



Child Rights References in the Universal Periodic Review

Summary:

A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

South Africa - 1st Session – 2008

Date of consideration: Tuesday 15 April 2008 - 2.30 p.m. - 5.30 p.m.

National Report

6. The South African Constitutional imperatives call for the enactment of enabling legislation in substantiation of all the rights enumerated in the Constitution in order to ensure substantive equality and non-discrimination. To this end, Parliament has already passed the following fundamental legislation:

...

iii. The National Education Policy Act, 1996

iv. The South African Schools Act,

...

10. In the relatively short period of South Africa's constitutional democracy the following international human rights instruments have been ratified or acceded to:

...

vi. The Convention on the Rights of the Child (CRC),

...

ix. Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution,

...

11. South Africa is in the process of signing and ratifying the following core human rights instruments:

...

iv. Optional Protocol to the CRC on the Use of Children in Armed Conflict.

12. In its compliance with the International Treaty obligations, South Africa has presented its country reports to the following United Nations Human Rights Treaty Monitoring Bodies:

i. The Committee on the Rights of a Child

...

13. On 30 October 2002, the South African Cabinet issued an open invitation to all the Special Procedures of the Human Rights Council to visit the country and undertake enquiries on the status of the enjoyment of human rights consistent with their respective mandates. In this regard several Special Procedures of the Human Rights Council visited South Africa. These included:

a) Special Rapporteur on the sale of children, child prostitution and child pornography, b) Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples,

...

14. Additional to the above, South Africa has ratified the under-listed Regional Human Rights Instruments:

...

ii. The African Charter on the Rights and Welfare of the Child,

...

15. In regard to the above continental instruments South Africa also submitted the following reports as part of its compliance with these

regional mechanisms;

...

iii. Country report on the African Charter on the Welfare and Rights of the Child (November 2007).

17. South Africa believes that it plays a leading role in the international fora. This is not only evident by the number of treaties, conventions and protocols the Government has ratified or acceded to, but also South Africa's ever higher commitment and involvement in the peaceful settlement of disputes, peacekeeping and peacemaking operations. The International Humanitarian Law (IHL) instruments South Africa has signed/ratified/acceded to include:

...

ix. 1995 Convention on the Rights of the Child;

...

xii. 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (Signed by South Africa).

56. The public health system is based on a District Health System as the vehicle for the delivery of Primary Health Care. Policies on free care for pregnant women and children under the age of six, free primary care services for all South Africans, a by-pass fee for those who chose to access hospital care without first using PHC facility have been implemented for the past decade. The NHA of 2003 saw the introduction of policies of free health for people with disabilities.

57. In order to pursue the government's objective of equity and equality of outcomes in human capital a range of health programmes have been designed and implemented by the DOH since 1994, viz.,

i. Free health care for children under six and for pregnant and lactating women at public clinics and health centres. Provision of essential drugs in all PHC facilities based on the Essential Drug List (EDL) Maternal and child health services through access to quality antenatal, delivery and postnatal services for all women is offered free at the point of delivery

iv. Integrated Management for Childhood Illnesses is implemented in all provinces

v. An Expanded Programme of Immunisation to reduce vaccine preventable diseases

vi. Integrated Nutrition Programme including Primary School Nutrition Programme

vii. Various measures to reduce substance abuse and improve the accessibility to mental health support and counselling services, particularly for survivors of rape and child abuse and those affected by domestic violence and other forms of violence

...

64. Regarding implementation of programmes targeting vulnerable groups and diseases of poverty especially to respond to the MDGs, progress has been made in the area of Maternal, Child and Woman's Health, TB control and the response to HIV&AIDS. Through the Free PHC services that includes for women the disabled and children under 6 years old, a range of programmes are implemented. Vitamin A supplementation is given to mothers and babies, nutritional meal supplements and micronutrients are given to all in need - the most beneficiaries being pregnant women, TB patients, malnourished children from birth to fourteen years, HIV positive children and adults. In October 2003, regulations came into effect for mandatory fortification of maize meal and white and brown bread. Also, fortification with iodine of food grade.

