

South Africa's Review in the Working Group
Tuesday 15 April 2008, Afternoon 2.30pm – 5.30pm
Analytical Summary by Tiffany Henderson

The Troika

Zambia, Guatemala, Qatar were the three Troika members but only Zambia took the floor on behalf of the Troika, Qatar and Guatemala did not ask questions. Zambia stated that it did not have a question given the major achievements by South Africa in the protection and promotion of human rights. Zambia highlighted several achievements by South Africa: Establishment of a Human Rights Commission; constitution comprising; specialized sexual offences codes; enactment to access to information act; courts established dealing especially with sexual offences and equality; and legislative reforms such as the access to information Act. Highlighted their concern with South Africa's congested prisons,

Presentation by South Africa

The statement on behalf of South Africa was made by **H.E. Mrs. Glaudine J. Mtshali Ambassador Extraordinary and Plenipotentiary, Permanent Representative to the UN in Geneva of South Africa** to introduce its report. The statement started with a discussion of the improvements and the legislative measures that were made. Civil Society not mentioned specifically as being a participant in the report. Nor was there a direct reference to the questions submitted in advance by the States, rather South Africa listed the legal measures, initiatives and challenges the country faced.

Legal Measures to improve human rights

- *South African Bill of Human Rights* cornerstone of human rights and enshrines their democratic values of equality and freedom.
- Their *Constitution* guarantees all rights and fundamental freedoms.
- Clear separation of power between the three tiers of governance: executive, legislative and the judiciary.
- Economic, Social and Cultural Rights have been enacted into the Constitution and access to food, water, healthcare and housing are now justiciable rights, several Constitutional Court decision are (not cited in the meeting provided by author as an example): *Government of the Republic of South Africa v Grootboom and Others*¹ ('Grootboom') *Soobramoney v Minister of Health, KwaZulu-Natal* ('Soobramoney'), and *Minister of Health and Others v Treatment Action Campaign & Others* ('TAC').
- Legislation enacted to promote the application of human rights enshrined in the Constitution the South African Parliament passed several pieces of legislation: including health, education, employment, citizenship, domestic violence, land reform security, promotion of access to information, terrorism and terrorist related activities, publications and finance, economic development.
- Undertaken the ratification of several treaties without reservations such as the Convention on Persons with Disabilities. Standing invitation to all Special Procedures who can enter South Africa without impediments.
- Constitution provides for the establishment of independent institutions such as the South African Human Rights Commission; the Commission for the Promotion and Protection of Human Rights and the Independent Electoral Commission. Their institutions are in compliance with the Paris Principles.

¹ 2000 (11) BCLR 1169 (CC).

- Establishment of a Truth and Reconciliation Commission to deal with the effects of apartheid. The Commission has also elaborated on the prohibition and regulation of mercenaries in armed conflict.
- Legislative-based framework recognising the right to water: access to water increased by 54% from 2001 to 2004.
- Legislative measures have been enacted to protect persons from discrimination.

Non-Legal measures to improve human rights

- Housing: Over 2.3 million houses provided over 12 year period and this is recognised by the UN as being unprecedented in any other state. Over 9 million people in rural and urban areas have benefited by the government providing security of tenure and security of basic shelter.
- Committed to effective implementation by 2015 of the MDG goal 2 including through retroviral therapy and meeting the challenges of HIV/AIDS and Tuberculosis.
- National Plan of Action with well-defined targets, a regulatory framework and the monitoring of performance and progress.
- Assisting women who are rape victims through 'one-stop' sights that provide access to investigators, prosecutors and counselling. South Africa recognises the **challenge** of still addressing more effectively the root causes of violence.
- **Challenge** still exists with fighting discrimination against women: their participation in decision making particularly in parliamentary structures is impeded by discriminatory patriarchal, cultural and religious practices.
- **Challenge** of dealing with educational shortcomings: Government has introduced a program to ensure the standard of education reflects the large percentage of the budget allocated to this area through upgrading the teaching of mathematics and science.

Interactive Dialogue

51 Countries took the floor:

- **32 Member states:** Angola, Egypt, Ghana, Zambia, Senegal, Bangladesh, China, India, Indonesia, Japan, Jordan, Malaysia, Pakistan, Philippines, Qatar, Sri Lanka, Russian Federation, Slovenia, Cuba, Guatemala, Mexico, Peru, Canada, France, Germany, Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland, Brazil, Nigeria, Romania.

