

UPR BRIEFING NOTE: SOUTH AFRICA

KEY ISSUES

1. Torture

Torture continues to be perpetrated in South Africa and the impacts of torture are not only complex with long-term negative consequences, they also include physical, psychological and social dimensions. Although South Africa signed the Optional Protocol to the Convention against Torture (OPCAT), it has not yet ratified it. South Africa enacted the Prevention and Combating of Torture of Persons Act (Act) 13 of 2013, in July 2013. The Act however does not explicitly provide for redress for victims of torture which includes forms of reparation articulated in General Comment No 3 of the Committee against Torture. This gap has translated to numerous torture victims in South Africa only being able to access redress through the courts – a long-winded and costly procedure which often results in secondary traumatisation for victims. Although the anti-torture legislation is in place, regulations that will operationalise the Act and possibly address some of the processes for accessing redress for victims have not been promulgated.

South Africa's torture victims are a diverse group and they include apartheid era torture victims, refugees, asylum seekers and current torture victims. Of these groups, the anti-torture legislation only covers current torture victims who have been tortured in South Africa after 25 July 2013.

The Truth and Reconciliation Commission (TRC) Recommendations provided for compensation for a closed list of victims who came forward to narrate their experiences of torture and other gross human rights violations during apartheid. A number of victims were excluded from this list and still cannot access reparation. There have been delays and challenges in implementing some of the recommendations of the TRC including the disbursement of the President's Fund to victim groups. Such delays and implementation challenges negatively impact victims, often leading to re-traumatisation and a lack of closure. Although the South African government is currently prioritising developmental projects such as building schools in various provinces in South Africa with the President's Funds as a form of collective reparation for apartheid era victims, such projects unfortunately do not consider the needs of victims at an individual level.

Despite South Africa's obligation to provide "as full rehabilitation as possible" under Article 14 of UNCAT, rehabilitation services for various torture victim groups are mainly provided by Non-Governmental Organisations (NGOs). Government institutions such as the Department of Health and the Department of Social Development are not providing rehabilitation services to torture victims and there are no allocations on South Africa's national budget to establish and support rehabilitation programmes for victims. As a result, NGOs are overburdened and are unable to reach out to all victims across the country.

2. Socio-Economic Rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR)

South Africa has recorded the largest number of socio-economic service delivery protests in the world in the past three years. These protests are also increasingly becoming violent. CSVR research on the key drivers of this violence including collective violence has shown that underlying factors such as high levels of inequality, social marginalisation and exclusion and the legacies of

South Africa's repressive past are some of the root causes. Addressing these underlying factors in our society will not only prevent this violence but will also achieve more peaceful and equal communities in the long term.

The qualification that the right to basic education will be provided "within available resources" is of great concern given South Africa's long standing history of inequality, social exclusion and marginalisation of the majority of black people. The right to free basic education for all will go a long way in affording the poor and marginalised in society this basic right. South Africa has also grappled with violent tertiary education protests where students have staged sit-ins and demonstrations against increases in University fees. The university fee increases mean that tertiary education becomes unattainable for most black South African students, widening the inequality gap. The realisation of secondary and tertiary education should also be prioritised by the South African government "within available resources".

3. Protection of the Rights of Migrants and Refugees

Migrants in South Africa include refugees and asylum seekers and undocumented migrants whose plight in obtaining documentation to legalise their stay in the country and being joined by their families in South Africa is dire. Furthermore, undocumented migrants continue to be exploited in their work stations, sometimes undertaking work without remuneration. Access to healthcare services for migrants is a challenge, especially for undocumented migrants. South Africa has not yet ratified the United Nations Convention on Migrant Workers and Their Families. Ratification of this instrument will go a long way in protecting the rights of migrant workers in South Africa and joining migrant workers with their families in host countries.

4. Gender-Based Violence (GBV)

South Africa has made strides in uplifting women in the country, however gender-based violence (GBV) still remains a major human rights violation in South Africa. Economic, cultural, social and religious factors drive GBV in South African communities. A lack of understanding of the extent of the problem, inaccurate and unreliable statistics on GBV continue to inhibit effective responses. Furthermore, the lack of a national coordinated strategy to address GBV remains a challenge. While the State recognises harmful practices of *Ukuthwala* (child marriages), there is no specific law to address the practice and protect women. Currently the practice is being regulated in a fragmented manner which addresses the acts associated with the practice without condemning the practice itself.

RECOMMENDATIONS

In order to ensure that the UPR continues to be an effective mechanism, we urge strong, focused and specific recommendations in relation to key issues in South Africa and consider the following issues as priorities:

1. Torture

- Ratify the Optional Protocol to the Convention against Torture (OPCAT) which will establish the National Preventive Mechanism for torture in South Africa.
- Promulgate Regulations to operationalise the Prevention and Combating of Torture of Persons Act 13 of 2013. The Regulations will also give guidance on procedures and processes that prioritise current torture victims' need for redress and reparations including rehabilitation.
- Promptly implement TRC recommendations for reparation for apartheid era torture victims through initiatives and reparative measures that directly benefit both individual and collective victims.

2. Socio-Economic Rights in International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Frame the right to basic education as a right to all without the qualification of “within available resources”.
- Facilitate access to secondary and tertiary education for the most marginalised groups in the South African society.
- Ensure that tertiary education is affordable, readily available and further that resources are channelled to make this right a reality for the majority of the South African population.
- Ratify the Optional Protocol on the International Covenant on Economic Social and Cultural Rights (OP-ICESCR) to promote a culture of accountability for implementing the ICESCR.

3. Protection of the Rights of Migrants and Refugees

- Ratify the United Nations Convention on Migrant Workers and Their Families.
- Effectively prosecute offences committed against migrants in South Africa and adopt policies and regulations that improve their living conditions and access to adequate health-care services.
- Develop and adopt policies and programmes designed to promote the integration of migrants into society and the respect for their rights, including the protection of their person and physical integrity.

4. Gender-Based Violence (GBV)

- Develop and implement integrated gender sensitive training of officials in the justice system including their roles in the criminal justice chain and how these are inter-linked.
- Develop specific legislation that addresses the practice of *ukuthwala* and other customary practices that directly or indirectly lead to forced and child marriages.
- Implement effective monitoring and evaluation of all government policies and interventions dealing with GBV.

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The Centre for the Study of Violence and Reconciliation (CSVr) is a non-governmental organisation which envisions societies that are peaceful, equal and free from violence. CSVr aims to understand and prevent violence, heal its effects and build sustainable peace at community, national and regional levels. This is achieved through collaboration with and learning from the lived and diverse experiences of communities affected by violence and conflict to inform innovative interventions, generate knowledge, shape public discourse, influence policy, hold States accountable and promote gender equality, social cohesion and active citizenship.



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The International Rehabilitation Council for Torture Victims: As a network of more than 150 torture rehabilitation centres in over 70 countries, the IRCT is the world's largest membership-based civil society organisation specialised in the field of torture rehabilitation. The work of the IRCT provides context to health-based rehabilitation within all pillars of the global fight against torture: prevention, accountability and reparation.

