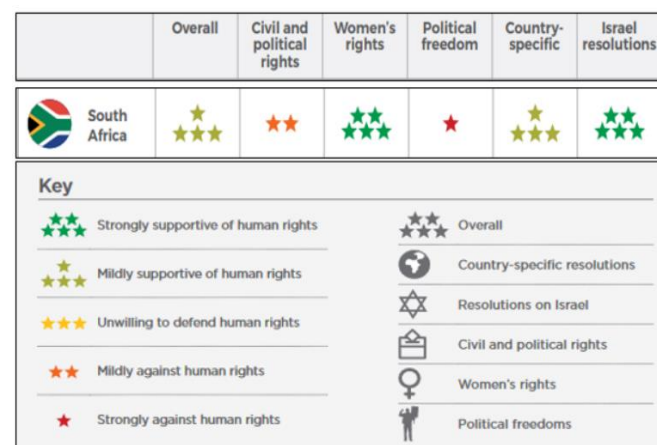
In a 2018 report on African States at the United Nations Human Rights Council¹¹, South Africa ranked 8th out of 13 African countries in terms of their level of human rights commitment.



The report assessed the international human rights commitment of the 13 African Human Rights Council members. The assessment was based on country behaviour in 5 issue areas:

ISSUE	RESOLUTIONS INCLUDED
Country-specific resolutions	Human rights situations in Belarus, Burundi, Georgia, Iran, Myanmar, Syria and Yemen
Resolutions on Israel	Five general session resolutions and one special session resolution
Women's rights	Resolutions on discrimination against women and violence against women
Political freedom	Resolutions on peaceful protest, civil society space, and equal participation in politics
Civil and political rights	Resolutions on peaceful protest, civil society space, equal participation in politics, discrimination against women and violence against women

The report indicates that South Africa was strongly supportive of resolutions on women's rights, as well as those relating to Israel. However, it did not fare as well in relation to the other categories.



¹¹ Jordaan, E, African States at the UN Human Rights Council in 2018

UNITED NATIONS: UNIVERSAL PERIODIC REVIEW

In 2017 South Africa underwent its third cycle of the Universal Periodic Review. The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States.¹²

The country received a total of 243 recommendations from the review, of which it fully accepted 187. The remaining 56 recommendations were 'noted' by South Africa. 'Noted' recommendations are those which South Africa was in the process of considering and could not commit to at the time of the review.

The noted recommendations relate to the categories listed below. The number of noted recommendations per category is included in brackets.

-  Acceptance of International Norms, Facilitation of Special Rapporteur Visits, Human Rights Reporting and Selection of Candidates for UN Treaty Bodies (20 recommendations noted)
-  Strengthening of the South African Human Rights Commission and other Human Rights Monitoring Mechanism, Context, Statistics, Budget and Cooperation with Civil Society (3 recommendations noted)
-  Hate Crime, Hate Speech Bill, National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, Non-Discrimination (2 recommendations noted)
-  Discrimination and Violence against Women (4 recommendations noted)
-  Human Rights Standards, Protection of the Environment (3 recommendations noted)
-  Law enforcement, Crime, Corruption, Human Rights Education and Training

and Conditions of Detention (2 recommendations noted)

 Constitutional and Legislative Framework (6 recommendations noted)

 Liberty and Security – General (2 recommendations noted)

 Freedom of Expression and Opinion (2 recommendations noted)

 Right to Health, Work and Education (1 recommendation noted)

 Children: Protection against Exploitation (8 recommendations noted)

 Eradication of Poverty, Inequality, Unemployment, and Economic Development and Empowerment, Social Protection (2 recommendations noted)

 Youth Development, Economic Empowerment and Reforms (1 recommendation noted)

A list of all noted recommendations, as well as recommending countries, is included in an Annexure at the end of this brief.