- **19 Non-Member States:** United States of America, Republic of Guinea, Norway, United States of America, New Zealand, Australia, Democratic Republic of the Congo, Cote D'Ivoire, Algeria, Zimbabwe, Mauritania, Denmark, Libyan Arab Jamahiriya, Palestine, Botswana, Tunisia, Sudan, Belgium, United Republic of Tanzania, Islamic Republic of Iran.

Questions/Issues Raised:

Truth and Reconciliation Tribunal

- What are the next steps in developing the Tribunal (Guinea)

Responses by the delegation: Gave a general overview of the progress and underlying idea of the Tribunal. The Commission concluded its work in 1999 and there are still several non-finished cases because victims could not be located.

Torture

- reasons for corporal punishment (Slovenia) , outlawing of torture (Denmark), institutions and measures combating practice of Torture (Russian Federation)

Responses by the delegation: Dealt with under recommendations.

Freedom of Information

The following issues were raised in connection with freedom of information:

- effectiveness of the Access to Information Act (Norway), dissemination of information regarding best practices amongst other countries (China)

Responses by the delegation: Freedom of Expression is limited when it comes to war propaganda, promoting hatred and incitement to harm. There are constitutional guarantees when it comes to Freedom of Expression.

Racism

The following issues were raised in connection with racism:

- measures taken regarding Durban Declaration and Program of Action (Malaysia, Belgium), de-facto segregation (Democratic Republic of Congo), conciliation amongst societal groups (Cote D'Ivoire), racially divided economy (Pakistan), xenophobia of aliens (Mauritania, Switzerland)

Responses by the delegation: Created a counter-xenophobia unit with several stakeholders involved. Immigration Amendment Act concerning refugees and provided a human rights based culture, better facilitation of permanent and temporary resident permits.

Migrants

- Zimbabwean Migrants, asylum processes (US, Pakistan), ratifying Convention on Migrants (Senegal), refugees (Pakistan), migrants and refugees being returned who subject to torture (Mexico), integration into society (Netherlands)

Responses by the delegation: Legislation is not national specific when it comes to refugees and side-effect is a backlog of asylum-seekers.

Women

- sexual violence against women (US), gender equality (Angola), reproductive rights (Brazil)

Responses by the delegation: Special initiatives provided by the government for the workplace to protect women and persons with disabilities. Law provides protection of women's productive rights, pregnancy is a legal choice in SA.

Education

- achieving universal primary education (Angola, Nigeria), quality education for children (Libya)

Responses by the delegation: Dealt with under **recommendations**.

Prison

- Root causes of crime and overcrowded prisons (Democratic Republic of Congo), congestion in prisons (Zambia)

Responses by the delegation: **Not dealt with.**

Economic, Social and Cultural Rights

- Progress of ratifying CESC (Senegal), measures countering socio-economic inequalities (Egypt, Ghana, Mauritania), right to housing (Algeria, Zimbabwe), access to water (Algeria and Germany), realization of ESC Rights (Nigeria)

Responses by the delegation: Measures identified such as establishing Equality Courts within Human Rights Commission, loans have been put in place to build houses. **Illegal Evictions:** Judicial remedies available and it is a states duty to provide housing for people, the three levels of governance: local, provincial and national are fully aware of the legislation guaranteeing this right. This awareness matched with cooperation between the Department of Housing and Department of Financial Services.

Health

- improving access to healthcare (Germany), treatment of women suffering HIV/AIDS (Germany)

Responses by the delegation: Stated there is 'no such thing as unequal access to health', for example recent legislation pertaining to the pricing of drugs and there is a free health care service in SA.

National Human Rights Institutions

- Role being played by the Human Rights Commission (Australia), unification of various human rights institutions (Norway)

Responses by the delegation: **Not dealt with.**

Co-operation and Dialogue

- submitting reports to Treaty Bodies (New Zealand)

Responses by the delegation: No obstacles to reporting and in the process of 'optimizing' this issue, **will report on their progress in four years along with progress in ratification of treaties.**

Indigenous People

- activities to assist indigenous people (Tunisia)

Responses by the delegation: **Not dealt with.**

Recommendations:

Torture

- Slovenia and Denmark recommended that South Africa criminalize torture, with Slovenia specifically mentioning: The adoption of a specific definition of torture, enacting legislation in line with Art. 1 of the Convention Against Torture (CAT) to eliminate impunity and to criminalize corporal punishment, including raising awareness and necessary assistance on alternative forms of discipline.
- Brazil, UK and Romania recommended the ratification of the Optional Protocol to CAT
- Switzerland recommended following the recommendations of CAT to prevent and combat violence against children and women and awareness campaign needed in regards to this.

