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ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

South Africa

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions of the Office of the High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. The information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most documents used as references are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have also been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty, and/or to a low level of interaction or cooperation with international human rights mechanisms.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations¹

<i>Core universal human rights treaties²</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations/ reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
ICERD	10 Dec. 1998	None	Individual complaints (art. 14): Yes
ICCPR	10 Dec. 1998	None	Inter-State complaints (art. 41): Yes
ICCPR-OP 1	28 Aug. 2002	None	
ICCPR-OP 2	28 Aug. 2002	None	
CEDAW	15 Dec. 1995	None	-
OP-CEDAW	18 Oct. 2005	None	Inquiry procedure (arts. 8 and 9): Yes
CAT	10 Dec. 1998	Art. 30	Inter-State complaints (art. 21): Yes Individual complaints (art. 22): Yes Inquiry procedure (art. 20): Yes
CRC	16 June 1995	None	-
OP-CRC-SC	30 June 2003	None	-
CPD	30 Nov. 2007	None	-
OP-CPD	30 Nov. 2007	None	Inquiry procedure (arts. 6 and 7): Yes
<i>Core treaties to which South Africa is not a party:</i> OP-CAT (signature only, 2006), ICESCR (signature only, 1994), CED, OP-CRC-AC (signature only, 2002) and ICRMW.			
<i>Other relevant main instruments³</i>	<i>Ratification, accession or succession</i>		
Convention on the Prevention and Punishment of the Crime of Genocide	Yes		
Rome Statute of the International Criminal Court	Yes		
Palermo Protocol ⁴	Yes		
Refugees and stateless persons ⁵	Yes		
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶	Yes, except Protocol III		
ILO fundamental conventions ⁷	Yes		
UNESCO Convention against Discrimination in Education	Yes		

1. In 2006, the Committee against Torture (CAT) acknowledged with appreciation the wide ratification of international human rights instruments by South Africa since the end of apartheid.⁸ In 2000, the Committee on the Rights of the Child (CRC) encouraged South Africa to ratify ICESCR.⁹ In 2006, the Committee on the Elimination of Racial Discrimination (CERD) encouraged it to ratify ICRMW and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.¹⁰ In 2007, South Africa indicated that it was in the process of ratifying ICSECR, ICRMW and OP-CAT.¹¹

B. Constitutional and legislative framework

2. In 2006, CERD expressed its satisfaction over the peaceful transition from apartheid, as well as the adoption of the Constitution of 1996 with its Bill of Rights, and CAT commended South Africa for establishing a democratic society.¹² CERD acknowledged with appreciation the numerous legislative measures designed to build a democratic and multicultural society and to combat segregation and racial discrimination¹³ and CAT welcomed the abolition of the death

penalty and solitary confinement.¹⁴ In 2007, UNICEF noted important gains made in strengthening legislation and policies for children.¹⁵ In 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted the new Act on the Basis of the Prohibition of Mercenary Activities and Prohibition and Regulation of Certain Activities in Areas of Armed Conflict Bill, which clarifies South Africa's position concerning the participation of its nationals as private security or military contractors in armed conflicts.¹⁶ He noted that this was an important step for improving South Africa's accountability for human rights violations in the context of countering insurgency or terrorism by means of armed intervention.¹⁷

C. Institutional and human rights structure

3. CERD, CAT and CRC welcomed the establishment of the South African Human Rights Commission (SAHRC).¹⁸ CERD noted its very active role in eliminating the residual effects of racial discrimination¹⁹ and CRC encouraged the allocation of adequate resources to ensure its effective functioning.²⁰ SAHRC was accredited with "A" status in 2000 which was renewed in 2007.²¹ CAT also welcomed the establishment of the Law Reform Commission, the Independent Complaints Directorate, with specific investigation powers regarding allegations of torture and the appointment, under the Correctional Services Act, of Independent Prisons Visitors, who report to the Judicial Inspectorate of Prisons.²² In 2006, the Working Group on Arbitrary Detention highlighted the commitment made to reinforcing human rights protection, including at the regional and international levels, and noted that South Africa was one of the first African countries to issue a permanent invitation to all special procedures.²³ Strong human rights institutions and safeguards were also highlighted by the Working Group and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in particular the efforts made by the Constitutional Court and other State institutions such as the Law Reform Commission and SAHRC, which ensure laws and bills are in conformity with both the 1995 Constitution and South Africa's international obligations.²⁴ The Working Group also noted that the protection of human rights, and especially the rights of arrested and detained persons, are well established in the Constitution and that a variety of institutions with different executive, legislative and judicial powers dedicated to the protection of human rights act as agents for change in the transition and evolution of mentalities from an authoritarian regime to a mature democracy.²⁵ UNICEF also informed that South Africa has set up child protection units and 62 specialized courts for sexual offences and initiatives to provide integrated care to survivors of sexual violence.²⁶