In a letter from the High Commissioner on Human Rights, reflecting on progress and areas for improvement, the following was noted:¹³

 The Office of the High Commissioner is encouraged by the enactment of the Prevention and Combatting of Torture of Persons Act – this gives effect to South Africa's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

 The Office of the High Commissioner encourages South Africa to develop a national human rights action plan in order to achieve concrete results in the areas recommended through the review process.

¹² United Nations Human Rights Council, 2017, Report of the Working Group on the Universal Periodic Review: South Africa, A/HRC/36/16

¹³ Office of the High Commissioner for Human Rights, United Nations, 23 October 2017

 The Office of the High Commissioner encourages South Africa to strengthen its national mechanism for comprehensive follow up and reporting in relation to international and regional human rights mechanisms and treaty obligations.

South Africa, along with other Member States, was encouraged to submit a voluntary mid-term report two years after the adoption of the outcome report – i.e. by September 2019. According to the submission records on the UPR database, this was not done.¹⁴

HUMAN RIGHTS WATCH WORLD REPORTS

On an annual basis Human Rights Watch undertakes a review of human rights practices around the globe. This section highlights some key findings for South Africa for its 2020, 2021 and 2022 reports.

2020 concerns (reflections from 2019)¹⁵

Women's rights

- In August 2019, Uyinene Mrwetyana was raped and murdered, resulting in public outcry. Increased levels of gender-based violence and femicide led to nationwide protests and sparked the #AmINext movement.
- In addition, there was slow progress with regard to the decriminalisation of sex work. Human Rights Watch notes that criminalisation has undermined sex workers' access to justice for crimes committed against them and exposed them to abuse and exploitation, as well as hinders their access to healthcare.

Disability rights

- The report highlights the challenges faced by persons with disabilities, including that education, training and health systems for this vulnerable groups needs to be improved.
- It also raised concerns with regard to special needs education for people with disabilities and persons with ongoing learning barriers. It noted that long and tedious processes of assessment

and referrals prevent children's entry into inclusive, mainstream education.

Xenophobic attacks on Foreign Nationals

- From March 25 to April 2, 2019, violence by South Africans against foreign nationals erupted in the eastern eThekweni municipality, one of South Africa's most heavily populated areas, which includes the city of Durban and surrounding towns
- In September, sporadic violence targeting African foreign nationals and their businesses broke out in parts of Durban, Pretoria, Johannesburg City and surrounding areas of Germiston, Thokoza, Katshele, Alberton, Alexandra, and Malvern. The attacks left 12 people dead, thousands displaced.
- On March 25, government launched a National Action Plan to combat xenophobia, racism, and discrimination, marking an important step toward addressing the widespread human rights abuses arising from xenophobic and gender-based violence and discrimination that continue to plague South Africa.

2021 concerns (reflections from 2020)¹⁶

Women's rights

- Levels of violence against women continued to increase during 2020 with COVID-19 lockdown regulations placing many women at greater risk.
- Just shy of one year after the death of Uyinene Mrwetyana, the country was shocked by the brutal murder of Tshegofatso Pule.
- Again the criminalisation of sex work was raised as an area of concern. Human Rights Watch states that in October 2020, the Department of Social Development said it has failed sex workers by not providing them with services such as counselling, safety and security and giving them other options to opt-out of sex work when they wish to do so.

Children's rights

- The report highlights the due to the COVID-19 pandemic, more than 13 million children across the country were affected by school closures. For many, this affected their safety and nutrition, and further excluded those who were already at risk of being excluded. Schools, as well as early childhood development centres (ECDs) were

¹⁴ <https://www.ohchr.org/en/hr-bodies/upr/upr-implementation>

¹⁵ Human Rights Watch, 2020, World Report 2020: Events of 2019

¹⁶ Human Rights Watch, 2021, World Report 2021: Events of 2020

closed without adequate plans to keep children learning.

