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| AFRICAN UNION                                                                                                                                                                                                                                                                                         |  | UNION AFRICAINE                                                            |
| الاتحاد الأفريقي<br>African Commission on Human & Peoples' Rights                                                                                                                                                                                                                                     |                                                                                   | UNIÃO AFRICANA<br>Commission Africaine des Droits de l'Homme & des Peuples |
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## Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa

### I. Introduction

1. The Republic of South Africa (South Africa) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified it **on 9 July 1996**.
2. Pursuant to Article 62 of the African Charter, South Africa submitted and presented its initial Report<sup>1</sup> in 1999 during the 25<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission) from 25 April to 5 May 1999, in Bujumbura, Burundi and presented its 1<sup>st</sup> Periodic Report<sup>2</sup> to the Commission in 2005, during the 38<sup>th</sup> Ordinary Session of the Commission, from 21 November to 5 December 2005 in Banjul, Islamic Republic of The Gambia.
3. The present Report (the Report), which covers the period from 2002 to 2013, combines its second (2<sup>nd</sup>), third (3<sup>rd</sup>), fourth (4<sup>th</sup>), fifth (5<sup>th</sup>) and sixth (6<sup>th</sup>) Periodic Reports under the African Charter and also covers the period from 2005 to 2014 under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol). The Report was considered by the Commission during its 58<sup>th</sup> Ordinary Session, held from 6 to 20 April 2016, in Banjul, Islamic Republic of The Gambia.
4. The Report was presented to the Commission by the delegation from South Africa (the delegation), led by **Honourable John Jeffery, Deputy Minister of Justice and Constitutional Development** and accompanied by the following officials:
  - i. **Ambassador Hon. N. Ntshinga** - Permanent Representative to the AU and the Ambassador of South Africa Mission in Addis Ababa;

<sup>1</sup> Covering the period 1996 - 1998

<sup>2</sup> Covering the period 1999 -2001

- ii. **Adv. J. M. Maluleke** - Special Advisor to the Minister in the Presidency responsible for Women;
  - iii. **Dr. W. Makgalancheche** - Acting Deputy Director, General Department of Traditional Affairs;
  - iv. **Adv. O. M. Sewpaul** - Deputy Chief State Law Advisor, Department of Justice and Constitutional Development;
  - v. **Mr. R. Raburabu** - National Spokesperson for Independent Police Investigative Directorate;
  - vi. **Mr. N. D. Maweni** - Chief Director, Head of Office of Deputy Minister of Justice and Constitutional Development;
  - vii. **Ms. T. Khosa** - Director International Relations, Department of Women;
  - viii. **Mr. M. Singaphi** - Deputy Director Responsible for AU; Department of International Relations and Cooperation;
  - ix. **Ms. T. Dlamini** - Counsellor Political at the South Africa Mission in Dakar, accredited to The Gambia and Cabo Verde;
  - x. **Mr. M. Maseko** - Assistant Director, Department of Justice and Constitutional Development;
  - xi. **Ms. E. King** - Counsellor Legal at the South Africa Mission in Addis Ababa; and
  - xii. **Mr. S. Ponco** - Assistant Director responsible for AU, Department of International Relations and Cooperation.
5. The Report highlights developments which took place in South Africa in the promotion and protection of human rights, and the legislative, administrative and judicial measures put in place to comply with its obligations under the African Charter and the Maputo Protocol.
6. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern regarding exercise of human rights in South Africa. The Commission makes recommendations to South Africa on measures for strengthening the enjoyment of human rights as guaranteed by the African Charter and the Maputo Protocol, as well as other relevant regional and international human rights instruments.

## II. Positive Aspects

7. The Commission notes a number of positive aspects in South Africa's fulfilment of its obligations under the African Charter and the Maputo Protocol:

## Reporting Obligation and Cooperation with the Commission

8. The Commission:
  - i. welcomes the efforts made in preparing and presenting its Report and commends the latter for fulfilling its obligations under Article 62 of the African Charter and Article 26 of the Maputo Protocol;
  - ii. commends the preparatory process of the Report which was participatory and involved different stakeholders from public and private sectors including representatives from the National Institutions on Human Rights and Civil Society Organisations (CSO); and
  - iii. commends the efforts made in responding to some of the recommendations of the Commission in its Concluding Observations on its 1<sup>st</sup> Periodic Report.

## Ratification of Regional/International Human Rights Instruments

9. The Commission commends the ratification of the following regional and international human rights instruments during the reporting period:
  - i. *African Youth Charter;*
  - ii. *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa;*
  - iii. *African Charter on the Rights and Welfare of the Child;*
  - iv. *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;*
  - v. *African Charter on Democracy, Elections and Governance;*
  - vi. *African Union Convention on Preventing and Combating Corruption;*
  - vii. *Protocol to the OAU Convention on the Prevention and Combating of Terrorism;*
  - viii. *Convention on the Nationality of Married Women;*
  - ix. *Convention on the Rights of Persons with Disabilities;*
  - x. *Optional Protocol to the International Covenant on Civil and Political Rights;*
  - xi. *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty;*
  - xii. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;*
  - xiii. *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;*
  - xiv. *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;*
  - xv. *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and*
  - xvi. *Optional Protocol to the Convention on the Rights of Persons with Disabilities.*

10. The Commission commends the enactment of the following laws amongst others, to guarantee human rights:

***Environment***

- i. Minerals and Petroleum Resources Development Act, 2002;*
- ii. Land and Agricultural Development Bank Act, 2002;*
- iii. National Environmental Management: Air Quality Act 2004*
- iv. Minerals and Petroleum Resources Development Amendment Act, 2008;*
- v. National Environment Management: Integrated Coastal Management Act, 2008;*
- vi. National Environment Management: Waste Act, 2008;*