67. The Department of Education has taken numerous steps since 1994 to secure the rights to education. Many of these rights are established in legislation, and are supported by various policies and regulations.

There are six areas to report on, namely

i. the right of access to education;

ii. the right of children with special needs;

iii. gender equity in education;

iv. Initiatives to protect indigenous marginalized groups' educational rights;

v. human rights challenges in schools; and

vi. Inculcating a culture of human rights.

68. The South African Constitution guarantees the right to basic education, including Adult Basic Education, as well as further education, which the state, through reasonable measures, must make progressively available and accessible"

69. This is dealt with through the South African Schools Act 84 of 1996, which provides that children may attend the school of their choice, without discrimination. In keeping with the Refugee Act, No.130 of 1998, the Department of Education also ensures full access to education for children of asylum seekers by extending to them the same rights, privileges and benefits to which South Africans are entitled. The South African Schools Act further provides that schools may determine fee payments, which, if agreed to by the parents of the school, will be compulsory for all learners. However, in those instances where the parent is unable to pay the fees (as calculated by a formula); they are entitled to a partial or full exemption from the payment of such fees. In this way we have been able to ensure that schooling is indeed free for the poor, and that no child may be excluded from a school of their choice because of an inability to pay fees.

70. This system has been further strengthened by the declaration of 40% of all schools (which accommodate nearly 50% of all learners) as "no fee schools". These schools do not have the right to levy school fees, and are subsidised at an adequate level by the state. These schools are the poorest 40% of schools, in which the fee income levels had been low enough to be absorbed by the state.

71. These provisions are applicable to all school grades; no distinction is made between primary and secondary schools. A poor learner should be able to complete 12 or 13 years of schooling without any payments. A recent report on retention has shown that South Africa retains almost all its children in school until at least the 9th Grade; after that there is a drop-out problem which is being addressed. It might also be noted that over 97% of South African children are in public schools.

Compilation of UN Information

1. In 2006, the Committee Against Torture (CAT)²¹ acknowledged with appreciation the wide ratification by South Africa of international human rights instruments since the end of apartheid. In 2000, South Africa was encouraged by the Committee on the Rights of the Child (CRC)²² to ratify the ICESCR. In 2006, the Committee on the Elimination of Racial Discrimination (CERD)²³ encouraged it to ratify the ICRMW and the ILO Indigenous and Tribal Peoples Convention, No. 169. In 2007, South Africa²⁴ indicated that it was in the process of ratifying the ICSECR, the ICRMW, and the OP-CAT.

2. In 2006, CERD and CAT²⁵ expressed their satisfaction over the peaceful transition from the apartheid regime and the establishment of a democratic South African society as well as for the adoption of the 1996 Constitution with its Bill of Rights. The adoption of numerous legislative measures building a democratic and multicultural society and combating segregation and racial discrimination was acknowledged by CERD²⁶ as well as by CAT²⁷ which further noted the abolition of the death penalty and solitary confinement. In 2007, UNICEF²⁸ informed of important gains made in strengthening legislation and policies for children. In 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted the new Act on the Basis of the Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict Bill, which provides clarity to South Africa's position concerning the participation of its nationals as private security or military contractors in armed conflicts²⁹. He noted this was an important step for improving South Africa's accountability for human rights violations in the context of countering insurgence or terrorism by means of armed intervention³⁰.

