



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés



## **Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedure Reports**

### **- Universal Periodic Review:**

## **SOUTH AFRICA**

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to South Africa.

### **1. Treaty Body Reports**

**CEDAW/C/ZAF/CO/4**

**COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST  
WOMEN, 48th Session**

**5 April 2011**

### **Trafficking and exploitation of prostitution**

27. The Committee is concerned about the lack of information about the extent of the phenomenon of trafficking in women in the country, despite the acknowledgement on the part of the State party, in its report, that it was a country of origin, transit and destination of victims of trafficking. The Committee notes with concern that statistics on the number of women and girls who are victims of trafficking for sexual and economic exploitation are not available, in light of the fact that prostitution is criminalized. It is also concerned at the State party's failure to address the root causes of trafficking and prostitution, including poverty, which impedes the State party's efforts to address these issues in a serious way. In addition, the Committee regrets the lack of information provided on the existence and implementation of regional and bilateral memoranda of understanding and/or agreements with other countries on trafficking, and the inadequate information provided on prosecution and punishment of traffickers.

### **28. The Committee urges the State party:**

**a) To expedite the adoption of the Prevention and Combating of Trafficking in Persons Bill in order to fully implement article 6 of the Convention, including through the effective implementation of this new legislation on trafficking, ensuring that perpetrators are prosecuted and punished and victims adequately protected and assisted;**

**b) That in all parts of the country information and training on how to identify and deal with trafficking victims and on anti-trafficking provisions in the domestic law be provided to the judiciary, law enforcement officials, border guards and social workers;**

c) **To conduct comparative studies on trafficking and prostitution and address their root causes, including poverty, in order to eliminate the vulnerability of girls and women to sexual exploitation and trafficking and to undertake efforts for the recovery and social integration of the victims;**

d) **To ensure systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women in prostitution, and to include such data in its next periodic report;**

e) **To increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonize legal procedures aiming at prosecution of traffickers; and**

f) **To consider using the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) as a basis for their implementation.**

**CAT/C/ZAF/CO/1  
COMMITTEE AGAINST TORTURE, 37th Session  
7 December 2006**

16. The Committee is concerned with the difficulties affecting documented and undocumented non-citizens detained under the immigration law and awaiting deportation in repatriation centres, who are unable to contest the validity of their detention or claim asylum or refugee status and without access to legal aid. The Committee is also concerned about allegations of ill-treatment, harassment and extortion of non-citizens by law enforcement personnel as well as with the absence of an oversight mechanism for those centres and with the lack of investigation of those allegations (arts. 2, 13 and 16).

**The State party should take all necessary measures to prevent and combat ill-treatment of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre, provide non-citizens with adequate information about their rights and the legal remedies available against any violation of these rights and continue to accelerate its measures to reduce the backlog of asylum applications. Prompt, thorough and independent investigation of all allegations of ill-treatment of non-citizens should also be ensured and an effective monitoring mechanism should be established for those centres.**

24. The Committee is concerned with human trafficking in the State party and notes the lack of effective specific measures to combat such a phenomenon, including the absence of national legislation criminalizing human trafficking (art. 16).

**The State party should adopt legislation and other effective measures, in order to adequately prevent, combat and punish human trafficking, especially that of women and children.**

**CERD/C/ZAF/CO/3  
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION,  
69th Session  
19 October 2006**

### **Concerns and recommendations**

11. While acknowledging the historic reasons submitted by the State party not to gather disaggregated data on the ethnic groups that constitute its population, the Committee notes that, in the absence of disaggregated information on the composition of the population, an adequate vision of the diversity of the South African society cannot be obtained, nor an accurate perception of the effective enjoyment of the rights provided in the Convention by different ethnic groups (art. 1).

**The Committee recommends that the State party endeavour to include, in its next periodic report, a qualitative description of the ethnic composition of its population, in particular indigenous peoples and non-citizens, and, in this connection, draws the attention of the State party to paragraph 8 of its general guidelines (2000).**

21. While noting the recent Refugee Backlog Project, the Committee is concerned about the substantial backlog of asylum-seekers' applications (art. 5 (d) and (e)).

In the light of general recommendation 30 (2004) on discrimination against non-citizens, **the Committee encourages the State party to accelerate its measures to reduce the backlog of applications for asylum.**

23. The Committee is concerned about allegations of ill-treatment, including extortion, of documented and undocumented non-citizens by law enforcement officials, inter alia in the Lindela Repatriation Centre and at the border, and about the lack of investigation of those cases (arts. 6 and 7).

**The Committee recommends that the State party take appropriate measures to eradicate all forms of ill-treatment, including extortion, of non-citizens by law enforcement officials, ensure prompt, thorough, independent and impartial investigation of all those allegations, and prosecute and punish those responsible for those acts. It further recommends that the State party provide non-citizens with adequate information about their rights and the legal remedies available against their violation. The Committee also recommends that the State party provide detailed information in its next report on any specific training programmes and courses for law enforcement officials on human rights and on the provisions of the Convention and their application.**

27. While acknowledging the "Roll Back Xenophobia" campaign, the Committee remains concerned at the persistence of xenophobic attitudes in the State party and negative stereotyping of non-citizens, including by law enforcement officials and in the media, as well as at reports of racist behaviour and prejudices, in particular in schools and farms, and the inefficiency of the measures to prevent and combat such phenomena (art. 7).

