



Human Rights Watch

UPR Submission

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Introduction

Emerging from a history of institutionalized racial inequality, South Africa has made admirable progress in transforming the state and society to ensure respect for fundamental rights, including freedom of expression, an independent judiciary, and free and fair elections. Nevertheless, widespread poverty, unemployment, persistently high levels of violent crime, and gender inequality continue to inhibit the full enjoyment of human rights.

Poverty and associated limitations on rights in South Africa has a strong rural dimension: the rural poor suffer from higher unemployment rates, lower educational attainment, and lower access to essential services. South Africa's Bill of Rights provides for binding and justiciable rights for all South Africans to education, housing, health care, food, water, and social security. A priority concern for the nongovernmental human rights sector in South Africa is to ensure that the Government continues to address the progressive realization of socioeconomic rights and to hold the Government accountable to fulfill these rights as binding obligations rather than programmatic aspirations.

Women's Rights

Strong women's organizations in South Africa continue to challenge the patriarchal attitudes that persist in society and to pressure the Government to address gender-based abuses and discrimination. At the 2007 Women's Parliament, South Africa's deputy president acknowledged

the need for Government to create partnerships with civil society to expedite the implementation of the country's progressive legislation. South Africa has a strong policy framework to promote gender equality, but women continue to be disadvantaged relative to men in job opportunities, income levels and basic safety, and to suffer extremely high levels of gender-based violence.

Rape continues to be under-reported and complaints frequently receive inadequate response by police officials. The Government has established 52 specialized sexual offenses courts (SOCs) throughout the country, which have had relative success in improving conviction rates. The Government has also established 10 Thuthuzela Care Centers (TCCs) in close proximity to these courts, where survivors of rape are able to report the crime, access specialist investigators and prosecutors, and obtain medical care and counseling. These TCCs are currently located in major centers and plans for roll-out are likely to leave service gaps especially in rural areas where police statistics are low and the cost of implementation would be high

On May 22, 2007, Parliament passed the Sexual Offences Bill and Related Matters Amendment Bill, which acknowledges the high incidence of sexual offenses committed in South Africa, broadens the definition of rape, and acknowledges the link between rape and HIV infection. The Bill provides for victim-initiated compulsory HIV testing of alleged rape perpetrators and requires test results to be made available to the victims; two provisions that are highly contested and raise concerns about the human rights and health impacts of implementation. The Bill also entitles victims to receive, at state expense, post-exposure prophylaxis (PEP), a course of antiretroviral drugs that can reduce the risk of contracting HIV by up to 80 percent if taken within 72 hours of exposure. However, although the Bill mandates designated public health facilities to provide rape survivors with PEP, it does not mention other treatment or counseling services and makes access to PEP dependent on the survivor laying criminal charges. Important recommendations by the South African Law Reform Commission that would have improved conviction rates due to better court experiences of claimants were not included in the Bill.

Refugees and Migrants

Over the past few years South African civil society and HRW has repeatedly drawn attention to the vast range of procedural shortcomings and subsequent violations of asylum seekers' rights. Asylum seekers continue to encounter serious procedural obstacles and administrative delays in relation to accessing the asylum system and to subsequent

asylum status determination. This is caused in part by a backlog of 144,000 asylum claims, which the Government is seeking to clear, and in part by a chronic lack of logistical and staff capacity within the Department of Home Affairs. These problems are further compounded by corruption within the Department of Home Affairs. These short-comings have been repeatedly condemned by the Parliament's Portfolio Committee on Home Affairs. Whilst the Government has at times responded to such criticism with statements of positive intentions, the only way in which the chronic state of the asylum system can be addressed is through a fundamental overhaul of the way in which the Department of Home Affairs conducts its business.

Political repression and the economic meltdown in Zimbabwe continue to cause hundreds of thousands of Zimbabweans (very possibly in excess of 1 million) to enter South Africa. Many Zimbabweans, particularly those affected by Operation Murumbatsvina, are not aware of the fact that they may have a genuine claim for refugee status. These claimants, together with those who have no genuine asylum claim but who are fleeing the serious consequences the economic crisis, make an asylum claim because it is the only way to regularize their stay in South Africa.