3. CERD, CAT, and CRC³¹ welcomed the establishment of the South African Human Rights Commission (SAHRC). CERD³² noted its very active role in eliminating the residual effects of racial discrimination and CRC³³ encouraged the allocation of adequate resources for its functioning. SAHRC was accredited with A status in 2000³⁴ which was renewed in 2007. CAT³⁵ also welcomed the establishment of the Law Reform Commission, the Independent Complaints Directorate, with specific investigation powers regarding allegations of torture and the appointment, under the Correctional Services Act, of Independent Prisons Visitors, who report to the Judicial Inspectorate of Prisons. In 2006, the Working Group on Arbitrary Detention³⁶ highlighted the commitment made to reinforce human rights protection including at the regional and international levels and noted that South Africa was one of the first African countries to have issued a permanent invitation to special procedures. Strong human rights institutions and safeguards were also highlighted by the working group and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in particular the efforts made by the Constitutional Court and other state institutions such as the Law Reform Commission and the SAHRC, which ensure that laws and bills are in conformity with both the 1995 Constitution³⁷ and South Africa's international obligations³⁸. The Working Group on arbitrary detention also noted that the protection of human rights and especially the rights of arrested and detained persons are well established in the Constitution and that a variety of institutions with different executive, legislative and judicial powers dedicated to the protection of human rights act as factors for change in the context of the longer transition and evolution of mentalities from an authoritarian regime to a mature democracy³⁹. UNICEF also informed that South Africa has set up child protection units and 62 specialized courts for sexual offences and initiatives to provide integrated care to survivors of sexual violence⁴⁰.

9. In 2000, CRC⁸⁴ was gravely concerned about the high incidence of domestic violence, ill-treatment and abuse of children, including sexual abuse within family and in 2006 CAT⁸⁵ was concerned at widespread acts of violence against women and children, especially rapes and domestic violence, and on the lack of an effective policy to prevent and combat such violence. The Special Rapporteur on the sale of children raised similar concerns in 2003⁸⁶ and CERD in 2006⁸⁷. CAT⁸⁸ recommended that South Africa adopt all necessary measures to prevent, combat and punish violence against women and children and reinforce its cooperation with civil society organizations; undertake research into the root causes of the high incidence of rape and sexual violence so that effective preventive measures can be developed; establish awareness-raising campaigns; investigate thoroughly those grave human rights violations; and work towards a "no tolerance" policy. UNICEF⁸⁹ noted that 40% of the reported rapes (22,500 out of 55,000 total) were against children during 2004-2005. The Special Rapporteur on violence against women⁹⁰ in relation to the alleged murder of a lesbian woman attacked by 20 young men, who was reportedly beaten, stoned and stabbed to death, noted with concern that although the police had identified and arrested six of the alleged perpetrators, no official publicly condemned the incident as a hate crime, that this case does not constitute an isolated incident, and that lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths.

10. In 2006, CAT and CERD⁹¹ were concerned with human trafficking in South Africa and noted the absence of specific national legislation criminalizing it. They recommended the adoption of such legislation as well as effective measures. A 2006 UNFPA report noted trafficking of women and children from various countries into South Africa, and referred to a 2005 inquiry by the International Organization for Migration which indicated that women continue to be brought in from a neighboring country for "use as sex partners and domestic servants without remuneration"⁹².

11. While noting that corporal punishment is punished by the legislation and the jurisprudence of the Constitutional Court, CAT⁹³ was concerned at its infrequent use in some schools and other public institutions and recommended that legislation banning corporal punishment be strictly implemented and a monitoring mechanism be established. In 2000, CRC⁹⁴ raised similar concerns.

13. In 2006, CAT recommended that South Africa take the necessary measures to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention⁹⁷. CAT also recommended that necessary measures be taken to strengthen legal-aid mechanisms for vulnerable persons or groups⁹⁸. In 2006, CERD⁹⁹ was concerned about the difficulties of access to justice, especially for members of the most disadvantaged and poor ethnic groups, including indigenous people, especially those unfamiliar with English or Afrikaans. CERD recommended that necessary measures be taken in that regard. In 2000, CRC was also concerned that the juvenile justice system

does not cover all regions of South Africa and recommended the implementation of a juvenile justice system in conformity with the Convention and of other United Nations standards¹⁰⁰. It also recommended that the draft legislation on criminal responsibility be reassessed with a view to increasing the proposed legal minimum age¹⁰¹. Also, while noting with appreciation the remarkable work of the Truth and Reconciliation Commission, CAT¹⁰² noted that de facto impunity persists regarding persons responsible for acts of torture during apartheid and recommended that South Africa consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid and grant adequate compensation to all victims. It should also consider other methods of accountability for acts of torture committed under the apartheid regime and combat impunity.