Xenophobic attacks on Foreign Nationals

- During 2020, South Africa continued to experience incidents of xenophobic violence and discrimination against non-nationals despite the government's launch of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP) in 2019. While the 2019 National Action Plan marked an important step toward recognising and addressing these abuses, it has not ensured accountability for xenophobic crimes.

Impact of COVID-19

- Human Rights Watch states that government's COVID-19 aid programs, including food parcels, overlooked refugees and asylum seekers. Many lesbian, gay, bisexual, and transgender (LGBT) African asylum seekers and undocumented migrants were also overlooked.
- Sex worker rights groups also noted that this vulnerable population had been left out of relief planning.
- In addition, government did not sufficiently consult with people with disabilities in its Covid-19 policies, leaving many at serious risk of Covid-19 infection, hunger, and other harms.
- On May 12, the rapporteur for South Africa at the African Commission on Human and Peoples' Rights, Solomon Ayele Dersso, sent an urgent appeal to the government to protect the rights of vulnerable groups, including refugees, asylum seekers and migrants in the context of the lockdown to combat the coronavirus.

2022 concerns (reflections from 2021)¹⁷

Women's rights

- Increased rates of violence against women - between 2019 and 2020, the rate of reported sexual offences in South Africa increased by an average of 146 incidences a day, 116 of which were cases of rape. In May, the Committee on the Elimination of Discrimination Against Women (CEDAW), reported that South Africa's low levels of

prosecution and conviction in domestic violence cases and the frequent failures by the police to serve and enforce protection orders, exposed survivors to repeated abuses and resulted in the violation of women's rights.

- In August, a 23-year-old University of Fort Hare law student Nosiselo Mtebeni was killed allegedly by her boyfriend. Parts of her dismembered body were found in the house she shared with her boyfriend.

Children's rights

- In addition to the health challenges faced as a result of the COVID-19 pandemic, Human Rights Watch reports that remote learning exacerbated existing inequalities as children from poor communities had limited access to online resources, leading to further exclusion. In addition, approximately 500 000 learners dropped out of school during the pandemic.
- Increases in teenage pregnancy are also cause for concern - between 2017 and the first quarter of 2021, over 512,000 girls and young women ages 10 to 19 delivered children in health facilities.

Sexual Orientation and Gender Identity

- In March 2021, Human Rights Watch filed a submission with the South African Department of Home Affairs on the Draft Official Identity Management Policy to address the inadequacies in the current system which do not cater for changes in the gender/sex attribute of the identity system.
- In July 2021, Human Rights Watch filed a submission with the Department of Justice and Constitutional Development on their Draft National Intervention Strategy (NIS) 2021-2025, that provides the framework to counter violence and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics.
- At least 19 LGBT persons were murdered in South Africa in 2021 – this despite LGBT individuals being recognised as a priority group in the National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP).

Police Conduct

- Human Rights Watch reports that in 2021 excessive force was used to disperse student

¹⁷ Human Rights Watch, 2022, World Report 2022: Events of 2021

protest at Wits, which led to the death of a bystander.

- In addition, the police initially failed to control violent riots and looting during July 2021, resulting in the deployment of military troops to restore order.

AMNESTY INTERNATIONAL 2020/21 HUMAN RIGHTS REPORT¹⁸

Amnesty International notes that “During 2020 the world was rocked by COVID-19. The pandemic and some of the measures taken to tackle it had a devastating effect on the lives of millions, but also revealed, and sometimes aggravated, existing patterns of abuses and inequalities.”

The pandemic threw into stark relief the human rights impact of years of political and financial crises and flaws in global systems of governance and co-operation – these dynamics were illustrated by trends in three areas: violations of the rights to life, health and social protection; gender-based violence and threats to sexual and reproductive rights; and repression of dissent.

In terms of South Africa, the report notes the following issues and concerns:

Gender-based violence

- Violence increased during the lockdown period and the report indicates that during the first quarter of the year, more than 2300 complaints had been lodged with police.
- 21 women were reportedly killed during June 2020.