***Culture***

- vii. Protection of the Rights of Cultural, Religious and Linguistic Communities Act of 2002;*
- viii. Black Economic Empowerment Act, 2003;*
- ix. Traditional Leadership and Governance Framework Act, 2003;*

***Health***

- x. National Health Act, 2003;*
- xi. Traditional Health Practitioners Act, 2004;*

***Constitution and Terrorism***

- xii. Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;*
- xiii. Constitution Seventeenth Amendment Act 2012;*

***Social Security***

- xiv. Social Assistance Act, 2004;*
- xv. South African Social Security Agency Act, 2004;*
- xvi. Social Assistance Amendment Act, 2008;*
- xvii. Social Housing Act, 2008;*
- xviii. Dangerous Weapons Act, 2013*

***Children***

- xix. Children's Act, 2005;*
- xx. Child Justice Act, 2008;*

***Civil Union***

- xxi. Civil Union Act, 2006;*

***Older Persons***

- xxii. Older Persons Act, 2006;*

## **Women**

- xxiii. *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;*
- xxiv. *Choice on Termination of Pregnancy Amendment Act, 2008;*

## **Prisons and Policing**

- xxv. *Correctional Services Amendment Act, 2008;*
- xxvi. *Correctional Matters Amendment Act, 2011;*
- xxvii. *Independent Police Investigative Directorate Act, 2011;*
- xxviii. *Protection from Harassment Act, 2011;*

## **Refugees**

- xxix. *Refugees Amendment Act, 2008;*

## **Immigration**

- xxx. *Immigration Amendment Act, 2007;*

## **Education**

- xxxi. *South African Judicial Education Institute Act, 2008;*

## **Criminal/Judicial**

- xxxii. *Community Scheme Ombud Service Act, 2011;*
- xxxiii. *Criminal Procedure Amendment Act 2012;*
- xxxiv. *Constitution 17<sup>th</sup> Amendment Act and Superior Courts Act, 2013;*
- xxxv. *Criminal Law (Forensic Procedures) Amendment Act, 2013;*
- xxxvi. *Superior Courts Act, 2013.*

## **Employment**

- xxxvii. *Skills Development Amendment Act, 2008;*
- xxxviii. *Basic Conditions of Employment Amendment Act, 2013;*
- xxxix. *Employment Equity Amendment Act, 2013;*
- xl. *Skills Development Amendment Act, 2011;*

## **Torture**

- xli. *Prevention and Combating of Torture of Persons Act, 2013;*

## **Trafficking in Persons**

- xlii. *Prevention and Combating of Trafficking in Persons Act, 2013;*

## **Freedom of Expression/Access to Information**

- xliii. *Protection of Personal Information Act, 2013; and*
- xliv. *Media Development and Diversity Agency Act, 2002;*

## **Institutional and Policy Measures Promoting Human Rights**

11. The Commission commends establishment of the following institutional measures in the promotion and protection of human rights:

- i. Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;*
- ii. Ethics and Anti-Corruption Commission;*
- iii. National Planning Commission; and*
- iv. South African National Aids Council.*

12. The Commission commends the adoption of the following policies and frameworks to guarantee human rights and promote peace and development:

- i. Policy on the Prevention and Combating of Hate Speech, Racial Discrimination; Xenophobia and Related Intolerance 2001;*
- ii. Gender Policy Guidelines for the Public Health Sector 2002;*
- iii. Food Security Strategy for South Africa 2002;*
- iv. Child Justice National Policy Framework 2007 ;*
- v. Local Government Gender Policy Framework 2007;*
- vi. National Industrial Policy Framework 2007;*
- vii. National Policy Guidelines for Victim Empowerment 2009;*
- viii. No Fee Schools Policy 2009;*
- ix. Community Safety Forums Policy Framework 2011;*
- x. Cybercrime Policy 2011;*
- xi. Policy for the Small Scale Fisheries Sector in South Africa 2012;and*
- xii. National Contraception and Fertility Planning Policy 2013;*

## **Economic, Social and Cultural Rights**

11. The Commission commends the:

### **Right to Employment**

- i. incorporation of the concept of equal pay for work of equal value in the Employment Equity Amendment Act, 2013, which stipulates that it is*

- unfair for an employer, based on a prohibited ground, or *analogous arbitrary ground, to have different terms and conditions of employment for employees doing the same work, similar work or work of equal value;*
- ii. improved living standards and development of the '*Nine-Point Plan*' which outlines a range of initiatives aimed at stimulating economic growth and job creation;

## **Right to Health**

- iii. increase in the overall life expectancy rate from 56.5 years in 2009 to 58.5 years in 2014;
- iv. establishment of the *National Health Insurance Scheme* to improve service provision and health care delivery and ensure access to affordable, quality health care services regardless of one's employment status and ability to make a direct monetary contribution to the NHI Fund;
- v. building of new hospitals in several rural districts such as *Dilokong, Nkhensani, Vryburg and Moses Kotane* and the current construction of 29 other hospitals in other rural and urban areas;
- vi. development of the "*10-Point Plan*", aimed at improving hospital infrastructure and human resources management, as well as, procurement of the necessary equipment and skills for hospitals;
- vii. launching of the *Human Resource for Health Strategy* to guarantee sufficient availability of adequately trained, appropriately skilled, suitably placed, highly motivated and properly remunerated health care providers to ensure that rural areas have equitable access to health care providers;
- viii. establishment of the interim *Health Practitioners Council of South Africa* to provide for a regulatory framework on Traditional Health to ensure the efficacy, safety and quality of traditional health care services;