16. In 2007, the Special Rapporteur on adequate housing¹¹¹ noted that few mechanisms are in place to ensure that policies are implemented. Despite the legislative framework on the right to adequate housing, evictions were taking place regularly, in breach of procedural requirements and through the inappropriate use of “urgent eviction” provisions, justified on the grounds of health threats to occupants. He was concerned about proposed amendments to procedural protections around evictions, that large numbers of people live in inadequate conditions in informal settlements and observed a failure at all levels of government to provide adequate post-settlement support for new settlements, where the most basic support services are often lacking, such as proper sanitation, water, access to schools, and access to livelihood options. In 2007, UN-HABITAT¹¹² informed that whilst millions have been housed and gained access to clean water, the millions staying in informal settlements are angered and have protested against the long wait for service delivery. Other issues of concern raised by the Special Rapporteur on adequate housing¹¹³ included the insufficient meaningful consultation between the government and affected individuals where large-scale development projects and mining operations are concerned, and the insufficient support in access to housing and related services for groups with special needs (including persons with disabilities, those living with HIV/AIDS, orphans and young people and the homeless)¹¹⁴. While acknowledging the efforts made by South Africa to meet the goal of delivering 30% of housing to women-headed households, he noted the prevalence of violence against women, lack of affordable housing, lack of timely access to public housing, and inadequate Government provisions for long-term safe and secure housing, particularly in rural areas, which force many women to either remain in or return to situations of domestic violence, and continue to live in inadequate housing where they risk their own and their children’s safety¹¹⁵.

17. CRC in 2000 and CERD¹¹⁶ in 2006 were concerned at the high rate of HIV/AIDS among persons belonging to the most vulnerable ethnic groups. CERD¹¹⁷ recommended that South Africa strengthen its programmes in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation resulting from poverty and lack of access to education, and encouraged it to take further measures to combat HIV/AIDS. A 2007 UNDP report indicated an 18.8 % HIV prevalence between ages 15 and 49 in 2005¹¹⁸. UNICEF referred to a 2005 survey that HIV prevalence rates may have begun to plateau and that amongst teenagers the prevalence moved from 15.9% in 2005 to 13.7% in 2006¹¹⁹.

18. In 2000, CRC¹²⁰ was concerned that primary education is not free and that inequality in access to education remains in some areas, particularly among Black children. It encouraged South Africa to continue its efforts to promote and facilitate school attendance, particularly among previously disadvantaged children, girls and children from economically disadvantaged families and to take effective measures to ensure that primary education is available free to all, to ensure non-discrimination within the school environment, and to improve the quality of education. In 2007, UNICEF informed that South Africa is on track to achieve universal primary education by 2015, though achieving a quality education for all children will be a challenge. It noted that gender parity has already been achieved. It also cited the approximately 687,000 children that remain out of school as a major challenge¹²¹.

19. In 2006, CERD¹²² was concerned at the situation of indigenous peoples, inter alia, the Khoi, San, Nama and Griqua communities and in particular, hunter-gatherer, pastoralist and nomadic groups. In 2006, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples noted that in South Africa there is no accepted norm as to the meaning of indigenous, although the term appears twice in the Constitution¹²³ and despite the constitutional reference to Khoi and San people¹²⁴. He noted that the most pressing concern of all the indigenous communities is securing their land base¹²⁵ and emphasized that forced dispossession of traditional land is the root cause for the poverty affecting the Nama and San people¹²⁶. He recommended that positive legal and judicial action be initiated¹²⁷. He also noted a number of incidents between the Khomani San and the local police force resulting in alleged abuses, cases of torture and harassment¹²⁸. He was also concerned about (1) inadequate access to clean water; (2) work for minimal wages without tenure rights or job security; (3) sedentarisation, closely associated with a collapse in nutrition and disintegration of fragile natural resources; (4) loss of land to farmers and to Statesponsored activities; (5) no specific poverty reduction programmes apply to vulnerable indigenous communities; (6) specific grievances of indigenous children, youth and women, who reported discrimination, violence, drug abuse, high suicide rates, prostitution, alcoholism and other syndromes associated with marginalization and poverty; (7) violence including murders and assaults with weapons; (8) the prevalence of HIV/AIDS¹²⁹. The Special Rapporteur also noted that the role and status of traditional leaders vis-à-vis elected councillors had not been clearly defined ¹³⁰.