Sexual and Reproductive Rights

- During COVID-19 lockdown many complaints were received relating to the lack of availability or access to sexual and reproductive health services.

Right to Education

- Amnesty International notes that the public education system continued to be characterised by poor and aging infrastructure, overcrowded classrooms and poor educational outcomes which perpetuate inequality.

- Educational inequality was further exacerbated when the pandemic led to school closures and students in poorer communities did not have access to remote learning. The national school feeding programme was also affected, leaving over 9 million learners vulnerable to food insecurity.
- In addition, authorities failed to use the school closures as an opportunity to improve school infrastructure.

Excessive use of force

- During the first period of lockdown in 2020 approximately 76 000 defence force personnel and police were deployed to enforce restrictions. Reports were received of excessive and lethal force being used by these officers in the administration of their duties.
- The Independent Police Investigative Directorate, received 828 complaints of police misconduct between 25 March and 5 May. They included 16 deaths in police custody; 32 deaths as a result of police action; eight incidents of rape by police officers; 25 reports of torture in custody; and 589 assaults.

Refugees, Asylum-seekers and Migrants

- Amnesty International states that during lockdown the authorities failed to abide by their constitutional and international legal obligations towards refugees, asylum-seekers and migrants in that government’s COVID-19 aid programmes and social relief measures were initially only available to those with national identity documents.
- Following a legal challenge some asylum-seekers and special-permit holders were able to receive a six-month COVID-19 Social Relief of Distress grant in June.
- The report further states that A malicious Twitter campaign, #PutSouthAfricaFirst, evoked a dangerous xenophobic narrative in the COVID-19 context, and targeted African migrants, accusing them of stealing jobs and draining public health resources. The media reported that nationals damaged or looted 124 spaza shops owned by foreigners, and other businesses in Thokoza township, south of Johannesburg, in September.

¹⁸ Amnesty International, 2021, The State of the World’s Human Rights 2020/21

Right to Water

- Amnesty International notes that according to government's National Water and Sanitation Master Plan, around 5.5 million households did not have access to safe and reliable drinking water as a result of poor infrastructure management and a lack of investment in water services.
- The COVID-19 pandemic compounded problems accessing water and the associated health risks arising from poor hygiene. For example, people, particularly women, had longer distances to walk to find safe drinking water.

CONCLUDING COMMENTS

From the various report findings above it is clear that while South Africa possesses the constitutional and legal instruments to ensure the promotion and protection of human rights, it appears that there are gaps in implementation. Issues relating to violence against women, xenophobia and the rights of other marginalised groups are of great concern. In addition, corruption and mismanagement result in the loss of resources which could be directed towards improving human rights implementation.

The University of Pretoria Centre for Human Rights notes that: "At the very least, we have the assurance that a rule-based, open and democratic system is in place, that we all have an opportunity to be involved in the way the country is run, and that we can vindicate our rights before largely well-functioning and independent courts."¹⁹

So how then do we ensure the improved application of human rights so as to create tangible change and outcomes in the lives of citizens?

Serfontein (2019) makes the following statement: "The Constitution presupposed an efficient government with the capacity and

commitment to meet the hopes of its inhabitants in their desire for a participatory and efficient democracy, the realisation of their human rights, peace and security, equal developmental opportunities, social justice, and integration. However, the responsibility lies with all living in contemporary South Africa to endorse human rights and inspire government to do the same. In a democracy humans are obliged to actively participate and take responsibility for the realisation of human rights."²⁰

To this end, citizens taking responsibility for their inalienable human rights and calling for their implementation and protection is the first step.

Political will and the commitment to upholding domestic, regional and international legislation and treaties is vital to human rights implementation. Mechanisms for accountability and regular reporting must be in place.

Improved cooperation between all entities and spheres in private and public sectors is of paramount importance – the private sector, civil society and government at all levels, must be unified in the application and commitment to human rights.

