

South Africa – Universal Periodical Report

Report by:



The Edmund Rice Justice Desk

Address: 1 York Road, Greenpoint, Cape Town, South Africa

E-Mail: info@ernsa.org

Phone: +27 727877710

Introduction

Edmund Rice Justice Desk of South Central Africa was launched in 2013. It is based in Cape Town, South Africa and operates in South Africa, Zambia and Zimbabwe. Our purpose is to advocate, educate and equip in the area of Human Rights, Justice and Advocacy. We belong to the global network of human rights defenders and are a part of the wider Edmund Rice Network. Our mother organisation is Edmund Rice International – an ECOSOC Advisor to the United Nations which is based in Geneva and New York.

1. GENDER BASED VIOLENCE

1.1. Situation Analysis

- 1) South Africa has one of the highest rates of sexual abuse. It is reported that 150 women report being raped to the police in South Africa on a daily basis. However, less than 30 of these cases are prosecuted and at the most 10 result in a conviction. The overall conviction rate, therefore, lies between only 4-8% of all reported cases.¹²
- 2) In 1993 the first sexual offence court was established in Cape Town, South Africa. However, due to various unjustified reasons – such as budgetary constraints, inappropriate and limited facilities, and the failure of state to properly protect victims of multiple forms of abuse – the sexual offence courts were widely abolished in 2005. In 2013, the government acknowledged that there was a need to re-establishment these courts, and soon after announced their plans to establish a minimum of 106 sexual offenses courts.³ Despite this promise, the very low conviction rate shows that, so far, the sexual offence courts have not taken appropriate measures to reduce sexual abuse in the country.⁴
- 3) South Africa’s Domestic Violence Act of 1998 is a prominent legal mechanism which is meant to protect victims of domestic violence, as well as ensure police protection – however this is insufficiently implemented. Domestic violence is often seen as a ‘private matter’ within the domestic environment, and is therefore not something that should be made public or reported to the police. With this in mind, it is reported that police across the country often refuses to take on its responsibility to open cases of domestic abuse, which leaves the victims helpless and unprotected.

¹ Smythe, Dee (2016).

² Guardian Development Network (2013).

³ Davis, Rebecca (2013).

⁴ SAnews (2014).

- 4) South Africa not only has one of the highest rates of rape in the world, but it also known for its shocking reports of ‘corrective rape’ which is on the rise – especially against lesbian women. There is deep-rooted bias against the South African LGBTQ community. However, as these hate crimes are not yet recognized as unique crimes under South African law, there are no reliable figures about the extent of this issue.⁵ Additionally, courts do not recognize the considerable cases of hate crimes and the police are often reluctant to investigate the cases further.⁶

1.2. Legal Framework

- 1) Article 7 (2) of the Constitution states that the state must respect, protect, promote and fulfil the rights stipulated in the Bill of Rights.
- 2) Article 9 of the Constitution provides for the right of all persons to be treated equally. Thereby, equality includes the full and equal enjoyment of all rights and freedoms. Article 9 (3) further states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex pregnancy, marital status, ethnic or social origin, colour, sex orientation, age, disability, religion, conscience, belief, culture, language and birth. Therefore women seeking protection from domestic abuse should not be discriminated against by police.
- 3) Article 10 provides that everyone has inherent dignity and the right to have their dignity respected and protected.
- 4) Article 34 of the Constitution states that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
- 5) Article 38 of the Constitution states that the rights listed in the Constitution are enforceable. Therefore, everyone has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened.

⁵ Davis, Rebecca (2012).

⁶ Smith, Lydia (2015).

1.3. Recommendation

Our organization recommends to the government of South Africa to:

- Fully implement the provisions of the South African Domestic Violence Act 1998 and other legislations and thus ensure that the police take on its responsibility to protect the victims.
- Promote the re-establishment of sexual offence courts and ensure that these courts take appropriate measures in respect to the reported cases.
- Ensure an appropriate conviction rate for offenders through enforcement of policies and legislation.
- Continue with its efforts to create forums for victims to discuss and thus process the experience they made.