## **Right to Education**

- ix. restructuring of the Department of Education to intensify and strengthen educational improvement initiatives at all levels of the education system, from foundation phase through to tertiary level;
- x. allocation of additional funding to the *National Student Financial Aid Scheme (NSFAS)*, which provides loans to students who qualify for NSFAS funding, to continue and complete their tertiary education;

- xi. adoption of the policy of *no fee schools to support learners from poorer backgrounds* and provision of free transport for learners who live far away from schools;
- xii. establishment of *Further Education and Training (FET) Colleges* to train the youth in a number of areas and increase employment opportunities for the youth;
- xiii. *Accelerated Schools Infrastructure Delivery Initiative* to ensure consistency in the provision of infrastructure and address backlogs in construction and maintenance of schools;

### **Right to Culture**

- xiv. legislative and other measures in place to promote its diverse cultures and heritage; and

### **Right to Food**

- xv. development of agricultural policies and support programmes promoting agricultural opportunities and reduce food insecurity.

## **Civil and Political Rights**

12. The Commission commends the:

- i. enactment of legislations to rule out discrimination and ensure equality in a variety of areas such as race, colour, ethnic origin, gender, sex, sexual orientation, religion, disability etc;
- ii. various programmes undertaken to raise human rights awareness, provide constitutional education and advance social cohesion;
- iii. initiatives undertaken to ensure that the Constitution is accessible to all such as the printing and distribution of the Constitution across the country, radio programmes to raise awareness and knowledge on the Constitution as well as the translation of the Constitution into official languages and its transcription into Braille;
- iv. development of a policy and *National Action Plan (NAP) on the Prevention and Combating of Hate Speech, Racial Discrimination, Xenophobia and Related Intolerances* and the existence of *Equality Courts* to adjudicate matters

- specifically relating to infringements of the right to equality, unfair discrimination and hate speech;
- v. construction of forty-five (45) new Courts and the finalisation of two (2) remaining High Courts in *Limpopo* and *Mpumalanga* enhancing citizen's access to justice;
  - vi. enactment and amendment of several legislations recognising religious marriages concluded under any tradition, system of religious, person or family law;
  - vii. voter education initiatives and numerous registration drives undertaken by the *Independent Electoral Commission* to promote citizens' participation in the electoral process and increase in the number of registered voters and voting stations;
  - viii. measures and programmes undertaken to ensure participatory democracy including the *Presidential Hotline*, *Public Liaison Offices* and other outreach activities such as *Taking Parliament to the People* Programmes which gives South Africans the opportunity to make their voices heard by participating in parliamentary processes and understanding how Parliament operates; and
  - ix. provision of free legal aid service to ensure that indigent people receive competent and adequate legal representation in Court and litigation services through the nationwide network of *Justice Centres* run by Legal Aid South Africa.

## Women and Children's Rights

### 13. The Commission commends the:

- i. protection of the rights of women through the enactment of various laws and policies geared towards combating discrimination against women and protection, empowerment and development of women;
- ii. establishment of the *Sexual Offences and Community Affairs (SOCA) Unit* in the National Prosecuting Authority and other similar units/departments to fight against violence against women, integrate gender equality and prioritize the prosecution of crimes committed against women;
- iii. re-establishment of the *Family Violence, Child Protection Units* in the Police Service, *Thuthuzela Care Centres*, the *Gender-Based Violence Help Line*; as well as, forty-three (43) *Sexual Offences Courts* with about thirty-three (33) regional courts upgraded into sexual offences courtrooms to fight violence against women;
- iv. various programmes initiated to curb incidences of sexual violence, the practice of abducting young women as unwilling brides into forced

- marriages known as “*Ukulthwala*” and other gender discriminatory practices;
- v. strategies and programmes aimed at combatting maternal and child mortality rates resulting in the increased provision of anti-natal care from 31% in 2009/10 to 97.4% in 2012/13;
  - vi. enactment of laws against human trafficking in particular the *Prevention and Combating of Trafficking in Persons Act 2013*;
  - vii. various programmes developed to ensure that trafficked victims have access to protective services by accrediting 13 multi-purpose shelters in 2011, to host trafficked victims and trained personnel to assist trafficked victims;
  - viii. measures taken in dealing with the challenges associated with forced labour, sex trafficking, and domestic servitude faced by men, women, and children;
  - ix. launch of the *Human Papilloma Virus (HPV) Vaccine Campaign* in March 2014, protecting women against cervical cancer;
  - x. awareness raising campaigns on the rights of widows provided by the *National Widowed Women’s Forum*;
  - xi. provision of sanitary dignity towels for all the vulnerable members of society in need of such products through an integrated programme which promotes women’s economic empowerment initiatives on manufacturing and distribution of sanitary pads;
  - xii. enactment of legal frameworks, establishment of institutional mechanisms and implementation of programmes ensuring gender is mainstreamed at all levels of government;
  - xiii. adoption of the *National Adolescent Sexual and Reproductive Health and Rights Framework Strategy* which seeks to provide an integrated action guide on adolescent sexual and reproductive health rights, as well as, increased access to information and services on sexual and reproduction health;
  - xiv. existence of legal frameworks such as the *Choice on Termination of Pregnancy Amendment Act 2008*, allowing for termination of pregnancy only by a medical practitioner;
  - xv. development of the *Home Community-Based Care (HCBC) Programme* to build a protective and caring environment for vulnerable children aimed at providing comprehensive care and support at community level and keeping children within their families and communities;
  - xvi. decrease in the infant mortality rate from 40 deaths per 1,000 live births in 2009, to 30 deaths per 1,000 live births in 2011;
  - xvii. promotion and support of breastfeeding with an aim to secure the health of infants and prevent under-nutrition; and
  - xviii. immunisation programmes aimed at protecting children against vaccine-preventable diseases, such as measles, TB, cholera and pertussis, the

expansion and strengthening of school health services and establishment of district clinical specialist teams to prevent disease and child death.