Human rights must be mainstreamed into budgetary and policy decision-making. To realise human rights from paper into reality all facets and mechanisms for its implementation must be adequately resourced, for example institutions aimed at upholding and supporting human rights such as the Commission for Gender Equality and the South African Human Rights Commission, must receive adequate human and financial resources to effectively carry out their mandates.

Much more needs to be done to realise the vision of a post-apartheid South Africa.

¹⁹ <https://www.chr.up.ac.za/latest-news/2981-human-rights-day-an-opportunity-to-remember-reflect-and-rethink>

²⁰ Serfontein, E, 2019, Humans: The Biggest Barrier to Realising Human Rights - A South African Perspective, <https://www.intechopen.com/chapters/68956>

"Factors such as pervasive structural inequality, the scourge of gender-based violence, violent targeting based on nationality, the disproportionate effects of COVID-19 on vulnerable South Africans, and frustration about impunity for those who have plundered state resources should not blind us to significant shifts in the legal and social landscape that took place post 1994."²¹ Now is the time to strengthen mechanisms and ensure greater accountability.

REFERENCES:

- Amnesty International, 2021, The State of the World's Human Rights 2020/21
- Human Rights Watch, 2020, World Report 2020: Events of 2019
- Human Rights Watch, 2021, World Report 2021: Events of 2020
- Human Rights Watch, 2022, World Report 2022: Events of 2021
- Jordaan, E, African States at the UN Human Rights Council in 2018
- Makhanya, M, 2019, Three generations of human rights: Balanced application will protect our poor and vulnerable
- Office of the High Commissioner for Human Rights, United Nations, 23 October 2017
- Serfontein, E, 2019, Humans: The Biggest Barrier to Realising Human Rights - A South African Perspective, <https://www.intechopen.com/chapters/68956>
- South African Human Rights Commission, 2018, Equality Report
- South African Human Rights Commission, 2020, 2019-2020 Annual Trends Analysis report
- The World Bank, 2021, The World Bank in South Africa, <https://www.worldbank.org/en/country/southafrica/overview#1>
- United Nations Human Rights Council, 2017, Report of the Working Group on the Universal Periodic Review: South Africa, A/HRC/36/16
- United Nations Universal Declaration of Human Rights, 1948
- <https://www.gov.za/speeches/president-cyril-ramaphosa-human-rights-day-21-mar-2022-0000>, Address by President Cyril Ramaphosa on Human Rights Day, Reagile Community Centre, Koster, North West, 21 March 2022
- <https://legal.un.org/avl/ha/udhr/udhr.html>
- <https://www.concourt.org.za/index.php/constitution/your-rights/the-bill-of-rights>
- <https://www.ohchr.org/en/hr-bodies/upr/upr-implementation>
- <https://www.chr.up.ac.za/latest-news/2981-human-rights-day-an-opportunity-to-remember-reflect-and-rethink>

²¹ <https://www.chr.up.ac.za/latest-news/2981-human-rights-day-an-opportunity-to-remember-reflect-and-rethink>

ANNEXURE A: 2017 UNIVERSAL PERIODIC REVIEW NOTED RECOMMENDATIONS



Acceptance of International Norms, Facilitation of Special Rapporteur Visits, Human Rights Reporting and Selection of Candidates for UN Treaty Bodies (20 recommendations noted)

- 139.1 Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Burkina Faso) (Niger) (Uganda) (Philippines) (Sierra Leone);
- 139.2 Promptly ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families (Guatemala);
- 139.3 Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Sri Lanka) (Sudan);
- 139.4 Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal) (Germany) (Sierra Leone);
- 139.5 Ratify without delay the International Convention for the Protection of All Persons from Enforced Disappearance (Japan);
- 139.6 Become a party to the International Convention for the Protection of All Persons from Enforced Disappearance (Albania) (Central African Republic) (Iraq);
- 139.16 Ratify, before the next cycle of the universal periodic review, the Optional Protocol to the Convention against Torture and adopt measures to improve access to justice, redress and rehabilitation for victims of torture (Czechia);
- 139.19 Ratify the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (Spain) (Philippines) (Portugal);
- 139.20 Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Spain) (Portugal) (Montenegro);
- 139.21 Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961

