

Republic of South Africa
Joint Submission to the UN Universal Periodic Review (UPR)
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¹ HURISA is an NGO founded in 1991 that offers professional services towards the promotion of a human rights, culture, peace and democracy

² POWA) was formed in 1979 by a group of women volunteers in order to provide referral services and sheltering to women who were experiencing domestic violence

³ CoRMSA) was founded in 1999 tasked with promoting and protecting refugee and migrant rights. It is comprised of a number of member organisations including legal practitioners, research units, and refugee and migrant communities

⁴ CIVICUS is an international movement with members and partners in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened. NGO in General Consultative Status with ECOSOC

⁵ CHR is both an academic department and a non-governmental organisation that works towards human rights education in Africa, a greater awareness of human rights, the wide dissemination of publications on human rights in Africa covering various themes.

⁶ CAL is a feminist coalition of 30 member organisations in 19 countries in Africa founded in 2003 that work to transform Africa into a place where all lesbians enjoy the full range of human rights, secure in the knowledge that we are recognised as full citizens, with rich and diverse cultures, and a significant and respected presence in all spheres of life, through personal and organisational growth

1.0. Introduction:

1.1.In this document, concerns are raised in regard to issues within the reporting period where gaps were identified in the previous review and are persisting. They include: Overall concerns; Violence Against Women, Gender equality and Non-Discrimination; Situation of Children's Rights; Rights of Refugees and Migrant workers and Xenophobia; Racial, Gender and Sexual Orientation Discrimination and hate crimes; UPR process and National Human Rights Institutions; and key recommendations from the submitting organisations.

1.2. Methodology:

1.3., The final submission is a result of consultative process between the aforementioned organisations and gathering of information from their partnerships and existing documents of the themes in the submission.

1.0. Overall Concerns.

1.1.The Republic of South Africa (RSA) was reviewed in 2008 and recommendations advanced by peer states on the implementation of mechanisms, legislative frameworks and policies in line with the constitutional and international human rights norms were positively welcomed by RSA. The past review was timely to show case practical experience of the human rights situation on the ground in South Africa since the advent of democracy in 1994. It also afforded the opportunity to address challenges the RSA faced in the reconstruction from apartheid to constitutionalism. The process also involved sharing information on steps taken by government to address inequalities of the past as well as elaborating on progress made to alleviate poverty for the previously disenfranchised populations. However, this initiative was thwarted by the lack of awareness raising in communities and the general public participation in the UPR process was indistinguishable.

1.2.HURISA concedes that the previous review revealed unexpected worrying realities of invisibility of practical implementation of plans conceived to uplift the previously disenfranchised populations from the economic hardship of the past.

1.3.Follow up to previous review: Analogous to the manner in which the UPR process ensued four years ago domestically, the same modus of operandi persisted in handling the follow up of the previous review. Therefore according to HURISA, it is impossible to validate any implementation of recommendations taken as reported by RSA during the 8th session of the UN Human Rights Council. Needless to say there is lack of visibility on the implementation of voluntary commitment to ratify the International Covenant on Economic Social and Cultural Rights by South Africa.

1.4.The situation of national human rights institutions in South Africa: Although the government is correct to blame the apartheid regime for the lack of progress to overcome the socio economic imbalances of the past. It is important to acknowledge that corruption

perpetrated by government officials and key ministries of the country contributes detrimentally to challenges experienced from the ground⁷. Moreover, the country's human rights mechanisms under the guardianship of the Constitution, Constitutional Court and National Human Rights Institutions especially the South African Human Rights Commission (SAHRC), Public Protector (PP), Commission for Gender Equality (CGE), Culture Religion Linguistic Commission (CLRC) are not adequately supported by the government. It is important to respect the special powers bestowed to these institutions to execute their functions according to the framework of the Paris Principles to promote institutions to function autonomously, without fear, favour and prejudice. South African human rights institutions do enjoy these powers to a certain degree. At the moment the PP is demonstrating effectiveness in exercising its functions independently. The same cannot be said about the SAHRC as it has dropped in its visibility compared to the robust way of promoting human rights it demonstrated in the past. The CLRC had continued to function without much impact and miss various opportunities to articulate its mandate of promotion of culture, religion and languages in the country. The manifestation of this was demonstrated in controversies surrounding unsuccessful VISA application of Dalai Lama's visit to South Africa in 2010 and 2011.