## HIV/AIDS

### 14. The Commission commends the:

- i. various initiatives taken in combating the HIV/AIDS pandemic in particular the provision of Public health facilities offering VCT and PMTCT to cover the whole country and the development of the Guidelines for the Management of Tuberculosis, HIV and Sexually Transmitted Infections in Correctional Centres issued in 2013;
- ii. establishment of the *South African National AIDS Council (SANAC)* to tackle persistent forms of stigma and discrimination that continue to affect a large number of people infected with HIV and AIDS/or TB;
- iii. development of the *Draft Integrated Strategy on HIV and AIDS* by the Department of Basic Education aimed at prevention, treatment, care, support and research/monitoring arms strengthening a systemic response to HIV and AIDS;
- iv. provision of funding and support to organizations that offer a range of services to individuals and families infected and affected by HIV and AIDS, ensuring that the basic needs of people living with HIV and AIDS (PLWHAs) are met;
- v. provision of services such as anti-retroviral drugs (ARVs), prevention of mother to child transmission, condom distribution, palliative care including home based care (HBC) programmes, Voluntary Confidential Counselling and Testing (VCT) for people living with HIV;
- vi. HIV Counselling and Testing Campaign in which almost twenty (20) million people had been tested and know their status, the screening of millions of people for TB and the increase in the number of anti-retroviral sites and nurses certified to initiate ARV treatment;
- vii. training programmes provided to community caregivers on HIV and AIDS management allowing all officials to understand the prevention, impact and management of HIV, AIDS and TB in their lives and work situations;
- viii. revision of the *Code of Good Practice on Key Aspects of HIV/AIDS and Employment of 2000* and the *Technical Assistance Guidelines (TAG) of 2003* to ensure alignment to the ILO Recommendations of 2010, providing policy guidelines to assist employers, employees and their organisations to develop and implement comprehensive gender sensitive HIV and AIDS workplace policies and programmes; and

- ix. decrease in the mother to child transmission of HIV and AIDS and improved coverage of immunization against diarrhoea and pneumonia amongst children.

## **Right to Freedom of Expression**

15. The Commission commends the:

- i. enactment of the *Promotion of Access to Information Act* (2000), in addition to designating the South African Human Rights Commission to promote the right to access information and monitor compliance with the legislation;
- ii. development of a manual for all staff members working on requests for access to information to ensure that requests are processed in line with the ideals of the Act and Constitution;
- iii. proposed repeal in the Judicial Matters Amendment Bill decriminalizing the common law crime of defamation; and
- iv. establishment of the *Media Development and Diversity Agency* to enable historically disadvantaged communities and persons not adequately served by the media, to gain access to the media and assist in the creation of an enabling environment for media development and diversity.

## **Prohibition of Torture, Cruel, Inhumane and Degrading Treatment**

16. The Commission commends the:

- i. enactment of the *Prevention and Combating of Torture of Persons Act, 2013* prohibiting and combating torture;
- ii. development of programmes to promote public awareness about torture;
- iii. abolition of the concept and practice of solitary confinement wherein inmates are detained in total isolation for long periods of time;
- iv. new mandate of the *Independent Police and Investigative Directorate (IPID)* to conduct independent and impartial investigations on complaints of torture or assault against a Police Officer in the execution of his or her duties; and
- v. development of the *Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service* setting out a system of checks and balances to protect persons in police custody from acts of torture, cruel, inhuman or degrading treatment.

## Due Process and Conditions of Detention

### 17. The Commission commends the:

- i. existence of a system of *Independent Correctional Centre Visitors* (Independent Visitors) in each Correctional Centre to deal with complaints of inmates through amongst others, regular visits, interviewing inmates, discussing of complaints with the head of Correctional Centre or any relevant official;
- ii. provision of nutritionally balanced meals to inmates;
- iii. development of the *Offender Rehabilitation Path (ORP)* to facilitate rehabilitation and integration of offenders and the existence of a variety of rehabilitation programmes for inmates;
- iv. measures taken to improve health care services to inmates such as the development of the *Guidelines for the Management of Tuberculosis, HIV and Sexually Transmitted Infections in Correctional Centers* which provides guidance on the prevention of new infections, routine testing and early treatment of inmates with tuberculosis and human immunodeficiency virus infection and disease;
- v. establishment of an *Independent Police Investigative Directorate (IPID)* with nine (9) provincial and district offices mandated to investigate any alleged misconduct of, or offence committed by, a member of the police service;
- vi. initiatives adopted to reduce overcrowding in detention centres such as, the collaborative implementation of the *White Paper on Corrections 2005* which ensures humane, just and safe correctional facilities that focus on reducing the number of remand detainees;
- vii. establishment of *Mother and Baby Units* for women inmates and their babies in correctional centres;
- viii. *Electronic Monitoring of Parolees* system put in place to alleviate the challenges of parolees absconding from the system of community corrections while also reducing the risk of recidivism;
- ix. establishment of an *Independent Civilian Secretariat for Police* to effectively discharge its duty of civilian oversight over the police and inducing community activation;
- x. launch of the '*Back-To-Basics*' campaign to improve police visibility, reduce opportunities for crime, and provide oversight of special police station operation;
- xi. incorporation of human rights training for the police and corrections officials in the basic training institutions and ensuring that human rights is a pre-requisite for Police and Correctional Officials writing their tertiary qualifications;
- xii. regular visits to detention centres conducted by judicial officials, members of the Parliamentary Portfolio Committee on Correctional Services, Sheriff or Deputy Sheriff and the Public Prosecutor; and

- xiii. progressive increase in the number of female Police Officers from 14.55% in 2006 to 19.56% in 2013.