The high number of Zimbabwean applicants means that the asylum system is placed under increased pressure. One of the most serious consequences of the current state of the asylum system is that many foreigners, in particular Zimbabweans, face arbitrary arrest, detention, mistreatment and extortion by police officers and illegal deportation by the police and immigration services. This leads to both a high risk and actual cases of refoulement (return that is unlawful under international law). The Lindela Repatriation Centre, 30 kms from Johannesburg, is the country's largest detention centre for foreign nationals who are deemed (often arbitrarily) to be illegally present in South Africa. Often in contravention of basic due process provisions under South African immigration law, the centre detains foreign nationals in overcrowded and unhygienic conditions prior to what is often unlawful deportation practice. In relation to Zimbabweans, the Government must reform the Refugee Department's practices to ensure that Zimbabweans with genuine claims to refugee status are aware of their rights under refugee law and are able to submit meaningful claims for refugee status. In order to reduce the pressure on the asylum system and respond to the humanitarian needs of Zimbabweans, the Government should also introduce a system of temporary protection that grants all Zimbabweans the right to remain in South Africa.

Large numbers of Zimbabwean and Mozambican migrants continue to seek seasonal work in South Africa's commercial agricultural sector. Although South Africa's employment law affords rights to foreign migrant workers, the law is not sufficiently well-enforced, with many farmers openly disregarding the minimum wage, failing to pay overtime, and making unlawful deductions from workers' wages. Undocumented migrants are also frequently harassed by police and immigration officials and are subject to assault and extortion during farm raids."

Expulsions of the urban poor, particularly refugees and economic migrants, from derelict buildings are increasing in South Africa's major cities. Evictions without provision of adequate shelter or alternative housing, reportedly conducted as part of urban regeneration programs, are becoming common. Refugees remain particularly vulnerable: they are routinely marginalised by city councils and are denied adequate hearing by city officials before decisions to evict are taken.

Children's Rights

The Children's Amendment Bill has yet to be enacted, 10 years after its preparation. The Bill is intended to improve delivery of a range of social welfare services for children, to strengthen community childcare and protection structures and to provide for well-resourced African strategies to facilitate child protection in instances of abuse and neglect. Passing of the full Bill was held up by intense parliamentary debate over the controversial corporal punishment provision; however, it was finally adopted by Parliament on November 6, 2007. It has been referred to the National Council of Provinces for concurrence.

Under South Africa's constitution, every child has the right to basic education. Serious concerns persist regarding the quality of rural education: many farm schools are staffed by unqualified teachers, and lack resources and infrastructure. State schools are required to waive fees for families that are unable to afford them, yet some local administrators refuse to do so. This contributes to de facto discrimination against very poor children and those from families affected by HIV/AIDS, who may consequently be excluded from attending school.

Sexual violence, corporal punishment, bullying, gang-related activities, and occasional murders continue to occur in some South African schools. In September 2007 the South African Parliament proposed that legislation to curb violence in schools be included in the Education Laws Amendment Bill, currently under consideration.

Lesbian, Gay, Bisexual, and Transgender

Although South Africa's constitution outlaws discrimination based on sexual orientation, and same-sex marriage has been legalized, gay and lesbian people remain vulnerable. In 2007 a spate of homophobia-induced murders of lesbians prompted the South African Human Rights Commission to develop a program of action to combat escalating hate crimes and to determine whether South Africa needs legislation in this regard. The commission recommended concerted action from the criminal justice system. Nongovernmental organizations have recommended that diversity sensitization should be part of a preventative curriculum in schools.

Evictions and Access to Health Care

While South Africa has made strides in developing a legislative and institutional framework for the social, economic and cultural rights in its constitution; it has struggled to progressively implement these rights. South Africa has yet to ratify the International Covenant on Economic Social and Cultural rights.

South Africa has undertaken commendable housing and land initiatives, including national housing subsidy schemes. However, many people continue to live in poor conditions in informal settlements, without access to basic services. Eviction of farm workers is an ongoing concern. Despite several pieces of legislation passed to protect the rights of farm workers and to prevent arbitrary evictions, thousands of farm workers continue to be evicted from their dwellings. Lack of tenure security for commercial farm workers leaves them particularly vulnerable to eviction.