20. In 2006, CERD and CAT¹³¹ were concerned, as also highlighted by UNHCR¹³², about allegations of ill-treatment, including extortion of documented and undocumented noncitizens by law enforcement officials. They recommended the adoption of measures preventing and combating all forms of ill-treatment, including extortion, of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre¹³³; that investigation of all allegations of ill-treatment of non-citizens be ensured and that an effective monitoring mechanism be established for those centres¹³⁴. In 2000, CRC¹³⁵ recommended, as also highlighted by UNCHR¹³⁶, that a legislative and administrative framework be developed to ensure family reunification and access to education and health for refugee children.

24. In 2006, CERD recognized that the heritage of a system of governance built by the apartheid regime, in terms of its economic, social and cultural consequences, presents obstacles for the South African society and requires human and financial resources on a scale adequate to meet the many challenges¹⁵³. The 2007-2011 UNDAF mentioned that South Africa has followed a coherent and structured approach to tackling poverty by integrating it into sectoral policies, strategies and budgetary allocations¹⁵⁴. UNICEF indicated that the

social security system in South Africa is excellent, with more than 10 million beneficiaries, most of them children, and noted the expansion of access to the child support grant from about 1 million children in 2001 to more than 7.5 million in 2006¹⁵⁵.

25. In 2003, the Special Rapporteur on the sale of children noted that the continuing progress and future development of the country was under serious threat by the AIDS epidemic which was weakening many communities, adding to the severe skills shortage of the population, and reversing development gains¹⁵⁶. He also noted that the stigma and discrimination associated with the disease continue to be driving forces behind its spread and impact¹⁵⁷. A 2004 WHO report noted that in November 2003, the Government committed itself to tripling the amount spent over three years compared to the preceding three years to combat HIV/AIDS¹⁵⁸.

27. In 2006 CAT¹⁶⁰ requested South Africa to provide information on the way it has followed up on its recommendations related to issues of: non-refoulement; ill-treatment of non-citizens detained in repatriation centres; the difficulties vulnerable persons or groups as victims of torture experience regarding legal-aid; widespread acts of violence against women and children, acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials; the bills criminalizing torture, child justice, including the production, trade and use of equipment specifically designed to inflict torture. In 2006, CERD¹⁶¹ made a similar request on the issues of: hate crimes and hate speech; violence against women and children, in particular women and children from the most disadvantaged and poor ethnic groups; backlog of asylum-seekers' applications and measures adopted with regard to promotion of tolerance, in particular in the field of education and media.

28. The United Nations Development Assistance Framework 2002-2007 identified the following main issues confronting South Africa: HIV/AIDS, delivery of basic services, including education, health services, housing and water, job creation, and crime prevention¹⁶². The UNDAF 2007-2011 also indicated the recognition by South Africa and the United Nations of the importance of improving the capacity of provincial and local Government at key technical levels especially where it impinges on service delivery and financial management¹⁶³. UNICEF also informed of its programmes and capacity building efforts to promote the respect for children's rights, including in collaboration with other UN agencies, funds and programmes¹⁶⁴.