2.0. Violence Against Women, Gender equality and Non-Discrimination:

2.1. Implementation of enacted Laws: Laws aimed at ending violence against women, in particular providing for remedial measures for survivors of gender based violence are progressive. Despite this, major gaps remain in the effective implementation, further aggravated by dysfunctional or semi-functional state institutions which have adverse consequences for women's realisation of the right to equality. In terms of the Article 12 and 19 of the CEDAW, South Africa committed to taking appropriate measures to protect women against gender based violence and to provide support services for victims and survivors of gender based violence. Despite recommendations made by the Human Rights Council in 2008 and following the Concluding Observations made by the CEDAW Committee in 2010 regarding women's rights in South Africa, minimal progress has been made in addressing the challenges in the gender based violence sector.

2.2. High Levels of Violence Deny Women the Right to Equality and Non- Discrimination: South Africa has sought to develop a comprehensive response to Gender Based Violence (GBV) that includes legislation, public awareness programmes and shelters for abused women. However, many women remain at risk in South Africa, which has one of the highest global rates of GBV. Official statistics are unreliable due to under-reporting, corruption and lack of disaggregated data. Even if one uses only the official statistics, there is no doubt that the rate of violence against women remains extremely high. South African Police Services (SAPS) statistics for reported rape were 69,117 in 2004/5, 68,076 in 2005/6, 65,201 in 2006/7, 63,818 in 2007/8, and 71,500 in 2008/9⁸. The 2011 RSA Police report recorded an

⁷ According to the ISS report over 540billion funds is lost in the hands of the government.

⁸ Rape statistics sourced from

http://www.saps.gov.za/statistics/reports/crimestats/2008/march_april_2001_2008/category/rape.pdf in *Criminal Injustice*:

increase From 55097 to 56272 in rape cases⁹. What is evidenced from these statistics is that the high levels of violence deny women the right to be free from discrimination. This is true of all women, but particularly so for women who are marginalised including poor women, refugee women, sex workers, women living with HIV and AIDS and lesbian women.

2.3. Insufficient Support Services at Health Facilities for Victims and Survivors of GBV:

Although policies and guidelines have been developed to improve services for ameliorating the after effects of rape and improve access to justice, many women do not receive adequate support. A study by Tshwaranang Legal Advocacy Centre¹⁰ confirmed that women experience systemic access problems when seeking support services at health-care facilities.

Lengthy waits for medico-legal examinations are common at health-care facilities. This is aggravated by the fact that nurses are not able to provide many of the forensic and treatment services but have to wait for doctors, who are in short supply especially in rural areas. The services are fragmented across many rooms and service providers within a facility, which lengthens the process substantially and limits privacy and confidentiality.

Medical treatment that is time-dependent for its efficacy is often delayed. Post-exposure prophylaxis (PEP), only effective within a short window of opportunity after the attack, is often the last step provided in the treatment for the women. PEP is frequently not available after-hours, when most attacks are reported. The majority of women who receive their first PEP treatment do not return for essential subsequent doses. Challenges persist with regard to the attitudes of health care workers, many of whom still carry strong bias and conservative positions around women's rights, gender and sexuality.

2.4. Victims Of Domestic Violence Cannot Access And Do Not Receive Adequate Protection:

South Africa passed the Domestic Violence Act in 1998 which sought to provide remedies for victims of domestic violence. This law allows courts, inter alia, to: prohibit abusive behaviour; prohibit entry into a victim's home; order the perpetrator out of the family home; and order the removal of his weapon. In addition, oversight is built in by means of a dedicated Independent Complaints Directorate (ICD) established to oversee adherence to obligations imposed on the police in terms of the law. But despite this strong legal framework, the majority of women do not receive the protection they are entitled to from either the police or the magistrate's courts.

2.5. Many police officers do not provide the prescribed services. This includes failure: to investigate telephonic reports of domestic violence; to assist with the service of court process; to refer complainants to shelters or organisations that can assist them; to assist complainants to obtain medical assistance; or to provide them with the necessary forms for completion by a registered medical practitioner in the case of a criminal case being opened. Police officers are reluctant to arrest perpetrators of abuse owing to the widespread perception that domestic violence is a "family matter" in which they have no right to involve themselves.