Access to health care services in the public health care system and the quality of care provided remain inadequate, despite policy and legislation governing this sector. Health care facilities are frequently physically and economically inaccessible to the poor, to rural populations and to other vulnerable groups in poorly serviced areas. Many provincial hospitals are in an incapacitated state and are experiencing a shortage of trained health care workers, lack of drugs in clinics, long waiting periods for treatment, poor infrastructure, disregard for patients' rights, shortage of ambulance services and poor hospital management. Lack of managerial capacity and human resource constraints are resulting in inefficient service delivery and negatively affect the quality of care that patients receive.

HIV/AIDS

South Africa continues to suffer from one of the most severe AIDS epidemics in the world and there are no signs that HIV prevalence is declining. People living with HIV and AIDS in South Africa continue to fear discrimination and victimisation. Few people choose to publicly disclose an HIV-positive status, fearing that this will cause stigmatisation in their community and loss of their jobs. Under the Constitution and the Employment Equity Act, such actions are unlawful and can be challenged, but the majority of people with HIV/AIDS do not have the financial means or knowledge to meet this challenge.

While the work of non-governmental AIDS organizations and civil society groups in South Africa has been widely commended, the Government's response has been criticized, both domestically and internationally. Much of this criticism has focused on the lack of access to antiretroviral treatment (ART) across the country. It was not until 2003 that the Government, with help from donors, began offering ART through the public health system—both for prevention of mother to child transmission and for treatment for infected people. Although access to ART has increased dramatically since the policy change, the needs, especially in rural areas, remain great.

Equitable access to treatment in South Africa's prisons, which are believed to have an extremely high prevalence of HIV, remains unaddressed. Since prisons are not accredited ART sites they cannot distribute drugs directly on-site. In 2006, after a protracted legal struggle and a hunger strike by hundreds of HIV-positive inmates, Westville Prison authorities were ordered by a High Court judgment to provide HIV testing and ART to prisoners in need. The prison was subsequently accredited by the Department of Health as an ART distribution site. This development is viewed as positive and should be replicated in prisons throughout the country.

Recommendations

- South Africa should ratify the International Covenant on Economic Social and Cultural Rights and implement its obligations in terms of the ICESCR.
- South Africa continues to be plagued by chronically high levels of gender violence. The Government must provide a coordinated and comprehensive response in line with the Kopenong Declaration on 365

Days of Action to End Violence Against Women and Children. The pending Sexual Offences Bill should be strengthened by including a comprehensive package of services and protections for child victims in courts; steps must be taken to ensure no further delays to enactment. The rollout of Thuthuzela Care Centers (TCCs) should ensure that the most vulnerable communities are reached.

- The Government must work with civil society to address the challenges to equitable roll-out of ART across the country, particularly to vulnerable groups including prisoners, children, people with disabilities and rural residents.
- The Government has acknowledged many of its weaknesses in addressing the rights of refugee and migrants and is in the process of instituting a comprehensive system overhaul while completing a specific program to address backlogs in processing asylum claims. The Government must ensure that its Recovery Plan includes specific emphasis on the asylum process including mechanisms to address corruption, to protect unaccompanied minors, to provide a clear and effective asylum process and to develop adequate human and resource skills. The particular circumstances of Zimbabweans in South Africa must be addressed through the introduction of a system of temporary protection that grants all Zimbabweans the right to remain in South Africa.
- The enactment of the Children's Amendment Bill must be expedited.
- Legislation protecting against arbitrary evictions has been enacted, yet legal and illegal evictions continue, in particular amongst farm workers. The Government should institute measures to discourage evictions including prosecuting farmers who evict farm workers illegally and providing legal aid to people who have been victims of evictions or face evictions. Government evictions must be subject to the constitution and the judgments of the Constitutional Court. Policies resulting in evictions must ensure adequate consultation prior to implementation and provide alternative accommodation.
- A pro-poor public health care system must be developed, with upgraded public health care infrastructure, capacitated and trained staff, and increased funding.