Responses by the delegation: Government stated that they had ratified CAT and that there was a policy protecting persons in police detention and the government provided a complaints directorate for persons whose rights were violated. There were prison visits to check on conditions and a civilian oversight mechanism of police. 36 laws repealed in 1996 to remove laws of apartheid regime that allows torture. SA recently presented a report to CAT and the government is finalizing the Torture Criminalizing Bill. **Corporal Punishment** came up before the Constitutional Court in 1995 and it was held to be a form of cruel, inhuman and degrading treatment and was dealt with in accordance with the criminal code. **Children:** programs aimed at assisting victims of crimes and judicial remedies through the courts to deal with family disputes.

Women's Rights

- Slovenia recommended that South Africa systematically include a gender perspective in the review.
- Canada recommended the implementation of legislative measures be enacted against sexual violence and improving police handling of sexual violence against women and girls.

- Angola encouraged (as a recommendation) South Africa to continue on the path of gender equality.
- Ghana recommended addressing further the subject of domestic violence.
- The Netherlands recommended specifically addressing the subject of gender-based violence and to ensure the protection of women's rights.

Responses by the delegation: **Not dealt with.**

Health

- Canada and Romania recommended South Africa take steps to ensure equitable access to treatment for HIV/AIDS, especially in rural areas.
- Algeria recommended a stepping up of their policy on HIV/AIDS with a special focus on teenagers.

Responses by the delegation: Addressed in their written statement including specific measures addressing the equal access of citizens to health care services.

Government also created an Act providing cheaper access to drugs. Assessment of HIV/AIDS focuses on analyzing the prevalence rate of young people and improves their preventative programs.

Treaties and Recommendations

- Canada recommended South Africa implement the recommendations of the Committee on the Elimination of all forms of Racial Discrimination (CERD).
- France recommended that South Africa ratify the Convention on Enforced Disappearances.

Responses by the delegation: No specific response given though did state above that they are in the process of ratifying treaties and will report on this progress in four years time (at the next review).

Economic, Social and Cultural Rights

- Zimbabwe, Germany, Brazil and Romania recommended that South Africa ratify the International Covenant on Economic Social and Cultural Rights and consider ratification of the Optional Protocol accompanying this Covenant.
- Nigeria recommends
- Zimbabwe recommended that marginalised members of society be integrated into social, economic and public life at a quicker pace.

Responses by the delegation: Policies such as the reconstruction and development policy focusing on sustainable development, skills building of citizens from poorer backgrounds, creation of a broad-based Empowerment Act, the Black Economic Empowerment Act. State often intervenes to provide socio-economic rights.

Education

- Angola recommended South Africa take action to promote school attendance

Responses by the delegation: The SA Constitution guarantees the right to basic education. Great efforts put into disadvantaged communities and SA has the highest rate of government investment in education in the world: for example created the National Students Financial Scheme (NSFS) which converts student loans into grants, alleviating financial burden.

Access to Justice

- Mexico recommended that South Africa take action to ensure a long-lasting respect for Human Rights standards including a fair hearing and compliance with international human rights norms.

Responses by the delegation: No specific response given though dealt with implicitly under **torture**.

Development

- Sudan recommended that South Africa give special attention to international cooperation through the sharing of experiences with other developing countries.
Responses by the delegation: Not dealt with.

Discrimination

- UK and Belgium recommended further eliminating discrimination on the basis of sexual orientation

Responses by the delegation: no specific legislation exists in SA addressing sexual orientation, however non-discrimination is prohibited under the Constitution.

Concluding statement (5 minutes)

Spoke about achieving economic, social and cultural rights and also the struggle towards eliminating the legacies of apartheid.

States that made solely welcoming statements

Sri Lanka, Palestine, Botswana, Jordan and Cuba. The latter stated that 'because we could always do more and there is always still more to be done and on the grounds of humanity, will note carefully other recommendations'.

Human Rights mentioned during the review but on which South Africa did not give a response:

Recommendations: Women's Rights and Development

Questions/Issues: Indigenous Peoples, National Human Rights Institutions, Prison Conditions.

Speaking Times:

- South Africa spoke in total for: 50 minutes
- Other States: All Member-States had 2 minutes to speak given the large list of speakers. Non-Member States were given 1 minute.

Disclaimer: this summary is by no means exhaustive as it is just an indication of the discussion that took place during the review and should therefore not be quoted as an official document of the UPR process.