Summary of stakeholders' information

2. The national human rights institution, the South African Human Rights Commission (SAHRC), has called on the Government of South Africa to commit to the passage of comprehensive legislation criminalizing human trafficking⁴. The Community Law Centre (CLC) indicated that the South African Constitution guarantees a range of children's rights and a key success has been the finalisation of the Children's Act 38 of 2005. Nevertheless some practical challenges remain. According to the CLC⁵, although the promulgation of some parts of the Children's Act is still pending, there is considerable political will behind this endeavour. However, the same cannot be said of the Child Justice Bill 49 of 2002, another key child rights legislation, which continues to languish. The CLC recommended that South Africa take urgent steps to see the Children's Act promulgated in full and the Child Justice Bill 2002 and the Children's Amendment Bill of 2006 enacted into law and implemented speedily as possible⁶.

14. The Masimanyane Women's Support Centre (MWSC) indicated that the South Africa's Anti-Rape Strategy was implemented in 2003, yet official rape statistics released from 2000 – 2005 indicate an overall national increase in reported rapes from 52,891 to 65,939²⁵, and, according to Children Now (CN), around 50% of these are perpetrated against children²⁶. CSVR noted that it represents one of the highest rape statistics in the world²⁷. However, as noted by CSVR, a report by the South African Law Reform Commission (SALRC) found that in the year 2000, only 5% of adult rape cases and 9% of child rape cases reported to South African Police Services resulted in convictions. Respectively, 68% and 58% of cases reported to the police did not even make it to court. 15% and 18% of cases were withdrawn. Withdrawals included cases where the rape survivor was intimidated by the perpetrator, where the rape survivor was afraid of the possible reaction of unsupportive partners or parents; or because the police persuade the complainant to withdraw the charges where the evidence is weak. Progressive legislation does not guarantee the end to gender-based violence, but it is a step ahead. In this regard, an important piece of legislation is still languishing of the National Assembly²⁸. CSVR indicated that the Criminal Law (Sexual Offences and Related Matters) Amendment Bill was passed by the National Assembly on 22 May 2007, but the hopes of the Bill finally becoming an Act in the year 2007 are fading, as it is now being revised at a very slow pace by the National Council of Provinces (NCOP). The Bill has been in the drafting for almost 10 years, denying victims of sexual violence access to justice and full exercise of their human rights²⁹. According to HRW, 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 counseling³⁰.

17. Corporal punishment is lawful in the home as noted by the Global Initiative to End All Corporal Punishment of Children (GIEACPC)³⁴. It noted that under common law, parents have the power "to inflict moderate and reasonable chastisement on a child for misconduct provided that this was not done in a manner offensive to good morals or for objects other than correction and admonition" (R v Janke and Janke 1913 TPD 382). This power may be delegated to a person acting in the parent's place, though not in the case of teachers. As noted by the GIEACPC corporal punishment is unlawful in schools, in the penal system and in alternative care settings³⁵. Similar observation was made by HRW³⁶. According to CLC, an attempt through the Children's Amendment Bill of 2006 to ban, among others, domestic corporal punishment and remove the 'reasonable chastisement' defence was to be discussed by Parliament this year (2007) but has been deferred for next year (2008)³⁷. Similar observation was made by CN and SAHRC³⁸. Children Now recommended that the full prohibition of corporal punishment is prioritised in the second Children's Act Amendment Bill, to be developed in 2008³⁹. Similar recommendation was made by CLC, GIEACPC and HRW⁴⁰.

19. Despite an apparent prioritisation of child labour issues, CN reported that a large numbers of children in South Africa are being used by adults in the commission of crime, and find themselves in situations of commercial sexual exploitation. In addition, significant

numbers of children are allegedly being trafficked into, out of and around South Africa. Objective data on the numbers of such children is virtually non-existent, and very little research of sufficient quality has been undertaken in this area. Some estimates, though, put the number of children trafficked into South Africa from neighbouring countries as high as 30,000⁴³.