## **Rights of Older Persons and Persons with Disabilities**

18. The Commission commends the:

- i. measures taken to ensure that older persons and persons with disabilities are offered social assistance such as the provision of a grant under the *Social Assistance Act, 2004*;
- ii. social policies and other measures taken in favour of vulnerable or designated groups such as the *Policy on Disability*, which embodies strategic guidelines in the delivery of social services;
- iii. enactment of laws to protect, promote and maintain the status, rights, well-being and security of older persons and persons with disabilities;
- iv. adoption of the *Disability Framework for Local Government 2009-2014* to support and facilitate the mainstreaming of disability issues into all policies, plans, programmes and activities of the local government;
- v. adoption of the *Job Access Strategy 2006-2010* to transform the public sector to be inclusive of persons with disabilities;
- vi. development of a *Handbook on Reasonable Accommodation for Persons with Disabilities in the Public Service*, as a tool enabling government departments to create conducive environments for persons with disabilities both as employees and clients of government services; and
- vii. provision of free health care services for persons with disabilities.

## **Death Penalty**

19. The Commission commends the retention of the abolition of the death penalty.

## **Indigenous Populations/Communities**

20. The Commission commends the:

- i. measures taken to advance the interests of indigenous people, including the Khoi-San people;
- ii. establishment of the *National Khoi-San Council* to represent the Khoi-San communities in South Africa and serves as a single body with which government would consult on all issues relating to the Khoi-San communities, including traditional health practitioners and healers; and
- iii. participation of Traditional Leadership and the Khoi-San structures in debates and discussions organized by the Department of Science and

Technology, which is a lead Department on Indigenous Knowledge Systems (IKS) and all matters related to IKS.

## **Refugees, Asylum Seekers, IDPs and Migrants Workers**

21. The Commission commends the:

- i. recognition of the international principle of *non-refoulement* concerning the protection of refugees from being returned or expelled to places where their lives or freedoms could be threatened;
- ii. allowing of asylum seekers the right to move freely, work and study, as well as, access to basic health services; and
- iii. treatment of all refugees including women with dignity and unhampered access to life's necessities, such as health, social grants, housing, education and work.

## **Extractive Industries and the Environment**

22. The Commission commends the:

- i. improvements in the social and economic conditions of mining towns and the implementation of mining towns programmes on distressed mining towns;
- ii. collaboration with other State Actors in implementing the environmental regulations to mitigate environmental degradation;
- iii. commencement of the assessment project addressing issues relating to acid mine drainage and the impact on catchment areas, with the Olifants and Komati-Crocodile River catchment areas being investigated;
- iv. development of the *Guidelines for Consultation with Communities and Interested and Affected Parties* to enhance a regulatory environment and create an operational framework for State Owned Mining Companies;
- v. recognition of compensation in cases of spoliation or expropriation in the public interest and the significant developments in respect to restitution and redistribution of land;
- vi. launching of the *Settlement Implementation Support Strategy* to provide post settlement support aimed at ensuring sustainability of land reform projects, including restitution projects; and
- vii. adoption of the *Policy for the Small Scale Fisheries Sector* which entrenches the principles of preferential access to small scale fishing communities who traditionally depended on marine living resources for their livelihood.

## **Right to Development**

20. The Commission commends the:

- i. adoption of the *Medium Term Strategic Framework (MTSF, 2009–2014)* which identifies the development challenges and outlines the medium-term strategy for improving living conditions, as well as, guide planning and resource allocation across all spheres of government;
- ii. adoption of the *National Development Plan (NDP)* which outlines recommendations to combat poverty, land inequity, and an underperforming economy with the aim to eliminate poverty and reduce inequality by 2030;
- iii. establishment of the *Ministry of Rural Development and Land Reform* dedicated to the social and economic development of rural South Africa and ensuring that people residing in rural areas enjoy the same benefits as those in urban areas; and
- iv. development of the *Comprehensive Rural Development Programme (CRDP)* aimed specifically at curing the blight of poverty by the creation of vibrant, equitable and sustainable rural communities.

### **III. Factors restricting the enjoyment of human rights guaranteed by the African Charter**

23. Harmful cultural and traditional practices such as *Ukulthwala* continue to restrict South African women and children from fully enjoying their rights.
24. High levels of unemployment, illiteracy, poverty and inequality in the country restrict the full enjoyment of human rights

### **IV. Areas of Concern**

25. While acknowledging the significant efforts made by the government of South Africa to promote and protect human rights, the Commission is however concerned about the following matters:

## Reporting Obligation and Cooperation with the Commission

26. The response to the Commission's recommendations in South Africa's first Periodic Report does not provide specific and comprehensive answers to all the questions and issues raised by the Commission.
27. The Commission notes that South Africa is overdue by one Report under Article 62 of the African Charter covering the period 2014 and 2015.
28. The Report does not provide a comprehensive disaggregated data on its implementation of all the rights guaranteed in the African Charter in order to allow the Commission to objectively assess South Africa's level of compliance *vis-à-vis* all its obligations contained in the African Charter.