D. Policy measures

4. In 2006, CAT acknowledged with satisfaction the establishment of a Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service and the issuing of Standing Orders for the Police.²⁷ CERD also welcomed the adoption of special measures, with the purpose of securing adequate advancement of racial or ethnic groups that have experienced discrimination.²⁸

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

<i>Treaty body²⁹</i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD	2004	Oct. 2006	Due since 2007	Fourth, fifth and sixth reports due in 2010
HR Committee				Initial report overdue since 2000
CAT	2005	Nov. 2006	Due since 2007	Second report due in 2009
CEDAW	1998	June 1998	-	Second and third reports overdue since 2001 and 2005 respectively
CRC	1997	Feb. 2000	-	Second report overdue since 2002
CRC-OP-SC	-	-	-	Initial report overdue since 2005

2. Cooperation with special procedures

<i>Standing invitation</i>	Yes
<i>Latest visits or mission reports</i>	-Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (28 July-8 August 2005); ³⁰ Working Group on Arbitrary Detention (4-19 September 2005); ³¹ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (16-27 April 2007); ³² and Special Rapporteur on adequate housing (12-24 April 2007) ³³
<i>Visits agreed upon in principle</i>	-Special Rapporteur on the right to food; -Special Rapporteur on the human rights of migrants
<i>Visits requested and not yet agreed upon</i>	Working Group mercenaries (requested in 2007).
<i>Follow-up to visits</i>	None
<i>Facilitation/ cooperation during missions</i>	-The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that he was very grateful to the Government for its invitation and its assistance in facilitating the mission. ³⁴ He noted that he regretted that requests made during the mission to visit police detention facilities were not met. He noted that in light of the terms of reference for fact-finding missions by special rapporteurs, such requests ought to be accommodated by the host Government and would have contributed in an important way to a greater insight into South Africa's counter-terrorism measures. ³⁵ -The Working Group on Arbitrary Detention noted the full cooperation enjoyed at all levels of government and of the provinces visited, as it was able to visit all the detention centres and facilities requested. ³⁶ -The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed his gratitude to the Government for its invitation and cooperation. ³⁷
<i>Responses to letters of allegation and urgent appeals</i>	Between 1 January 2004 and 31 December 2007, a total of eight communications were sent to the Government. In addition to communications sent for particular groups, three individuals, including one woman, were covered by these communications. During the same period, the Government replied to four communications (50 per cent).
<i>Responses to questionnaires on thematic issues</i>	The Government has responded to 2 of the 12 questionnaires sent by special procedures mandate-holders ³⁸ between 1 January 2004 and 31 December 2007, within the deadlines. ³⁹

3. Cooperation with the Office of the High Commissioner for Human Rights

5. South Africa is the host of the OHCHR Regional Office for Southern Africa and is 1 of the 14 countries in the Southern African Development Community (SADC) region covered by the Office. The Regional Office was established in 1998 with the aim of providing advice and assistance on human rights issues to national, United Nations and regional partners in the SADC region, including all State branches, national human rights institutions and civil society. The High Commissioner for Human Rights visited South Africa in 1998 and again in 2001 for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. South Africa is a regular contributor to the budget of OHCHR [South Africa is a regular contributor to the activities of OHCHR funded from extrabudgetary sources - phrase used for the Netherlands].⁴⁰