Violence Against Women in South Africa: Shadow Report on Beijing +15 (March 2010), POWA, AIDS Legal Network, Solidarity with ♀ who speak out, CAL: page

⁹ Crime report, 2010/2011 http://dnaproject.co.za/new_dna/wp-content/uploads/2011/09/110908crimestats2011.pdf

¹⁰ Vetten L, Kim J, Ntlemo E, Mokwena L (2009) *From Rape to Practice: Lessons in the Implementation of Health and Victim Empowerment Policy Applicable to Rape Survivors*. Policy Brief no 2, February 2009, Tshwaranang Legal Advocacy Centre.

2.6. Women suffer secondary abuse when they report domestic violence due to negative attitudes towards complainants; this is especially so when charges are withdrawn. A further impediment is that the application forms for a protection order must be in writing; moreover, the forms are only available in two of the official eleven languages (English and Afrikaans), both of which are not understood or spoken by many rural women.

2.7. The Commission for Gender Equality (CGE) is an independent state organ established in Chapter of the South African Constitution with oversight mandate to promote gender equity and equality in the country, is best placed to play fundamental role in the follow up process as recognised key stake holder by UPR. The CGE remain seized with challenges based on gender violence, in particular rape of women, children and human trafficking and yet is inadequately funded.

3.0. Situation of Children’s Human Rights: While legislation and policies are in place on the rights of children, the status of state reporting on international and regional instruments promoting and protecting children’s rights is always affected by delays. Preparation of the second and third reports is overdue though RSA indicate that these reports are now completed and would be merged and submitted to cabinet for approval.

3.1. Schools without facilities not conducive to learning as well as learners walking to schools more than 4km radius away from learners homes still exist. Most of the schools located in the rural areas lack proper building infrastructure, portable water and sanitation are rare in local communities. It is very common for educators and learners to relieve themselves in the bush. School buildings including class rooms are in state of collapse. Some learners are still receiving lessons under the trees in the Eastern Cape Province¹¹. Overcrowding and inadequate number of educators are added problems to the situation of children’s human rights in rural areas. The Eastern Cape and Limpopo Provinces are leading in presenting schools that violate the human rights standard committed to by the state. This lack of adequate service delivery has resulted in the Department of Basic Education being put under the national administration in the Eastern Cape Province.

3.2. Inequality in access to quality education: CHR noted that the quality of physical assets and infrastructure at school level is highly unequal. Literacy and numeracy test scores are low by African and global standards. Early childhood development is still regarded by many as unnecessary and is underfunded by Government. Teachers in black South African schools teach an average of 3.5 hours per day compared to 6.5 hours per day in former white schools. This amounts to a difference of three years of schooling.¹²

3.3. Lack of registration of children at birth: Many children have not been declared at birth and have no birth certificates and learners without birth certificates, especially in rural areas are

¹¹ A recommendation was made to increase efforts to facilitate school attendance particularly among children from economically disadvantaged families. The right to education committed by government in the Convention on the Right of the Child as well as the African Charter on the Right and Welfare of the Child lack practical implementation in rural communities. ¹¹

¹² Diagnostic overview, National Planning Commission, June 2011,

<http://www.info.gov.za/view/DownloadFileAction?id=147192>

difficult to identify. This makes children vulnerable to human trafficking. In addition, South Africa remains a hub of child trafficking from Mozambique, Zimbabwe and Zambia whose identity becomes difficult to determine.

3.4. Child Participation: South Africa introduced the concept of Children's Participation in the early stages of its democracy. This entailed the formation and creation of fora such as Children's Parliament and the introduction of Junior Mayors in the municipal chambers. The concept afforded children an opportunity to discuss their own issues amongst themselves with a view of participating in the decision-making process on aspects affecting their lives. However, children's participation has subsequently been dropped without any reason being given to stakeholders.

3.5. Child poverty: As the Millennium Development Goals deadline to half poverty by 2015 nears, child mortality of under 5 year olds by two thirds and maternal mortality by three quarters, abject poverty is rife in poor provinces, particularly in the most extreme rural areas. Limpopo Province accounts for the highest number of 83.3% while the Eastern Cape Province has 71.5%. Unemployment is the key contributor to poverty and most children live in households with no economically active household members¹³. Children living in poverty end up dropping out of schools as a result of lack of financial resources for school uniform and other related needs¹⁴.