## Ratification of Regional/International Human Rights Instruments

29. South Africa has not ratified the following human rights instruments:
  - i. *African Charter on Statistics;*
  - ii. *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);*
  - iii. *African Union Convention on the Elimination of Mercenaries in Africa;*
  - iv. *African Union Convention on Cyber Security and Personal Data Protection;*
  - v. *The Protocol on the Statute of the African Court of Justice and Human Rights;*
  - vi. *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);*
  - vii. *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;*
  - viii. *Indigenous and Tribal Peoples Convention;*
  - ix. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and*
  - x. *International Convention for the Protection of all Persons from Enforced Disappearance.*
30. South Africa has also not made the Declaration under Article 34(6) of the Protocol to the African Court on Human and Peoples' Rights, accepting the jurisdiction of the Court.

## **Economic, Social and Cultural Rights**

31. The Commission is concerned about the:

### **Right to Property**

- i. complex and lengthy process of land acquisition and distribution resulting in the escalation of the cost of redistribution of land;
- ii. slow pace of settling of remaining land restitution claims which results in negative impacts on agricultural production and the acquisition of land by government at reasonable prices;

### **Right to Employment**

- iii. fact that the youth constitute a large part of unemployed persons in society;

### **Right to Health**

- iv. challenges faced by the public health sector to deliver services to about 80% of the population and the shortage of key medical personnel to deal with the burden of diseases such as HIV and Tuberculosis (TB);

### **Right to Water and Sanitation**

- v. lack of necessary infrastructure in rural areas and lack of effective cost-recovery programs preventing the free disposal of water to all people;
- vi. issue of acid mine drainage hindering access to safe water and sanitation; and

### **Right to Basic Amenities**

- vii. existence of a cross-section of the population who live in poor socio-economic conditions with limited access to basic amenities such as food, health care, housing and education.

## **Civil and Political Rights**

32. The Commission is concerned about the:

- i. challenges faced by *Legal Aid South Africa* to provide adequate assistance to all the persons in need of its services; and

- ii. discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against homosexuals despite the existence of legal frameworks.

## **Women and Children's Rights**

33. The Commission is concerned about the:

- i. reservations made under the Maputo Protocol;
- ii. low representation of women at decision making levels and the Judiciary despite the concerted efforts made at ensuring gender equality in all sectors;
- iii. lack of a law domesticating the Maputo Protocol;
- iv. lack of a provision in the *Sexual Offences and Related Matters Act* specifying corrective rape as a sexual offence;
- v. existence of traditional harmful practices such as "*Ukulthwala*" in spite of the criminalization of the said practice;
- vi. teenage pregnancy as the leading cause of high school drop-outs amongst girls of school going age exposing them to sexually transmitted diseases;
- vii. high unemployment rates amongst women age 15 to 24 years who are at their vibrant working ages; and
- viii. inadequate laws governing child marriages.

## **HIV/AIDS**

34. The Commission is concerned about the:

- i. high prevalence rate of HIV and AIDS pandemic placing a tremendous strain on the health care system and the high rate of AIDS orphans;
- ii. increase in the co-infection rates of HIV and TB due to late detection, poor treatment management and drug-resistant forms of TB; and
- iii. stigma and discrimination that continue to present challenges in the management of HIV and AIDS particularly in health care settings and communities;

## **Right to Freedom of Expression**

35. The Commission is concerned about the:

- i. limitations in the *Protection of State Information Bill* which seems to be in violation of the right to freedom of expression,
- ii. delay in the appointment of the information Regulator;
- iii. limitations in the *Cybercrimes and Cybersecurity Bill* permitting journalists and members of the public to be prosecuted for possessing or disclosing state information; and
- iv. existence of laws criminalizing defamation

## **Right to Freedom of Assembly and Association**

36. The Commission is concerned about the:

- i. lack of information on the promotion of the rights of human rights defenders; and
- ii. lack of statistical data on the number of NGOs and CSOs in South Africa.

## **Prohibition of Torture, Cruel, Inhumane and Degrading Treatment**

37. The Commission is concerned about the:

- i. lack of statistical data in the Report relevant to the prohibition of torture and ill-treatment, including disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment;
- ii. lack of measures to provide reparations for victims of torture irrespective of whether a successful criminal prosecution or other judicial remedy can or has been brought; and
- iii. non-ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) and the establishment of the National Preventive Mechanism as envisaged under OPCAT.

## **Due Process and Conditions of Detention**

38. The Commission is concerned about the:

- i. shortage of psychological services in detention centres particularly in rural regions;
- ii. lack of access by NGOs to visit detention centres other than for training and research purposes;
- iii. overcrowding and high incarceration rates in correctional centres;
- iv. high levels of gang-related violent crimes and maintaining safe custody in correctional centres; and
- v. prevalence of HIV/AIDS and TB amongst inmates in correctional centres.

## **Older Persons and People with Disabilities**

39. The Commission is concerned about the lack of adequate disaggregated data on the gender, age, type of disability and other elements that are important in formulating policies for disabled persons.

## **Indigenous Populations/ Communities**

40. The Commission is concerned about the:

- i. lack of disaggregated data on the literacy, mortality, employment, life expectancy rate of indigenous communities in South Africa;
- ii. non-existence of schools that teach indigenous children in their mother tongue;
- iii. delay in the enactment of the *Traditional and Khoi-San Leadership Bill* pending before Parliament, to advance the interests of disadvantaged persons or group of persons, including the Khoi-San people; and
- iv. lack of adequate representation of indigenous populations at political and decision making levels.