B. Implementation of international human rights obligations

1. Equality and non-discrimination

6. In 2006, CERD was concerned by the de facto segregation that persists as a legacy of apartheid in spite of the measures adopted, especially regarding ownership of property and access to social services such as health, education and housing.⁴¹ It was also concerned about the frequency of hate crimes and hate speech and the inefficacy of the measures in preventing such acts. It recommended the full and adequate implementation of article 4 of ICERD.⁴² While acknowledging the “Roll Back Xenophobia” campaign, CERD was concerned at the persistence of xenophobic attitudes and negative stereotyping of non-citizens, including by law enforcement officials and in the media, as well as at reports of racist behaviour.⁴³ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that the rise of immigration has also brought in an element of xenophobia against the immigrant community of South Africa⁴⁴ and found that firmer action is needed to address violence and other expressions of xenophobia towards immigrants.⁴⁵

2. Right to life, liberty and security of the person

7. In 2006, notwithstanding the provisions of the Constitution and the fact that courts may consider torture as an aggravating circumstance, CAT was concerned with regard to the absence of a specific offence of torture, or a definition of torture, in criminal law and recommended the enactment of such legislation in line with article 1 of the Convention in order to prevent and eliminate torture and combat impunity.⁴⁶ CAT also recommended the adoption of appropriate legislation implementing the principle of absolute prohibition of torture, prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture.⁴⁷ Also, while acknowledging the jurisprudence of the Constitutional Court, CAT was concerned at the return of persons to States where there are substantial grounds for believing that they would be in danger of being subjected to torture or sentenced to death.⁴⁸ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was concerned about the possible detention of illegal immigrants who are deportable, which is permitted under the Immigration Act of 2002,⁴⁹ and the application of the principle of non-refoulement.⁵⁰ He highlighted recent court cases which clarified the scope of application of the principle and established that it was binding upon South Africa.⁵¹ He recommended the establishment of a general system of

independent oversight for the detention of immigrants;⁵² a re-examination of the provisions on immigration detention to provide for mandatory judicial review within approximately 48 hours and effective access to counsel;⁵³ amending the Refugees Act to prohibit the removal of any person that faces 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 on the prohibition of refoulement in the Extradition and Immigration Acts.⁵⁴ CAT also recommended that South Africa ensure that adequate judicial mechanisms for the review of the decision are in place and ensure effective post-return monitoring arrangements.⁵⁵

8. In 2006, the Working Group on Arbitrary Detention noted that the behaviour of some police officers had created an image of the police acting with brutality and impunity.⁵⁶ These concerns were echoed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Both noted as positive measures the establishment of an Independent Complaints Directorate (ICD). However, the Special Rapporteur noted that transparent information on reports and decisions by ICD are not easily available.⁵⁷ The Working Group regretted that its mandate covered only the most serious cases of police brutality and noted that many of the cases referred to ICD are referred for investigation back to the police, which has limited capacity to monitor them, resulting in a lack of confidence in the effectiveness of the police and faith in their accountability.⁵⁸ The Working Group was further concerned about the high number of deaths in police custody.⁵⁹ CAT expressed similar concern and recommended that all deaths in detention and all allegations of acts of torture or cruel, inhuman or degrading treatment committed by law enforcement personnel be promptly, thoroughly and impartially investigated and that perpetrators be brought to justice.⁶⁰ CAT was also concerned about the overcrowding in detention facilities as well as the high rate of HIV/AIDS and tuberculosis among detainees and recommended the adoption of effective measures to improve those conditions and the establishment of an effective monitoring mechanism for persons in police custody.⁶¹ The Working Group on Arbitrary Detention noted that there was no legal stipulation that takes into account in the final sentence time spent in pretrial detention.⁶² It noted the high number of persons in detention serving long sentences and expressed concern over the multiple negative impacts of the minimum sentencing legislation and the alarming rate of overcrowding in detention facilities, affecting convicts, pretrial detainees and, in particular, juveniles.⁶³ While the Constitution states that the duration of detention in police stations should not exceed 48 hours, the Working Group noted that persons are detained there for months in totally inadequate facilities.⁶⁴ It expressed concern over the conditions of detention affecting pretrial detainees, which are much worse than those affecting sentenced detainees.⁶⁵