2. CHILDRENS' EDUCATION

2.1. Situation Analysis

- 1) Schools that served predominantly white learners under apartheid remain functional while the vast majority of those which served black learners remain dysfunctional.⁷
- 2) The National School Effectiveness Study 2007/2008/2009 has shown that by grade 3, children in the poorest 60% of schools are already 3 years behind those in functional schools. This gap grows as the children progress and by grade 9 they are 5 years behind more affluent children in learning.⁸
- 3) Less than 50 percent of learners enrolled in grade one in 2002 stayed within the schooling system to write their final Matric exams 12 years later in 2014. Therefore, a significant number of pupils drop out of school before they reach Matric.⁹
- 4) South Africa spends an average of 20% of its national budget on education. Thereby, it spends more on education, some 6% of GDP, than any other African country.¹⁰ However, the majority of school children cannot enjoy a quality education. The causes lie deep in the education system.¹¹
- 5) In 2015 the Department for Basic Education has reported on the National Education Infrastructure Management System Quality of 23,589 schools: 12% of the schools still

⁷ Spall, Nic (2015a).

⁸ Spall, Nic (2015a).

⁹ Spaul, Nic (2015b).

¹⁰ Mhhize, Nomalanga (2016).

¹¹ Nkosi, Milton (2016a).

have unreliable electricity supply, 20% of the schools still have unreliable water supply, and 44% of the schools still use pit latrine toilets.¹²

- 6) Students that study in language other than their home language have difficulties understanding and expressing themselves at school.¹³ South Africa has 11 official languages. Despite the fact that English is the mother tongue only for 9.6% of the population, it is the predominate teaching language at most schools.¹⁴
- 7) Clear norms and standards for the education system are missing. Therefore, many state's constitutional obligations remain loosely specified and consequently, the right for education for everyone in its broader sense is not enforced.

2.2. Legal Framework

- 1) Article 29 (1) of the Constitution states that everyone has the right to a basic education, and to further education, which the state, though reasonable measures, must make progressively available and accessible.
- 2) Article 28 (1) of the Constitution provides that every child has the right not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age or that place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.
- 3) Article 7 (2) of the Constitution states that the state must respect, protect, promote and fulfil the rights in the bill of rights. This article imposes the duty on the state to encourage educational participation and provide an equal access to education for everyone.
- 4) Section 5a of the South African School Act No. 84 of 1996 states that minimum uniform norms and standards are to be prescribed concerning school infrastructure, school's capacities, and teaching support material. Therefore, each school is supposed to have - beyond others – electricity, water, and sanitation.¹⁵
- 5) Article (8) of the UNESCO's Children's Act 1998 states that – amongst others – no person shall deprive a child access to education.¹⁶

¹² Department of Basic Education (2015).

¹³ Nkosi, Milton (2016b).

¹⁴ SAinfo reporter (2015).

¹⁵ South African School Act.

¹⁶ The Children's Act.

6) Article (87) of the UNESCO's Children's Act 1998 provides that exploitative child labor that deprives the child of its health, education or development.

2.3. Recommendation

Our organization recommends to the government of South Africa to:

- Revise the education system and ensure that the budget for education is invested effectively and responsibly.
- Investigate the reasons for the high drop-out rate of schools and ensure to minimize the obstacles that hinder children to make use of their right for education.
- Provide adequate infrastructure and facilities to all schools and thus enforce the South African School Act.
- Focus on the language skills of children and ensure that all children are familiar with English as the teaching language.

3. REFUGEE

3.1. Situation Analysis

- 1) At the end of 2015, South Africa had 1,096,063 asylum claims with 62,159 new applications that year.¹⁷ Of the 62,159 asylum applications, 2,499 applications were approved for refugee status while 58,141 were denied or pending.¹⁸
- 2) According to section 21 of The Refugee Act No. 130 of 1998, asylum seekers entering South Africa are required to apply for asylum seeker status at a local Refugee Reception Office. Upon submitting an application, the asylum seeker will receive a

¹⁷ UNHCR (2016).

¹⁸ EWN (2016)

section 22 permit which is valid until their application has been reviewed or for a maximum of six months. South Africa currently has a back log of over 400,000 asylum claims.¹⁹ Due to this back log, many asylum seekers wait years to receive official refugee status and are required to renew their section 22 permit every six months. Asylum seekers residing in South Africa on section 22 permits are not entitled to the same rights as official refugee status holders including but not limited to the right to work and access to basic social services.²⁰

- 3) In the beginning of 2014, the Director General of the Department of Home Affairs announced the closure of the Cape Town Refugee Reception Office and the Port Elisabeth Refugee Reception Office. Presently, there are only three Refugee Reception Offices open in South Africa; Pretoria (Marabastad and Tirro), Durban (Greyville) and Musina.²¹ The current back log of over 400,000 asylum seeker applications along with new applications has to be managed by fewer Refugee Reception Officers. The closure of these offices has restricted freedom of movement for asylum seekers within South Africa. This has profound implications for asylum seekers who may have been residing in Cape Town or Port Elisabeth for multiple years but have to relocate to where a Refugee Reception Office is so that they can renew their section 22 permit every six months.