3.6. Transportation: learners in Eastern Cape and Limpopo Provinces experience problems of lack of transportation facility for attending schools. This is an on-going problem and impacts severely on children with disabilities as they often cannot walk long distances to reach their respective schools. Generally most rural schools provide no proper facilities for children with disabilities¹⁵.

3.7. Children and HIV/AIDs: Due to the HIV epidemic, there has been a marked increase in the proportion of children in South Africa who are double-orphans and from child-headed families¹⁶. Children have the burden of caring for younger brothers and sisters and this forces many to drop out of school in an effort to survive and girl children are at a higher risk of sexual exploitation.

3.8. Water and sanitation: Lack of water and sanitation in the rural areas makes people to rely on rivers or streams for drinking water. People have to walk long distances in search of water which is often collected from polluted sources such as unprotected wells and rivers. Lack of

¹³ According to the UN report, South Africa is among countries that would not achieve this goal due to the prevailing situation of children in the country and many communities surviving by less than R10.00 a day

¹⁴ A recommendation was made to South Africa to continue efforts to promote and facilitate school attendance, particularly among children from economically disadvantaged families

¹⁵ South Africa ratified UN Convention on the Rights of Persons With Disabilities in 2007. The initial due date for submission of the state report was on May 2010. Most NGOs / CBOs were not aware of the states accountability under this UN mechanism.

¹⁶ 6 million people suffer from HIV/AIDs in South Africa, making the country statistic 5.6 of the people living with the pandemic in the world

toilets means that people have no option but to defecate openly and this results health hazards, associated with malodorous and raw sewage.

- 3.9. **Child Abuse and Violence:** Sexual offences are often committed against young children by adults who also subject them to severe form of violence. Teenage pregnancy is increasing, especially in Limpopo province as well as learners abuse by educators, through rape and corporal punishment. This is despite abolition of corporal punishment and sanction of culprits through prosecution, convictions, sentencing and fines. Corporal punishment is more prevalent in the private sphere and the government lacks mechanism to control corporal punishment on children in this sphere¹⁷.
- 3.10. **Child Exploitation:** Child labour is a problem in the Limpopo Province wherein children are subjected to work on commercial farms along the border with Zimbabwe. Many of the children who suffer from exploitation do so because they have no choice. Their parents or guardians may need extra income or they are orphaned and responsible for their siblings. In Eastern Cape and Limpopo Provinces children are used as street beggars by adults in the small towns and get paid a pittance in return.
- 3.11. **Substance abuse:** Substance abuse is rife among young children. This mainly affects school going and non-attending children. These substances include cannabis, tik, heroin and cocaine and it has been medically proven that they affect their performance at school¹⁸.
- 3.12. **Harmful traditional and cultural practices:** Notable is a practice of Ukuthwala which is rife in the rural areas of the Eastern Cape Province and KwaZulu Natal. The practice involves the abduction of young girls for wives to elderly men in the villages. This disrupts their education and robs them the right to realise their full potential. Virginity testing is another practice that children face in rural areas considered to be a Zulu traditional practice¹⁹
- 3.13. The situation of children's rights in Eastern Cape and Limpopo Provinces in poor rural communities is worrisome and contravenes constitutional imperatives as well as legislative frameworks aimed at improving situation of children. This also shows the lack of implementation of recommendations offered from international commitments to advance children's rights.

4.0. Protection of Refugee and Migrant Rights and Xenophobia

¹⁷ Besides removing reasonable chastisement, but also criminalise corporal punishment with aim to raising awareness and providing necessary resources to support parents in adopting positive and alternative forms of discipline

¹⁸ Human Science Research, Pretoria South Africa, based on national surveys, current use of cannabis ranged among adolescents from 2% to 9% and among adults it was 2%, cocaine/crack (0.3%), mandrax/sedatives (0.3%), club drugs/amphetamine-type stimulants (0.2%), opiates (0.1%), and hallucinogens (0.1%). A study done by Family Practice evaluated the use of tik (crystal methamphetamine), a relatively new drug. Conducted a cross-sectional study was performed amongst 12 secondary schools in Mitchells Plain; Grade 8 and Grade 11 with a sample of 438 learners.