9. In 2000, CRC was gravely concerned about the high incidence of domestic violence, ill-treatment and abuse of children, including sexual abuse within the family.⁶⁶ In 2006, CAT was concerned at widespread acts of violence against women and children, especially rapes and domestic violence, and at the lack of an effective policy to prevent and combat such violence.⁶⁷ The Special Rapporteur on the sale of children, child prostitution and child pornography raised similar concerns in 2003⁶⁸ and CERD in 2006.⁶⁹ CAT recommended that South Africa adopt all necessary measures to prevent, combat and punish violence against women and children and reinforce its cooperation with civil society organizations; undertake research into the root causes of the high incidence of rape and sexual violence so that effective preventive measures can be developed; establish awareness-raising campaigns; investigate thoroughly those grave human rights violations; and work towards a “no tolerance” policy.⁷⁰ UNICEF noted that 40 per cent of

the reported rapes (22,500 out of 55,000 from 2004 to 2005) were of children.⁷¹ The Special Rapporteur on violence against women raised the case of the murder of a lesbian woman who was allegedly attacked by 20 young men, beaten, stoned and stabbed to death. She noted with concern that although the police have identified and arrested six of the alleged perpetrators, no official publicly condemned the incident as a hate crime; that this case does not constitute an isolated incident; and that lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths.⁷²

10. In 2006, CAT and CERD were concerned about human trafficking in South Africa and noted the absence of specific national legislation criminalizing it.⁷³ They recommended the adoption of such legislation, as well as effective measures to combat it. A 2006 UNFPA report noted trafficking of women and children from various countries into South Africa, and referred to a 2005 inquiry by the International Organization for Migration which indicated that women continue to be brought in from a neighbouring country for “use as sex partners and domestic servants without remuneration”.⁷⁴

11. While noting that corporal punishment is prohibited by the legislation, and confirmed by the jurisprudence of the Constitutional Court, CAT was concerned at its frequent use in some schools and other public institutions and recommended that legislation banning corporal punishment be strictly implemented and a monitoring mechanism be established.⁷⁵ In 2000, CRC raised similar concerns.⁷⁶

3. Administration of justice and the rule of law

12. In 2006, CERD was concerned by the findings of SAHRC on the deficiencies in the administration of justice, and recommended that South Africa strengthen its measures to reform the justice system and raise the sensitivity of the judiciary concerning the provisions of ICERD and that special consideration be given to specific issues related to indigenous communities.⁷⁷ It also noted that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, and requested that appropriate provisions be ensured and that the public be informed about all legal remedies in the field of racial discrimination.⁷⁸

13. In 2006, CAT recommended that South Africa take the necessary measures to establish its jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either extraditing or prosecuting him or her, in accordance with the provisions of the Convention.⁷⁹ It also recommended that necessary measures be taken to strengthen legal-aid mechanisms for vulnerable persons or groups.⁸⁰ CERD was concerned about the difficulties of access to justice, especially for members of the most disadvantaged and poor ethnic groups, including indigenous people, especially those unfamiliar with English or Afrikaans, and recommended that necessary measures be taken in that regard.⁸¹ In 2000, CRC was also concerned that the juvenile justice system does not cover all regions of South Africa and recommended the implementation of a juvenile justice system that is in conformity with the Convention and other United Nations standards.⁸² It also recommended that the relevant draft legislation be reassessed with a view to increasing the proposed legal minimum age of criminal responsibility.⁸³ While noting with appreciation the remarkable work of the Truth and Reconciliation Commission, CAT noted that de facto impunity persists regarding persons responsible for acts of torture committed during apartheid and recommended that South Africa

consider bringing to justice persons responsible for the institutionalization of torture as an instrument of oppression to perpetuate apartheid and grant adequate compensation to all victims.⁸⁴ It should also consider other methods of accountability for acts of torture committed under the apartheid regime and combat impunity.⁸⁵

14. The Working Group on Arbitrary Detention recognized the efforts made by South Africa in moving from an ex-officio legal aid system to a salaried public defence system in order to comply with the constitutional requirement of State-funded legal representation that guarantees the right to a public defender to any person accused of a criminal offence who cannot afford a private one.⁸⁶ However, it also noted that legal aid is in most cases available only at the trial stage,⁸⁷ that law offices are understaffed and that lawyers have to deal with a very large number of cases.⁸⁸ It also pointed out that legal aid is not available for persons detained under the Immigration Act many of whom are in serious need of legal assistance.⁸⁹ CAT raised similar concerns and recommended ensuring a fair trial for everyone.⁹⁰