## Refugees, IDPs and Migrants Workers

41. The Commission is concerned about the:

- i. lack of information on measures taken on the effective implementation of the provisions of the African Charter with respect to freedom of movement;
- ii. lack of disaggregated statistics on asylum seekers and refugees living in South Africa;
- iii. acts of Xenophobia and other intolerances directed at foreign nationals; and
- iv. restrictive nature of the law on refugees as far as settlement of refugees is concerned.

## Extractive Industries and Environment

42. The Commission is concerned about the:

- i. inadequacy of regular environmental monitoring and inspection of mining companies and the issue of acid mine drainage hindering access to safe water and sanitation; such as
  - a) hazardous acid mine drainage resulting from coal mining in Mpumalanga; and
  - b) exposure of fresh sulphite minerals to elements notably in the gold fields and various coal and copper mines;
- ii. lack of a regulatory framework in terms of extractive industries particularly for mining workers, and
- iii. following limitations in the *Mining Charter*:
  - a) failure to address gender inequality in the sector whether in relation to ownership, management positions or core mining roles;
  - b) lack of reference to measures addressing gendered impacts of mining, which include the loss of livelihoods experienced by women who are dispossessed due to mining activities;
  - c) impact of mining on the quality and availability of water and on health due to environmental degradation; and
- iv. failure to define the parameters for implementing the requirement that companies have to take measures to improve the housing and living conditions of workers.

## **V. Recommendations**

43. In view of the foregoing, the Commission makes the following recommendations to the government of South Africa:

### **Reporting Obligations and Cooperation with the Commission**

44. The Commission recommends that South Africa should ensure it complies with its obligations under Article 62 of the African Charter and 26 of the Maputo Protocol by implementing these recommendations:

### **Ratification of Regional/International Human Rights Instruments**

45. Make a declaration under Article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights and lift all reservations under the Maputo Protocol in line with the spirit of the Protocol.

46. Ratify the following human rights instruments:

- i. *African Charter on Statistics;*
- ii. *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);*
- iii. *African Union Convention on the Elimination of Mercenaries in Africa;*
- iv. *African Union Convention on Cyber Security and Personal Data Protection;*
- v. *The Protocol on the Statute of the African Court of Justice and Human Rights;*
- vi. *Indigenous and Tribal Peoples Convention;*
- vii. *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);*
- viii. *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;*
- ix. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and*
- x. *International Convention for the Protection of all Persons from Enforced Disappearance.*

## **Economic, Social and Cultural Rights**

47. The Commission recommends that South Africa should:

### **Right to Health**

- i. mainstream traditional medicine and practice into the health system to ensure a more effective way of monitoring the activities of traditional medicine practitioners, as well as, provide continuous training for a better service delivery;
- ii. take measures to overcome the challenges faced by the public health sector to deliver services to about 80% of the population and provide adequate medical personnel to deal with the burden of diseases such as HIV and Tuberculosis (TB);

### **Right to Property**

- iii. expedite the process of land acquisition and distribution;

### **Right to Employment**

- iv. take appropriate measures to combat unemployment, poverty and inequality in the country;
- v. strengthen ongoing youth development programmes to enhance job creation for the youth;

### **Right to Water and Sanitation**

- vi. resolve the issue of acid mine drainage to ensure access to safe water and sanitation; and

### **Right to Basic Amenities**

- vii. enhance the socio-economic conditions and access to basic amenities such as food, health care, housing and education to under privileged communities.

## Civil and Political Rights

48. The Commission recommends that South Africa should:

- i. provide adequate financial and material resources to *Legal Aid South Africa* to enable it provide adequate assistance to all the persons in need of its services; and
- ii. strengthen legislative and other measures aimed at combating discrimination and homophobia.

## Women and Children's Rights

49. The Commission recommends that South Africa should:

- i. speed up the enactment of the *Hate Crimes Bill* to criminalise corrective rape;
- ii. enforce laws that outlaw the practice of *Ukuthwala*;
- iii. harmonise its laws to provide for the age of marriage to be 18 years without any exception in line with the Maputo Protocol and review laws criminalizing child marriage for a better and adequate protection;
- iv. develop laws and policies to increase women's representation in decision-making levels and in the Judiciary;
- v. enact a legislation domesticating the Maputo Protocol;
- vi. develop programmes aimed at curbing pregnancy amongst girls of school going age; and
- vii. build operational and institutional mechanisms to combat the high rate of unemployment amongst women age 15 to 24 years.

## HIV/AIDS

50. The Commission recommends that South Africa should:

- i. strengthen its policies and programmes to curb the high prevalence rate of HIV and AIDS pandemic;
- ii. enhance the management and treatment of HIV and the drug resistant forms of TB to reduce the co-infection rates of HIV and TB; and
- iii. strengthen its strategies to eradicate stigma and discrimination that continue to present challenges in the management of HIV and AIDS, particularly in communities.

## Right to Freedom of Expression

51. The Commission recommends that South Africa should:

- i. accelerate the enactment of the *Protection of State Information Bill* and ensure that the Bill is in line with regional and international standards;
- ii. expedite the establishment of the Information Regulator;
- iii. amend the *Cybercrimes and Cybersecurity Bill* in line with international best practices on access to information; and
- iv. accelerate the enactment of the *Judicial Matters Amendment Bill* decriminalizing the common law crime of defamation.