**The Committee recommends that the State party strengthen its existing measures to prevent and combat xenophobia and prejudices which lead to racial discrimination, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the media.**

## **2. Special Procedures reports**

**A/HRC/17/33/Add.4**

**HUMAN RIGHTS COUNCIL, 17th Session**

**Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante**

**2 May 2011**

**73. The Special Rapporteur thanks the Government of South Africa for its invitation and for facilitating the visit, which allowed him to conduct meetings with all the authorities requested, civil society and the United Nations country team, as well as to conduct interviews with migrants, refugees and asylum-seekers. Despite the efforts made to protect migrants, including by providing assistance to migrants and their families, and recognizing that South Africa has taken measures to protect migrants, such as the process of regularizing Zimbabwean migrants, addressing the xenophobic attacks against migrants in townships and striving to alleviate the impact of the recent economic crisis, the Special Rapporteur noted that a number of challenges still need to be addressed, in particular the absence of a clear and comprehensive immigration policy, the lack of data and statistics, the question of detention of foreign nationals, access to health-care services and the situation of unaccompanied foreign children. In this context, the Special Rapporteur makes the recommendations below.**

**78. In addition to specific legislation, additional measures should be taken, such as:**

- (a) Strengthening the response of police and justice authorities to ensure that perpetrators of hate crimes and police profiling of foreign nationals are held accountable;**
- (b) The development of measures to monitor cases of hate crimes against foreign nationals by using police and justice statistics as a means of monitoring trends of such crimes and the response of police and justice authorities to these cases (with statistics on, inter alia, the number of arrests, the number of offenders prosecuted and the number convicted);**
- (c) The establishment of a visible and accessible mechanism whereby members of the public can report cases of violence against foreign nationals as a means of providing more effective police responses to mob violence against foreign nationals;**
- (d) The establishment of a permanent body in the office of the Presidency to ensure effective coordination of different Government department programmes on social cohesion, addressing xenophobia, police profiling and tackling hate crimes.**

**79. With regard to the arrest and detention of foreign nationals, the Special Rapporteur recommends that the Government, in particular the Department of Home Affairs, revise the Immigration Act in order to provide clearer standards and policies with regard to what qualifies as an “illegal foreigner” and on which grounds he or she can be detained.**

**80. The Special Rapporteur also reiterates the call made by the Working Group on Arbitrary Detention concerning persons detained under immigration legislation, and urges the Government to take the appropriate measures to allow detained illegal foreigners to challenge their detention and thus exercise all the rights guaranteed by the Constitution.**

**82. The Special Rapporteur commends the Government of South Africa for the regularization exercise for Zimbabweans living in the country (Special Dispensation Permits), which allowed many to apply for a legal residence permit. This measure represents a positive shift towards a rational, coherent and regionally beneficial migration management approach, and should be extended on a regional basis with other SADC Member States.**

**83. The Special Rapporteur encourages the Government to define a clearer appeal procedure and inform rejected applicants of this possibility.**

**86. The Special Rapporteur highlights the importance of an adequate legal framework for the protection of the rights of all children in the context of migration and the need to mainstream a child rights-based approach into migration programmes and policies. He encourages better collection of data at the national level and more thorough research on unaccompanied or separated children. He also recalls General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children, in which the Committee provided useful guidance on the protection of the rights of unaccompanied migrant children.**

**88. Finally, the Special Rapporteur encourages the Government of South Africa, in its implementation of programmes, to provide unaccompanied migrant children with comprehensive support and protection, including means to identify those who are vulnerable and in need of international protection. Protection services should include access to food, health care and legal advice; support for return to the community of origin; professional and vocational training; and the pursuit of durable solutions in the case of refugee children. These programmes should also include reproductive sexual health awareness and training to address psychological trauma.**

**A/HRC/6/17/Add.2**

**HUMAN RIGHTS COUNCIL, 6th Session**

**Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin**

**7 November 2007**

#### **Recommendations**

**76. The Special Rapporteur recommends the establishment of a general system of independent oversight for the detention of immigrants. This need is particularly**

**urgent in respect of the use of police detention facilities for immigration detention of persons subject to deportation proceedings.**

**77. The Special Rapporteur recommends re-examining the provisions on immigration detention so that judicial review would be mandatory within, say, 48 hours and that effective access to counsel is guaranteed from the moment of apprehension.**

**78. The Special Rapporteur recommends amending section 2 of the Refugees Act so as to prohibit the removal of any person, either by extradition, deportation or any other form of removal, to face a real risk of persecution, capital punishment, torture or any form of inhuman, cruel or degrading treatment or punishment, and the inclusion of a provision concerning the prohibition of refoulement in the Extradition and Immigration Acts.**

**Human Rights Liaison Unit  
Division of International Protection  
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