5. Right to social security and to an adequate standard of living

15. In 2006, while noting the various existing poverty reduction strategies, CERD was concerned at the extreme poverty of part of the population and its impact on the equal enjoyment of the human rights by the most vulnerable ethnic groups.⁹¹ While noting the promulgation of the Restitution of Land Rights Amendment Act of 2004 and the post-settlement support programmes, CERD was concerned about the extent of restitution, the sustainable development of resettled communities and the enjoyment of their rights under ICERD, in particular their rights to housing, health, access to water and education.⁹² UN-Habitat mentioned that over 5,279 rural land restitution claims are still outstanding, many of them community claims involving thousands of residents.⁹³

16. In 2007, the Special Rapporteur on adequate housing noted that few mechanisms are in place to ensure that policies are implemented.⁹⁴ Despite the legislative framework on the right to adequate housing, evictions were taking place regularly, in breach of procedural requirements and through the inappropriate use of “urgent eviction” provisions, justified on the grounds of health threats to occupants. The Special Rapporteur was concerned about proposed amendments to procedural protections affecting evictions and, that large numbers of people live in inadequate conditions in informal settlements and observed a failure at all levels of government to provide adequate post-settlement support for new settlements where the most basic support services are often lacking, such as proper sanitation, water, access to schools, and access to livelihood options.⁹⁵ In 2007, UN-Habitat noted that while millions of people have been housed and gained access to clean water, the millions staying in informal settlements are angered and have protested against the long wait for service delivery.⁹⁶ Other issues of concern raised by the Special Rapporteur included the insufficient meaningful consultation between the Government and affected individuals where large-scale development projects and mining operations are concerned,⁹⁷ and the insufficient support in access to housing and related services for groups with special needs (including persons with disabilities, those living with HIV/AIDS, orphans and young people and the homeless).⁹⁸ While acknowledging the efforts made by South Africa to meet the goal of delivering 30 per cent of housing to women-headed households, he noted

the prevalence of violence against women, lack of affordable housing, lack of timely access to public housing, and inadequate Government provisions for long-term safe and secure housing, particularly in rural areas, which force many women either to remain in or return to situations of domestic violence and to continue to live in inadequate housing where they risk their own and their children's safety.⁹⁹

17. CERD in 2006 was concerned at the high rate of HIV/AIDS among persons belonging to the most vulnerable ethnic groups.¹⁰⁰ It recommended that South Africa strengthen its programmes in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation resulting from poverty and lack of access to education, and encouraged it to take further measures to combat HIV/AIDS.¹⁰¹ A 2007 UNDP report noted an 18.8 per cent decrease in HIV prevalence among people aged 15-49.¹⁰² UNICEF referred to a 2005 survey showing that HIV prevalence rates may have begun to level off and that among teenagers the prevalence rate decreased from 15.9 per cent in 2005 to 13.7 per cent in 2006.¹⁰³

6. Right to education and to participate in the cultural life of the community

18. In 2000, CRC was concerned that primary education is not free and that inequality in access to education remains in some areas, particularly among black children, and encouraged South Africa to continue its efforts to promote and facilitate school attendance, particularly among previously disadvantaged children, girls and children from economically disadvantaged families; to take effective measures to ensure that primary education is available free to all; to ensure non-discrimination within the school environment; and to improve the quality of education.¹⁰⁴ In 2007, UNICEF noted that South Africa is on track to achieve universal primary education by 2015, though achieving a quality education for all children will be a challenge. It noted that gender parity has already been achieved. It also cited the approximately 687,000 children that remain out of school as a major challenge.¹⁰⁵

7. Minorities and indigenous peoples

19. In 2006, CERD was concerned at the situation of indigenous peoples, *inter alia*, the Khoi, San, Nama and Griqua communities and, in particular, hunter-gatherer, pastoralist and nomadic groups.¹⁰⁶ In 2006, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people noted that in South Africa there is no accepted meaning of indigenous, although the term appears twice in the Constitution¹⁰⁷ and despite the constitutional reference to Khoe and San people.¹⁰⁸ He noted that the most pressing concern of all the indigenous communities is securing their land base¹⁰⁹ and emphasized that forced dispossession of traditional land is the root cause of the poverty affecting the Nama and San peoples.¹¹⁰ He recommended that positive legal and judicial action be initiated.¹¹¹ He also noted a number of incidents between the Khomani San and the local police force resulting in alleged abuses, torture and harassment.¹¹² He was also concerned about (a) inadequate access to clean water; (b) work for minimal wages without tenure rights or job security; (c) sedentarization, closely associated with a collapse in nutrition and disintegration of fragile natural resources; (d) loss of land to farmers and to State-sponsored activities; (e) the lack of specific poverty reduction programmes