3.2. Legal Framework

- 1) South Africa is party to the 1951 Refugee Convention and its 1967 Protocol, as well as the 1969 OAU Convention. Therefore, the Government of the Republic of South Africa has an obligation to grant protection to refugees and other persons in need of protection.²²
- 2) Article 21 of the Constitution states that everyone has the right to freedom of movement. Therefore, everyone has not only the right to leave the Republic but also has the right to enter, to remain in and to reside anywhere in, the Republic.

3.3. Recommendation

Our organization recommends to the government of South Africa to:

¹⁹ UNHCR (2014).

²⁰ UNHCR (2015).

²¹ UNHCR (2014).

²² UNHCR (2015).

- (Re-)establish further Refugee Reception Offices in further district of South Africa to ensure that asylum seekers as well as refugees have the chance to make use of their right to freedom of movement.
- Accelerate the administration procedure for the 21 permit to grant their right to work and access to basic social services as fast as possible.
- Ensure that the administration procedure is not unnecessarily enlarged.

4. Living conditions in townships

4.1. Situation Analysis

- 1) According to the Worldbank half of South Africa's urban population lives in Township or informal housing, accounting for 38% of working-age citizens, but home to nearly 60% of its unemployed.²³
- 2) According to the World Health Organization 19% of the population in South Africa still lives without access to improved drinking-water sources (an improved drinking-water source is defined as one that, by nature of its construction or through active intervention, is protected from outside contamination, in particular from contamination with faecal matter).²⁴
- 3) According to the World Health Organization 34% of the population in South Africa have no access to improved sanitation facilities (An improved sanitation facility is defined as one that hygienically separates human excreta from human contact).²⁵
- 4) National statistics by the South African Police Service (SAPS) put South Africa's murder rate at 33 per 100,000 people. Thereby, it is high by global standards. While the murder rate had been decreasing from 1994 to 2012, it has been increasing for the last three years.²⁶
- 5) Gang violence is wide spread especially in the Western Cape. The gang-related murders increased by 86% since 2012. It is argued that the main reasons for continues growth of gang violence is the combination of drugs, lack of safe common spaces, and the intergenerational transmission of violence.²⁷

²³ Worldbank (2014).

²⁴ World Health Organization (2015a).

²⁵ World Health Organization (2015b).

²⁶ Shaw, M & Shaw, Kriegler (2015).

²⁷ Guardian Development Network (2014).

4.2. Legal framework

- 1) Article 26 of the Constitution provides that everyone has the right to have access to adequate housing. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 2) Article 27 of the Constitution provides that everyone has the right to have access to health care services, including reproductive health care; sufficient food and water; and social security, including – if they are unable to support themselves and their dependants – appropriate social assistance.

4.3. Recommendation

Our organization recommends to the government of South Africa to:

- Provide basic infrastructure for people in need and thus ensure that Article 26 of the Constitution is enforced.
- Ensure that the basic needs of the population are satisfied and thus enforce Article 27 of the Constitution.
- Promote community based initiatives that help to minimize gang violence within the same community.
- Promote community based initiatives that help children not to step into the footsteps of their parents and thus prevent intergenerational transmission of violence.

Bibliography

Department of Basic Education (2015): NEIMS Standard Report. Available at:

<<http://www.education.gov.za/Portals/0/Documents/Publications/NEIMS%20STANDARD%20REPORTS%20AS%20AT%2012%20MAY%202015.pdf?ver=2015-06-03-114948-520>>

Last accessed on 30 August 2016.

Davis, Rebecca (2012): SA's gay hate crimes: An epidemic of violence less recognised.

Available at: <<http://www.dailymaverick.co.za/article/2012-06-27-sas-gay-hate-crimes-an-epidemic-of-violence-less-recognised#.V8VLIfI97IW>> Last accessed on 30 August 2016.

Department of Home Affairs (2016): Refugee Status & Asylum. Available at: <

<http://www.home-affairs.gov.za/index.php/immigration-services/refugee-status-asylum>> Last accessed on 30 August 2016.

Davis, Rebecca (2013): Sexual offences courts are back. If only they'd never gone away....

Available at: <<http://www.dailymaverick.co.za/article/2013-08-07-sexual-offences-courts-are-back-if-only-theyd-never-gone-away#.V8VJovI97IX>> Last accessed on 30 August 2016.