24. SAHRC reported that the wealth gap in South Africa has been growing, rather than shrinking, since the end of Apartheid. Additionally, many poor South Africans have sunk deeper into poverty since the end of Apartheid. Further, according to SAHRC, it continues to be true that a grossly disproportionate number of those living in extreme poverty are black. This is a substantial threat to the health of a new democracy, and is connected with many of other pressing social problems, including the extremely high levels of violence and the spread of HIV/AIDS. Indeed, some reports, including ones emanating from government sources, exist of people living in such desperate poverty that there are persons intentionally infecting themselves with HIV in the hope of getting a disability grant. There have also been reports of HIV positive persons deliberately refusing to take ARV treatment for fear of losing their disability status and disability grant. Despite no research to substantiate allegations, there are persistent reports in the media that teenage girls intentionally become pregnant in order to access a child support grant from government⁵³. SAHRC called on the Government to continue prioritizing the creation of jobs and job programs⁵⁴. Children Now recommended that the deep poverty in which so many South African children live be addressed via extending the Child Support Grant to all children, and that the means test be removed so that primary health care programmes are rolled out more widely⁵⁵.

26. As reported by the COHRE, South African domestic law, particularly following extensive progressive jurisprudence developed by the Constitutional Court, includes extensive protections against forced eviction. These protections notwithstanding, according to COHRE's database of forced evictions, over 840,000 people were forcibly evicted in South Africa between 1995 and 2006, with over 5000 people being evicted in 2006⁵⁷. CLC indicated that between 1995 and 2005, 826 679 people were reportedly evicted⁵⁸. According to SAHRC, the Government has been speaking of setting up an alternative dispute resolution to deal with evictions for a number of years, but to date this is not forthcoming. There is also a dire need for additional legal services to be offered to farm dwellers faced with eviction⁵⁹. As reported by COHRE, another impediment facing South Africa in terms of its commitment to providing adequate housing is the critical shortage of rental public housing stock for low-income groups⁶⁰. It stated that South Africa's water delivery and sanitation system has been criticised for having a number of weaknesses, including community non-engagement, lack of consumer education resulting in widespread refusal to pay for water and sanitation services, vandalism and water piracy⁶¹. CN indicated that adequate access to safe drinking water and sanitation is still denied to many South African children in 2005, only 54% of children had access to basic sanitation and only 58% had access to drinking water at their homes. Over 6 million children (35%) live in informal housing or traditional dwellings⁶².

31. MWSC noted that the State has attempted to address accessibility issues through the Choice on Termination of Pregnancy Amendment Bill but the legislation has faced major opposition from pro-life groups who successfully challenged the amendments in the Constitutional Court on procedural grounds. Government was given 18 months (until beginning of 2008) by the Constitutional Court to follow proper public consultative processes to have the Amendment Act passed, failing which it will be declared invalid. Reproductive and sexual health education and information targeting adolescent girls and boys are generally confined to HIV/AIDS education⁷¹. Although crucial it is necessary to broaden this approach to include practical and appropriate information on the prevention of pregnancy through various contraceptive and barrier methods, early pregnancy⁷².

32. Serious concerns persist according to HRW 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 schools⁷³. 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. SAHRC recommended that the Government commit to prioritising this issue and taking innovative and interdisciplinary approaches to resolving it. SAHRC called also on the government of South Africa to commit to increasing its efforts to provide services to rural areas⁷⁴.

34. According to IFHR, migrants, which represent around 500 000 persons for a population of 47 millions, are amongst the most exposed to human rights violations and have the least legal protection and support to defend their rights. Highest numbers come from neighbouring countries in recent years due to the political situation in their country⁷⁷. According to recent studies, IFHR noted that there is a growing number of children entering South Africa through neighbouring countries border posts, both accompanied and unaccompanied; they seem to be staying in Gauteng and border areas, working on farms, in informal trade, etc. There are growing numbers of women and children amongst undocumented migrants⁷⁸.

38. A best practice identified by CN is the development of a sophisticated model of costing, budgeting and implementation planning for child-related legislation⁸⁵.

Final Report

On 28 February 2008, the Human Rights Council selected the following group of Rapporteurs (troika) to facilitate the review of South Africa: Zambia, Guatemala and Qatar. The delegation of South Africa was headed by H.E. Ms. Glaudine J. Mtshali, Ambassador, Permanent Representative of South Africa in Geneva.