for vulnerable indigenous communities; (f) the specific grievances of indigenous children, youth and women, who reported discrimination, violence, drug abuse, high suicide rates, prostitution, alcoholism and other phenomena associated with marginalization and poverty; (g) violence, including murders and assaults with weapons; (h) the prevalence of HIV/AIDS.¹¹³ The Special Rapporteur also noted that the role and status of traditional leaders vis-à-vis elected councillors has not been clearly defined.¹¹⁴

8. Migrants, refugees and asylum-seekers

20. In 2006, CERD and CAT were concerned, as also highlighted by UNHCR, at allegations of ill-treatment, including extortion of documented and undocumented non-citizens by law enforcement officials.¹¹⁵ CERD recommended the adoption of measures to prevent and combat all forms of ill-treatment, including extortion, of non-citizens detained in repatriation centres, especially in the Lindela Repatriation Centre.¹¹⁶ CAT recommended that all allegations of ill-treatment of non-citizens be investigated and that an effective monitoring mechanism be established for those centres.¹¹⁷ In 2000, CRC recommended, as also highlighted by UNHCR, that a legislative and administrative framework be developed to ensure family reunification and access to education and health care for refugee children.¹¹⁸

21. In 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that South Africa has become a major host country for immigrants and that it was one of the first African countries to set up an individual asylum procedure.¹¹⁹ In 2006, the Working Group on Arbitrary Detention noted, as also highlighted by UNHCR, that many foreigners are deprived of their liberty, some of whom have legal residence papers and some seeking asylum and claiming they have been arbitrarily arrested by police officers, ill-treated and unable to contest the validity of their detention, and that they can consequently be expelled from the country with no form of review or recourse.¹²⁰ It was also concerned that the procedure for those detained under immigration law does not make it possible to effectively challenge the lawfulness of the detention, and places the burden on the person concerned to prove the right to remain in the country.¹²¹ It also noted that the right to a lawyer or to legal aid is not covered in such situations.¹²² It was also concerned at the numerous cases of police arresting legally resident foreigners, throwing out their residence papers and putting them in custody, or even handing them over to immigration authorities for forced deportation.¹²³ In 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed surprised at statements that irregular aliens would not enjoy rights in South Africa despite the clarity brought by the Constitution and the legislation regarding non-discrimination.¹²⁴ He noted that many see the risk of terrorism primarily as coming from foreigners and that among authorities there is a temptation to bypass procedural and substantive human rights standards when dealing with foreigners unlawfully in the country.¹²⁵ He noted that, despite human rights protections provided for in the Constitution, in practice, immigrants and asylum-seekers face serious difficulties in the areas of housing and health care.¹²⁶

9. Human rights and counter-terrorism

22. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that terrorism has not been seen as a major problem in South Africa.¹²⁷ He examined the Protection of Constitutional Democracy against Terrorist

and Related Activities Act of 2005 and commended South Africa for the thorough consultative process preceding the adoption of this Act, and noted that legitimate concerns on the right to labour action and on administrative detention had been taken into account.¹²⁸ However, concerns were raised in relation to the possible broad interpretation of the definition of terrorism and to the reporting duty for the public in respect of all crimes set forth under the Act, which may raise issues related to freedom of expression.¹²⁹ In relation to the possibility of listing individuals on the basis of Security Council resolution 1267 (1999) provided for by the Act, he noted the need for a clearer elaboration of the national procedure for listing.¹³⁰

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

23. In 2007, the Special Rapporteur on adequate housing commended South Africa's legislative and constitutional commitment to the recognition and protection of socio-economic rights, including the right to adequate housing.¹³¹ He was pleased to see the extent of land that has been redistributed to communities that had been dispossessed during the apartheid era.¹³² The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was encouraged by assurances that the South African Police Service adhere strictly to human rights standards.¹³³ Regarding the housing policy and strategy, UN-Habitat noted that the construction of 2,355,913 houses in 12 years is unprecedented, both nationally and internationally, with over 6 million people in both urban and rural areas estimated to have benefited from the programme.¹³⁴ The Working Group on Arbitrary Detention also noted the positive orientation of the correctional policy, geared towards rehabilitation and reinsertion.¹³⁵