## Right to Freedom of Association and Assembly

52. The Commission recommends that South Africa should:

- i. provide adequate information and statistical data on the number of NGOs and CSOs in South Africa;
- ii. provide specific information on the situation of human rights defenders in South Africa in its next Periodic Report;
- iii. take legislative and other measures to protect and promote human rights in conformity with the UN Declaration on Human Rights Defenders, the African Charter, the Kigali Declaration and other regional and international human rights instruments that guarantee the right to freedom of association and assembly; and
- iv. accelerate the proposed amendments to the Non-Profit Organisations Act, 1997 (Act 71 of 1997), to strengthen its regulatory framework and working relationship between government and NGOs.

## Prohibition of Torture, Cruel, Inhumane and Degrading Treatment

53. The Commission recommends that South Africa should:

- i. provide statistical data in its next Periodic Report relevant to the prohibition of torture and ill-treatment, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment;
- ii. take measures to provide reparations for victims of torture irrespective of whether a successful criminal prosecution or other judicial remedy can or has been brought;
- iii. ratify Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and establish the National Preventive Mechanism envisaged under OPCAT; and

- iv. fully comply with the Commission's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhumane or Degrading Treatment or Punishment in Africa (Robben Island Guidelines).

## **Due Process and Conditions of Detention**

54. The Commission recommends that South Africa should:

- i. take measures to enhance and ensure the provisions of psychological services in all detention centres particularly in rural regions;
- ii. develop programmes aimed at motivating inmates to participate in educational programmes;
- iii. provide NGOs access to visit detention centres other than for training and research purposes;
- iv. enhance programmes to curb overcrowding and high incarceration rates as well as, the prevalence of HIV, AIDS and TB amongst inmates in correctional centres;
- v. strengthen programmes to fight against high levels of gang-related violent crimes, maintain safe custody and strengthen rehabilitation programmes in correctional centres;
- vi. continue to ensure human rights training for the police and other law enforcement officers and promote the presence of female Police Officers within the police services;
- vii. make use of the Commission's *Guidelines on Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines)* to deal with the challenges of arbitrary arrests and pre-trial detention.

## **Older Persons and People with Disabilities**

55. The Commission recommends that South Africa should:

- i. provide adequate disaggregated data in its next Periodic Report on the gender, age, type of disability and other elements that are important in formulating policies for the disabled; and
- ii. develop a proactive sensitisation policy aimed at reducing or eliminating stereotypes and other perceptions which undermine the full realisation of the rights of older persons and persons with disabilities.

## **Indigenous Populations/Communities**

56. The Commission recommends that South Africa should:

- i. provide in its next Periodic Report disaggregated data on the literacy, mortality, employment, and life expectancy rate of indigenous populations/communities;
- ii. provide institutionalized support towards the promotion and teaching of indigenous languages and establish schools that teach indigenous children in their mother tongue;
- iii. accelerate the enactment of the *Traditional and Khoi-San Leadership Bill* pending before Parliament, to advance the interests of disadvantaged persons or group of persons, including the Khoi-San people;
- iv. adopt legislative and other measures to ensure adequate representation of the indigenous population at political and decision-making levels; and
- v. consult indigenous communities in the inception, planning and execution of development projects affecting the communities.

## **Refugees, IDPs and Migrant Workers**

57. The Commission recommends that South Africa should:

- i. provide in its next Periodic Report information on measures taken on the effective implementation of the provisions of the African Charter in respect to freedom of movement and disaggregated statistics on asylum seekers and refugees living in South Africa;
- ii. strengthen various initiatives taken in the fight against acts of Xenophobia directed at foreign nationals to bring about a more coordinated response to the increased protection needs foreign nationals; and
- iii. review and amend its law on refugees as far as settlement of refugees is concerned.

## **Extractive Industries and Environment**

58. The Commission recommends that South Africa should:

- i. provide adequate regular environmental monitoring and inspection of mining companies and resolve the issue of acid mine drainage hindering access to safe water and sanitation;
- ii. establish a regulatory framework in terms of extractive industries particularly for mining workers ;

- iii. take measures to address the following limitations in the *Mining Charter* such as:
  - a) failure to address gender inequality in the sector whether in relation to ownership, management positions or core mining roles;
  - b) lack of reference to measures addressing gendered impacts of mining, which include the loss of livelihoods experienced by women who are dispossessed, due to mining activities;
  - c) impact of mining on the quality and availability of water and on health due to environmental degradation;  
Absence of parameters for implementing the requirement that companies have to take measures to improve the housing and living conditions of workers.
- iv. ensure effective environmental monitoring and inspection of mining operations to prevent the recurrence of hazardous acid in mine drainage;
- v. report on the steps taken to implement the recommendation of the Marikina Commission of Inquiry and to address the underlying factors that precipitated the massacre; and
- vi. report on the extent to which affected communities have made use of their privileges for participating in mining prospects and ventures provided for in the *Mineral and Petroleum Resources Development Act*.

### **Cooperation with the Commission**

59. The Government of South Africa should:

- i. authorize the Commission to undertake a promotional mission to the country;
- ii. provide in its next Periodic Report up-to-date statistics on activities of institutions with a human rights mandate; and
- iii. inform the Commission, in its next Periodic Report of the measures taken to address the above issues of concern and to ensure the effective implementation of the recommendations contained in the present Concluding Observations.

**Adopted by the African Commission on Human and Peoples' Rights at its 20<sup>th</sup> Extra-Ordinary Session held from 9 to 18 June 2016, in Banjul, Islamic Republic of The Gambia.**