¹⁹ Section 39(3) recognise rights conferred by common law, customary law or legislation to the extent that that they are consistent with the Bill of Rights

4.1. In spite of South Africa having signed the 1951 UN Convention (and 1967 Protocol) Relating to the Status of Refugees, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, both of which prohibit the return of asylum seekers to countries where they may face persecution (the *non-refoulement* principle), the Department of Home Affairs has recently stated that asylum seekers will be subject to the ‘first safe country’ principle²⁰. This means that individuals who pass through countries *en route* to South Africa without having sought asylum in those countries are being turned back from South African borders without any proper determination of their need for asylum protection. The on-going conflict in Somalia, exacerbated by the drought in some parts of the country, has seen an increase of Somalis fleeing the country. These individuals fit clearly into the 1951 UN Convention definition of refugees. However The UNHCR and other agencies have noted a number of instances of Somalis being turned away from South African borders during the last year and a decline in the number of Somali asylum seekers in the country. Just looking at an example from one transit route, the UNHCR Representative in Mozambique reported on a mission from Tanzania that 800 Somalis were in detention in Twala after having been turned back from Mozambique. In January this year, the European Court has ruled that returning an individual to a country whose asylum system was deficient constituted ‘indirect *refoulement*’²¹. Thus South Africa is clearly violating the *non-refoulement* principle and the Universal Declaration of Human Rights in denying the right of individuals to seek asylum.

4.2. This type of discrepancy between the stated legal obligations of South Africa to protect the rights of refugees and migrants and the current policies and practices being employed on the ground is just one aspect in a worrying trend. During 2011 two out of the six Refugee Reception Offices (RROs) in the country have been closed down without consultation or communication as to alternative arrangements. Given that South Africa has the highest number of asylum applications in the world (over 210,000 in 2009²²) the decreasing number of RROs is putting an even greater strain on the offices that remain functioning. CoRMSA is currently monitoring RROs and the findings thus far show that many people are sleeping rough outside offices, often for several nights, as the existing offices cannot cater for the numbers of clients. In addition, the Director-General of the Department of Home Affairs made clear in a media briefing on 4th November that asylum seekers are now given only five days to lodge their claim. The time and expense of travelling to remaining offices is going to seriously prejudice individuals’ ability to claim asylum as well the South African government policy of integration of refugees. The Department of Home Affairs has recently been stating that they are looking to move all RROs to border areas over the course of the coming year²³. This will further compromise the stated policy of integration without camps as major cities are a great distance from border areas so de-facto ‘camps’ will emerge by necessity to cater for the people arriving and queuing at the RROs.

²⁰ Department of Home Affairs representative, Minutes of a UN inter-agency and civil society Protection Working Group (PWG) meeting, UNHCR Offices, Pretoria, 4 November 2011

²¹ CoRMSA Annual Report, ‘Protecting Refugees, Asylum Seekers and Immigrants in South Africa during 2010’, Johannesburg, April 2011, p8

²² CoRMSA Annual Report, ‘Protecting Refugees, Asylum Seekers and Immigrants in South Africa during 2010’, Johannesburg, April 2011, p9

²³ Director-General, Department of Home Affairs Media Briefing, 4 November 2011 and Department of Home Affairs representative, Minutes of a UN inter-agency and civil society Protection Working Group (PWG) meeting, UNHCR Offices, Pretoria, 4 November 2011

4.3. The legal and practical limits of South Africa's immigration and asylum regime have left many migrants vulnerable to arrest, detention and deportation. Despite claims to the contrary, the Department of Home Affairs has done little to improve the detention and deportation processes. While deportation remains a central part of immigration management in South Africa, the processes leading to it often occur outside of the law and violate the procedural guarantees put in place by the Refugees and Immigration Acts as well as the Promotion of Justice Act. CoRMSA is also worried that there is no independent monitoring of Department of Home Affairs' detention facilities, and individuals working at these facilities are largely unaccountable for the violations of the law and of the rights of detainees. A recent survey²⁴ of detainees at the Lindela Detention Centre showed that the Immigration Act and accompanying regulations have been consistently violated. In general, detainees reported that police had not allowed them to retrieve nearby documents that could confirm their legal status. Detainees also reported that the police were either unwilling or unable to verify their status with the Department of Home Affairs. Many had been detained for deportation even though they had not been classified as illegal foreigners by an immigration officer. Xenophobic attitudes, violence and corruption also remain significant features of the arrest process. The threat of violence is exacerbated by the fact that individuals arrested as suspected illegal foreigners are often held with ordinary prisoners and those awaiting trial, despite the fact that they are administrative detainees who have not been charged with a crime. Almost two-thirds of those arrested as suspected illegal foreigners, moreover, were held beyond the legally allowed 48 hours. On average, detainees at Lindela spent ten days at a police station before being sent to Lindela.