Convention on the Reduction of Statelessness (Belgium) (Germany);

- 139.22 Accede to and implement the 1954 and 1961 statelessness conventions (Kenya);
- 139.23 Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Australia);
- 139.24 Promptly ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO) (Guatemala);
- 139.25 Strengthen domestic efforts to tackle modern slavery of children and rural workers, including through ratification of the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (United Kingdom of Great Britain and Northern Ireland);
- 139.26 Ratify the Kampala amendments to the Rome Statute of the International Criminal Court on the crime of aggression (Liechtenstein);
- 139.27 Reconsider the announcement of its possible withdrawal from the Rome Statute (Peru);
- 139.28 Reconsider the decision to withdraw from the Rome Statute of the International Criminal Court (Greece);
- 139.29 Uphold its commitment to and obligations under the Rome Statute of the International Criminal Court (Czechia)
- 139.32 Accept the request for a visit by the Special Rapporteur on the human right to safe drinking water and sanitation (Uruguay);
- 139.34 Adopt an open, merit-based selection process when selecting national candidates for United Nations treaty body elections (United Kingdom of Great Britain and Northern Ireland)



Strengthening of the South African Human Rights Commission and other Human Rights Monitoring Mechanism, Context, Statistics, Budget and Cooperation with Civil Society (3 recommendations noted)

- 139.35 Ensure sufficient resources to the so-called chapter 9 institutions, which, as independent oversight bodies, serve a crucial purpose in upholding the rule of law and good governance (Finland)

- 139.39 Develop an independent child rights monitoring mechanism and allocate adequate financial resources to ensure effective implementation of the relevant international obligations (Mongolia);
- 139.40 Continue to adequately fund the medium-term strategic framework and to refine its consolidated planning, monitoring and evaluation mechanisms to support the Framework's effective implementation (Singapore)

 Hate Crime, Hate Speech Bill, National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, Non-Discrimination (2 recommendations noted)

- 139.72 Take proper legal measures, including compensations on the attacks on foreign nationals resulting in loss of life and damage to property in parts of the country (Ethiopia);
- 139.90 Consider expanding the policy of affirmative action to the coloured population (Peru)

 Discrimination and Violence against Women (4 recommendations noted)

- 139.193 Expedite the enactment of the proposed Women Empowerment and Gender Equality Bill (Maldives);
- 139.194 Adopt as soon as possible the Women's Empowerment and Gender Equality Bill (Spain);
- 139.200 Work to eradicate harmful cultural or traditional practices against women and girls by conducting educational campaigns, encouraging reporting of cases and publically denouncing such practices; by urgently providing an adequate budget for the implementation of key measures of the Domestic Violence Act; and by strengthening the systematic and comprehensive collection of disaggregated data related to the incidence of all forms of violence against women, including femicide and intimate partner violence, and by using this data to inform its policy responses and monitoring (Ireland);
- 139.207 Render operational and grant adequate resources to the National Council against Gender-Based Violence and

develop a multi-sectoral national strategic plan on this issue (Spain)

 Human Rights Standards, Protection of the Environment (3 recommendations noted)

- 139.104 Increase the efficiency and the systematic implementation of the law on the development of mining resources, in the field of employment, housing, social development and protection of the environment (Cabo Verde);
- 139.105 Continue to develop and implement a framework that holds companies, particularly those in the extractive sector, accountable for the human rights violations and the environmental degradation caused by their operations (Philippines);
- 139.106 Define and enforce regulations to ensure that companies comply with international and national standards relating to human rights, labour, the environment and others (Togo)

 Law enforcement, Crime, Corruption, Human Rights Education and Training and Conditions of Detention (2 recommendations noted)