(i) Summary of the State under Review

- The Government faces the challenge of generating an outcome in terms of the quality of education provided and the acquisition of skills that is commensurate with the significant percentage of the national budget allocated to education. It has introduced new measures

over the past few years to improve the quality of educational curricula and teachers' competencies, and South Africa is deemed to be well prepared to meet Millennium Development Goal 2 by 2015. The Government remains committed to the effective implementation of the multi-stakeholder designed National Strategic Plan (2007-2011) aimed at addressing HIV and AIDS, tuberculosis and malaria. A principal focus of the strategic plan is to prevent infection in the first place. It further includes clear targets for the provision of antiretroviral (ARV) drugs, care for vulnerable children, and improving prevention of mother-to-child transmission (PMTCT).

(ii) Interactive dialogue and responses by the State under Review

- Slovenia regretted that corporal punishment remains lawful in the home, and that it is also widely practised in schools despite the prohibition in law. Slovenia recommended to South Africa to commit not only to removing the defence of reasonable chastisement but also to criminalise corporal punishment concomitant with the pledges towards raising awareness and providing the necessary resource to support parents in adopting positive and alternative forms of discipline.
- Angola stated that in spite of all efforts undertaken by South Africa, inequality in access to education still remains in some areas. It recommended to South Africa to continue its efforts to promote and facilitate school attendance, particularly among children from economically disadvantaged families. It noted that South Africa is on track to achieve universal primary education by 2015, though achieving a quality education for all children will be a challenge, and asked how South Africa is addressing this particular issue.
- Cote d'Ivoire noted that South Africa for decades was faced with a situation which allowed the authorities of that time to ignore any human rights. One of the most difficult consequences is that the need for proper education for children was not taken into account, which led to another problem in the country with violence in all its forms.
- In the field of education, UNICEF has noticed that South Africa is about to reach universal access to primary education for all, and equality between the girl and boy child. The Libyan Arab Jamahiriya asked what measures South Africa is taking to reach a new qualitative mode of education for all children.
- The delegation indicated that South Africa is on track to achieve Millennium Development Goal 2 by 2015. The Constitution guarantees that everyone has the right to basic education, including adult basic education and further education, which the State, through reasonable measures, must progressively make available and accessible. South Africa has made great strides in widening educational opportunities to previously disadvantaged groups, mainly black South Africans. With almost 5.4 per cent of gross domestic product, South Africa has one of the highest rates of government investment in education in the world.
- Tunisia commended South Africa on the very important achievements in particular in the field of education where there has been remarkable development, and on its activities in particular for children with special needs and in ensuring general equality for education. Tunisia sought more information in these areas, and recommended to South Africa to persevere in its efforts to promote the rights of education and to pay particular attention to continuing and disseminating the culture of human rights among young people as part of its educational and pedagogical programme.
- The United Kingdom stressed that it supported South Africa's work in these areas through, for example, a number of projects supporting young people in disadvantaged communities.

Conclusion and Recommendations

In the course of the discussion, the following recommendations were made to South Africa:

- Recommended to South Africa to commit not only to removing the defence of reasonable chastisement but also to criminalizing corporal punishment with the concomitant pledges towards raising awareness and providing the necessary resource to support parents in adopting positive and alternative forms of discipline (Slovenia);
- Recommended South Africa to follow up on the recommendation made by the Committee against Torture to adopt all necessary measures to prevent, combat and punish violence against women and children (Switzerland);
- Recommended that concrete measures be taken to improve the handling by police of rape cases and to curb rates of violence, particularly against women and girls (Canada);
- Recommended to South Africa to continue its efforts to promote and facilitate school attendance, particularly among children from economically disadvantaged families (Angola);
- Recommended to South Africa to persevere in its efforts to promote the rights of education and to pay particular attention to continuing and disseminating the culture of human rights among young people as part of its educational and pedagogical programme (Tunisia);