5.0. Racial, Gender and Sexual Orientation Discrimination and hate crimes;

5.1. Discrimination based on race, sexual orientation and gender identity, refugees and migrants: The Year 2011 marks the tenth Anniversary of the World Conference on Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR)²⁵. As a country emerging from the legacy of apartheid and leading the global debate against discrimination, RSA practical action at domestic level leaves a lot to be desired. Firstly, there was no visibility given to great efforts of the WCAR and in Durban Declaration Programme of Action is not known at grass root level. Secondly, 2011 the International Year for People of African Descent, with a view to strengthening national actions and regional and international cooperation for the benefit of people of African descent in relation to their full enjoyment of economic, social, cultural, civil and political rights and other rights passed unnoticed²⁶. Thirdly, Education and awareness raising against racism is not effective in schools or any public and private institutions. Instead the private sector gets away with murder and continues with discrimination and bypassing this through the use of constitutional

²⁴ Amit, R 2010, 'Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa', Johannesburg: Forced Migration Studies Programme.

²⁵ The recommendation was also made to South Africa to follow up to the recommendation on the Elimination and Racial Discrimination of migrants, to increase efforts to provide mediation machinery to provide victims of discrimination on the basis of sexual orientation more accessible and rapid remedies

²⁶ Resolution 64/169 of the General Assembly on International Year for People of African Descent, Sixty-fourth session Agenda item 69 (b)

rights which gives freedom of association or so to say fair discrimination. However the constitution under section 36 of the Bill of Rights conferring limitation of rights also prevents limitation of rights to happen unconstitutionally²⁷. However this provision is not often exhausted to ensure protection of victims aggrieved affected by fair discrimination.

5.2. Young black lesbian women are also forced into marriage in an attempt to prevent them from expressing their sexual orientation. Documented cases have shown some families using corrective rape on their lesbian daughters²⁸. Many LGBTI girls are forced to drop out of school due to bullying by peers and harassment and discrimination by educators.

5.3. The equality courts are meant to provide remedies in disputes based on inequality. However awareness raising is not taking place in rural communities including producing materials in local languages to enable victims and Community Based Organisations to know how, when and where to access justice for enforcement of their rights. The indigenous populations remain excluded from racism debates and are not fully integrated in the general society. The RSA 2006, 2008 and 2011 periodic reports to ICERD are outstanding. The government has embarked on the process to combine these reports to be submitted in 2012. Delay in submission of periodic reports to the ICERD and to implement recommendations offered in 2004 retards South Africa from coordinating comprehensive actions to end discrimination in the country from the ground.

5.4. The government is commended for making efforts to advance Hate Crime Bill to address challenges based on intolerance through interaction with CSOs in various platforms. However the delay in creating measures for remedies in dealing with situation of hate crimes in the short and medium terms is a concern. The CSOs have recommended that structures established to combat Hate Crimes should be inclusive of representatives of the CSOs²⁹. The process should also ensure all victims that are not clearly listed in the DDPA to benefit from remedies offered in future hate crimes legislation. They include victims of xenophobia, racism, ethnic discrimination and discrimination on the basis of sexual and gender identity or orientation and religious intolerance. Sexual minority groups in South Africa continue to experience attacks resulting in death, correctional rape and other harassment because of their gender identity and sexual orientation. Failure on the part of RSA to implement the existing legislation has compounded the situation.

²⁷ The Bill of Rights applies vertically and horizontally under section 8 of the Bill of Rights. Further right in the B of R may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors.....

²⁸ Report by One in Nine Campaign, 2010.