Guardian Development Network (2013): South Africa's rape problem: why the crime remains under-reported. Available at: <<https://www.theguardian.com/global-development/2013/nov/04/south-africa-rape-problem-crime-under-reported>> Last accessed on 30 August 2016.

Guardian Development Network (2014): Fighting the gangs of South Africa's Western Cape. Available at: <<https://www.theguardian.com/world/2014/may/29/gangs-south-africa-western-cape>> Last accessed on 30 August 2016.

Mhhize, Nomalanga (2016): EDUCATION: SA consistently prioritises spending on education in its budgets. Available at: <<http://www.bdlive.co.za/opinion/2016/02/25/education-sa-consistently-prioritises-spending-on-education-in-its-budgets>> Last accessed on 30 August 2016.

Nkosi, Milton (2016a): South Africa's education system really 'in crisis'?. Available at: <<http://www.bbc.com/news/world-africa-35427853>> Last accessed on 30 August 2016.

Nkosi, Milton (2016b): Is South Africa's education system really 'in crisis'?. Available at: <<http://www.bbc.com/news/world-africa-35427853>> Last accessed on 30 August 2016.

SAinfo reporter (2015): The languages of South Africa. Available at: <http://www.southafrica.info/about/people/language.htm#.V8VP9_197IV> Last accessed on 30 August 2016.

SAnews (2014): SA to set up more sexual offences courts. Available at: <<http://www.southafrica.info/services/rights/justice-160714.htm#.V8P8qrsVjMw>> Last accessed on 30 August 2016.

Shaw, M & Shaw, Kriegler (2015): South Africa's mysterious murder rate. Available at: <http://www.dailymaverick.co.za/article/2015-10-02-south-africas-mysterious-murder-rate/#.V8VW6_197IV> Last accessed on 30 August 2016.

Smith, Lydia (2015): Corrective rape: The homophobic fallout of post-apartheid South Africa. Available at: <<http://www.telegraph.co.uk/women/womens-life/11608361/Corrective-rape-The-homophobic-fallout-of-post-apartheid-South-Africa.html>> Last accessed on 30 August 2016.

Smythe, Dee (2016): Rape in South Africa: why the system is failing women. Available at: <<http://www.timeslive.co.za/local/2016/02/19/Rape-in-South-Africa-why-the-system-is-failing-women>> Last accessed on 30 August 2016.

Spaull, Nic (2015a): Schooling in South Africa: How low-quality education becomes a poverty trap. Available at: <http://www.ci.org.za/depts/ci/pubs/pdf/general/gauge2015/Child_Gauge_2015-Schooling.pdf> Last accessed on 30 August 2016.

Spaull, Nic (2015b): High dropout rate in SA's school system. Available at: <<https://www.enca.com/south-africa/high-dropout-rate-sas-school-system>> Last accessed on 30 August 2016.

UNHCR (2014): Refugees and asylum seekers. Available at: <http://www.southafrica.info/travel/documents/refugees_asylum.htm#.V8VTovl97IU> Last accessed on 30 August 2016.

UNHCR (2014): Global Trends
<http://www.unhcr.at/fileadmin/user_upload/dokumente/02_unhcr/events/Global_Trends_2014.pdf?> Last accessed on 05 September 2016.

UNHCR (2016): Global Trends – Forced Displacement in 2015. Available at: <<http://www.unhcr.org/uk/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>> Last accessed on 30 August 2016.

Worldbank (2014): The Economics of South African Townships. Available at: <<http://www.worldbank.org/en/country/southafrica/publication/the-economics-of-south-african-townships-special-focus-on-diepsloot>> Last accessed on 30 August 2016.

World Health Organization (2015a): Proportion of population using improved drinking-water sources. Available at: <http://gamapserver.who.int/gho/interactive_charts/mdg7/atlas.html?indicator=i0> Last accessed on 30 August 2016.

World Health Organization (2015b): Proportion of population using improved sanitation facilities. Available at:

<http://gamapserver.who.int/gho/interactive_charts/mdg7/atlas.html?indicator=i5&date=2012

> Last accessed on 30 August 2016.

South African Laws & The Constitution

South African School Act. Available at:

<<https://www.gdeadmissions.gov.za/Content/Files/SchoolsAct.pdf>>

The Children's Act. Available at:

<<http://www.unesco.org/education/edurights/media/docs/f7a7a002205e07fbf119bc00c8bd3208a438b37f.pdf>>

The Constitution – Chapter 2: Bill of Rights. Available at:

<<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf>>