- 39.109 Revise laws and policies regarding public order policing and the use of force, including lethal force by law enforcement officials (Greece);
- 139.110 Take further action regarding oversight of and training for security forces in human rights, including to address violence related to hatred against foreigners, and make sure security forces carrying out law enforcement duties comply with United Nations standards (Austria)

 Constitutional and Legislative Framework (6 recommendations noted)

- 139.153 Expedite the necessary consultative and legislative processes for the establishment of mandatory retirement benefits for all working persons who retire due to old age or disability (Mauritius);
- 139.223 Increase the age of marriage to 18 years for both boys and girls and harmonize legislation to this effect (Sierra Leone);

- 139.224 Harmonize the South African legislation to ensure that the minimum age for marriage is established at 18 years for both boys and girls (Zambia);
- 139.225 Ensure in national legislation that the minimum age for marriage is 18 years for both girls and boys and take all necessary measures to prevent and eliminate child sex tourism and exploitation of child labour (Slovenia);
- 139.226 Revise the Children's Act in order to set the minimum age for marriage to 18 years for both boys and girls (Belgium);
- 39.243 Refrain from depriving citizenship through the blocking of identity documents and establish a dedicated procedure to identify stateless persons (Hungary).

Liberty and Security – General (2 recommendations noted)

- 139.122 Ensure that all communications surveillance requires a test of necessity and proportionality (Liechtenstein);
- 139.123 Take the necessary steps to ensure that all the operations of intelligence agencies are monitored by an independent oversight mechanism (Liechtenstein)

Freedom of Expression and Opinion (2 recommendations noted)

- 139.119 Review the current text of the Protection of State Information Bill in order to remove any limitations on freedom of expression, including the unwarranted persecution of whistle-blowers (Sweden);
- 139.120 Continue to revise the Protection of State Information Bill so that it fully respects international human rights law, in particular the right to freedom of opinion and expression (Switzerland)

Right to Health, Work and Education (1 recommendation noted)

- 139.178 Ensure unconditional access to primary, secondary and tertiary

education for all groups of society, irrespective of their socioeconomic situation, ethnic background or gender (Germany)

Children: Protection against Exploitation (8 recommendations noted)

- 39.233 Adopt legislation to prohibit all forms of corporal punishment in the private sphere (Israel);
- 139.234 Expedite the adoption of legislation to prohibit all forms of corporal punishment in the home, including "reasonable chastisement", and ensure that those who perpetrate corporal punishment are held accountable (Liechtenstein);
- 139.237 Review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention on the Rights of the Child (Albania);
- 139.238 Review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention on the Rights of the Child (Liechtenstein);
- 139.239 Review its relevant legislation and regulations on birth registration to ensure their full conformity with the Convention on the Rights of the Child (Portugal);
- 139.240 Ensure birth registration of all children born on South African territory, regardless of the immigration status or nationality of the parents (Mexico);
- 139.241 Amend legislation and regulations in order to ensure universal birth registration for children born in its territory (Turkey);
- 139.242 Continue ensuring that unaccompanied migrant children entering South Africa are kept in child and youth care centres and treated as children in need of care and protection (Holy See)

Eradication of Poverty, Inequality, Unemployment, and Economic Development and Empowerment, Social Protection (2 recommendations noted)

- 139.41 Commit to procurement and e-governance reforms, including the full

implementation of the Open Government Partnership national action plan and a permanent dialogue mechanism with civil society (United States of America)

- 139.152 Explore the possibility of a universal basic income in place of the existing social protection system, in consultation with all the stakeholders (Haiti)

 Youth Development, Economic Empowerment and Reforms (1 recommendation noted)

- 139.220 Allocate sufficient resources to implement its youth policy to ensure meaningful use of youth delegates participating in international forums, and inclusion of youth in rural areas and strengthen political impartiality and independence of youth representation (Denmark)