24. In 2006, CERD recognized that the heritage of a system of governance built by the apartheid regime, in terms of its economic, social and cultural consequences, presents obstacles for the South African society and requires human and financial resources on a scale adequate to meet the many challenges.¹³⁶ The United Nations Development Assistance Framework (UNDAF) 2007-2010 for South Africa mentioned that South Africa has followed a coherent and structured approach to tackling poverty by integrating it into sectoral policies, strategies and budgetary allocations.¹³⁷ UNICEF indicated that the social security system in South Africa is excellent, with more than 10 million beneficiaries, most of them children, and noted the expansion of access to the child support grant from about 1 million children in 2001 to more than 7.5 million in 2006.¹³⁸

25. In 2003, the Special Rapporteur on the sale of children, child prostitution and child pornography noted that the continuing progress and future development of the country was under serious threat by the AIDS epidemic which was weakening many communities, adding to the severe skills shortage of the population and reversing development gains.¹³⁹ He also noted that the stigma and discrimination associated with the disease continue to be driving forces behind its spread and impact.¹⁴⁰ A 2004 WHO report noted that in November 2003, the Government committed itself to tripling the amount spent over three years, compared to the previous three years, to combat HIV/AIDS.¹⁴¹

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

A. Pledges by the State

26. In 2007, South Africa stated that it would present its reports to CERD and CAT, and undertook to submit a National Action Plan exclusively covering the area of racism and racial discrimination, as required by the Durban Declaration and Programme of Action.¹⁴²

B. Specific recommendations for follow-up

27. In 2006, CAT requested South Africa to provide information on the way it has followed up on its recommendations related to issues of non-refoulement; ill-treatment of non-citizens detained in repatriation centres; the difficulties vulnerable persons or groups experience in obtaining redress and compensation as victims of torture; widespread acts of violence against women and children; acts of torture or cruel, inhuman or degrading treatment committed by law enforcement officials; and the bills criminalizing torture and on child justice, as well as measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture.¹⁴³ In 2006, CERD made a similar request on the issues of hate crimes and hate speech; violence against women and children, in particular women and children from the most disadvantaged and poor ethnic groups; the backlog of asylum-seekers' applications; and measures adopted with regard to the promotion of tolerance, in particular in the field of education and media.¹⁴⁴

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

28. UNDAF 2002-2007 identified the following main issues confronting South Africa: HIV/AIDS; delivery of basic services, including education, health services, housing and water; job creation; and crime prevention.¹⁴⁵ UNDAF 2007-2010 also indicated the recognition by South Africa and the United Nations of the importance of improving the capacity of provincial and local Government at key technical levels, especially where it impinges on service delivery and financial management.¹⁴⁶ UNICEF also mentioned its programmes and capacity-building efforts to promote respect for children's rights, including in collaboration with other United Nations agencies, funds and programmes.¹⁴⁷

Notes

¹ Unless indicated otherwise, the status of ratifications of the instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General as at 31 December 2006* (ST/LEG/SER.E.25); supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://untreaty.un.org/>.

² The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPD	Convention on the Rights of Persons with Disabilities
OP-CPD	Optional Protocol to Convention on the Rights of Persons with Disabilities
CED	International Convention for the Protection of All Persons from Enforced Disappearance

³ Information relating to other relevant international human rights instruments, including regional instruments, may be found in the pledges and commitments undertaken by South Africa before the Human Rights Council, as contained in the note verbale dated 26 April 2007 sent by the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly (A/61/889, annex).

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁵ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at: <http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html>.

⁷ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour and Convention; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁸ Conclusions and recommendations of the Committee Against Torture (CAT/C/ZAF/CO/1), para. 6.

⁹ Concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.122), para. 11.

¹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/ZAF/CO/3), para. 31.

¹¹ A/61/889, annex, p. 5.

¹² CERD/C/ZAF/CO/3, para. 6; CAT/C/ZAF/CO/1, para. 5.

¹³ CERD/C/ZAF/CO/3, para. 7.

¹⁴ CAT/C/ZAF/CO/1, para. 7.

¹⁵ UNICEF UPR submission on South Africa, p. 5.

¹⁶ Report of Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to South Africa (A/HRC/6/17/Add.2), para. 54.