²⁹ South Africa was recommended to increase mediation machinery to provide victims of discrimination on the basis of sexual orientation more accessible and rapid remedies

6.0.RECOMMENDATIONS:

The submitting organisations recommend that the RSA should:

- 6.1.Strengthen the implementation of policies and laws to protect all women, especially those exposed to multiple vulnerabilities, notably migrant women, LGBTI people, and women in rural areas. This should include adequate research and ongoing monitoring.
- 6.2.Expedite the prosecution of perpetrators of domestic violence in order to convey to offenders and the public that society condemns domestic violence by, inter *alia*, ensuring enhanced coordination among law enforcement officials, judicial officers, and non-governmental organisations that work to protect and support women survivors of gender-based violence.
- 6.3. Increase funding to provide adequate services (including shelters for abused women and children) and access to justice and redress for survivors.
- 6.4. Give due consideration to the safety of women whilst adjudicating domestic violence cases and emphasise that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.
- 6.5.Widely implement the recommendations emanating from the previous review, especially to systematically and continuously integrate a gender perspective in the follow up process to the UPR and CEDAW reporting.
- 6.6.Involve the CGE in the implementation UPR recommendations and those by CEDAW and other treaties related to promotion of gender equality and equity. RSA should adequately finance the CGE to do this complimentary role. It is also important to highlight that the CGE enjoy status with the UN and its role is relevant in taking South Africa to higher levels in-terms of promoting gender equity domestically.
- 6.7.Strengthen the recommendation of UPR on national institutions, PP, CGE, SAHRC, CLRC with enforceable powers in court to ensure effective protection of the rule of law, including the judiciary and protection of individual rights as crucial under the current political, economic and cultural environment. Coordination among state institutions to alleviate unsystematic and fragmented way in dealing with gender based challenges encountered during both review and follow up on the UPR process is very important.
- 6.8.Without delay ratify the International Covenant on Economic and Social Rights as promised in its voluntary commitment during the 2008 UPR review.
- 6.9. Ensure broad open democratic participation domestically of both CSOs and CBOs in rural areas in preparation of states reports of various international and regional obligations.
- 6.10. Submit their over due reports on to the CRC committee putting in mind of the current situation of children's rights in the country as reported in the 2008 UPR recommendations.

- 6.11. Undertake a Multi-sectoral initiative through coordination of training by all stakeholders collaborating cohesively and uniting and role of media involved to deepen awareness raising on human trafficking including CSOs, CBOs, educators, academia, national institutions and private sector and government to end the ignorance and curbing of human trafficking especially of children. Translation of materials in local languages should be done to assist communities with better understanding on impact of human trafficking and play instrumental role with police in tracking perpetrators and victims.
- 6.12. Reinstate the concept of Children's Participation with the view of affording children the opportunity of expression and participation in decision-making process on aspects affecting their lives and on understand their rights and responsibilities.
- 6.13. Implement a policy on child registration at birth for all children born in South Africa to reinforce protection of children from abuse especially child trafficking and forced marriages.
- 6.14. Address *de facto* inequality in schools through empowerment of educators and school governing bodies to monitor the implementation of policies and programmes with the view of granting quality and equal access to education to all South African children.
- 6.15. Take concrete steps to address the harmful traditional practices affecting children including a political will to dialogue and ensue that traditional rulers enforce existing policies in line with the constitution and eradicate all harmful practices.
- 6.16. Take urgent measures to prevent and address the bullying and forcing out of school of young women and men and transgender people and to ensure the right to education is respected by school governing bodies, education department officials, educators, peers and community members
- 6.17. Sensitise society, religious and traditional leaders and popularise the Human Rights Council Sexual Orientation and Gender Identity (SOGI) Resolution, 2011 as a critical move to incorporate the achievements made at international level and take effective measures to protect LGBTI in the country.
- 6.18. Implement the Durban Declaration on Programme of Action and the recommendations of the inter-governmental group to end racial and sexual discrimination and xenophobia
- 6.19. Strengthen the mechanisms for supervision of procedures, including the procedure for recognition of the status of refugees and the deportation of foreigners, with a view to ensuring the right to a hearing, thus complying with the policy of *non-refoulement* as well as closing the door to possible abuses.
- 6.20. Ensure that alternatives to immigration detention and international best practices in this field are explored in order to develop a holistic sub-regional immigration management system that upholds the rights of individuals, is cost-effective and does not compromise national security.

6.21. Ensure that a communications strategy on the processes and alternative arrangements for the closure of Refugee Reception Offices and their move to border areas is developed and implemented including systematic and regular consultations with civil society stakeholders. This will ensure that the good practice of asylum seeker and refugee integration is upheld.