¹⁷ Ibid., para. 68.

¹⁸ CERD/C/ZAF/CO/3, para. 8; CAT/C/ZAF/CO/1, para. 8; CRC/C/15/Add.122, paras. 5 and 13.

¹⁹ CERD/C/ZAF/CO/3, para. 8.

²⁰ CRC/C/15/Add.122, para. 13.

²¹ For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/7/69, annex VIII, and A/HRC/7/70, annex I.

²² CAT/C/ZAF/CO/1, para. 8.

²³ Report of the Working Group on Arbitrary Detentions on its visit to South Africa (E/CN.4/2006/7/Add.3), para. 53.

²⁴ Ibid., para. 55.

²⁵ Ibid., paras. 54 and 55.

²⁶ UNICEF UPR submission on South Africa, p. 3.

²⁷ CAT/C/ZAF/CO/1, para. 10.

²⁸ CERD/C/ZAF/CO/3, para. 10.

²⁹ The following abbreviations have been used in this document:

CERD - Committee on the Elimination of Racial Discrimination

HR Committee - Human Rights Committee

CAT - Committee against Torture

CEDAW - Committee on the Elimination of Discrimination against Women

CRC - Committee on the Rights of the Child

³⁰ E/CN.4/2006/78/Add.2.

³¹ E/CN.4/2006/7/Add.3.

³² A/HRC/6/17/Add.2.

³³ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on his mission to South Africa (A/HRC/7/16/Add.3).

³⁴ A/HRC/6/17/Add.2, para. 4.

³⁵ Ibid., para. 5.

³⁶ E/CN.4/2006/7/Add.3, second paragraph of the summary.

³⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on his mission to South Africa (E/CN.4/2006/78/Add.2), para. 3.

³⁸ See (i) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006;

(ii) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in September 2006;

(iii) report of the Special Rapporteur on the human rights aspects of victims of trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons, sent in July 2006;

- (iv) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005;
- (v) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous peoples sent in August 2007;
- (vi) report of the Special Rapporteur on trafficking in persons, especially women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the demand for commercial sexual exploitation sent in July 2005;
- (vii) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005;
- (viii) report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/61/341), questionnaire concerning its mandate and activities sent in November 2005;
- (ix) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent in July 2006;
- (x) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004;
- (xi) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003;
- (xii) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprise (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.
- ³⁹ The questionnaire on girls' right to education (E/CN.4/2006/45, para. 89) and the questionnaire on the prevention of child sexual exploitation (E/CN.4/2004/9, para. 4).
- ⁴⁰ OHCHR, *Annual Report 2004*, p. 13, *Annual Report 2005*, p. 15 and *Annual Report 2006*, p. 158.
- ⁴¹ CERD/C/ZAF/CO/3, para. 13.
- ⁴² Ibid., para. 14.
- ⁴³ Ibid., para. 27.
- ⁴⁴ A/HRC/6/17/Add.2, para. 55; see also para. 56.
- ⁴⁵ Ibid., para. 69.
- ⁴⁶ CAT/C/ZAF/CO/1, para. 13.
- ⁴⁷ Ibid., para. 14.
- ⁴⁸ Ibid., para. 15.
- ⁴⁹ A/HRC/6/17/Add.2, para. 42.
- ⁵⁰ Ibid., paras. 45-46.
- ⁵¹ Ibid., paras. 45-52.
- ⁵² Ibid., para. 76.
- ⁵³ Ibid., para. 77.
- ⁵⁴ Ibid., para. 78.

⁵⁵ CAT/C/ZAF/CO/1, para. 15.

⁵⁶ E/CN.4/2006/7/Add.3, para. 75.

⁵⁷ A/HRC/6/17/Add.2, paras. 28-29.

⁵⁸ E/CN.4/2006/7/Add.3, para. 76.

⁵⁹ Ibid., para. 75.

⁶⁰ CAT/C/ZAF/CO/1, para. 20.

⁶¹ Ibid., para. 22.

⁶² E/CN.4/2006/7/Add.3, para. 72; see also paras. 73-74.

⁶³ Ibid., para. 63.

⁶⁴ Ibid., para. 67; see also paras. 65-71.

⁶⁵ Ibid., para. 66.

⁶⁶ CRC/C/15/Add.122, para. 27.

⁶⁷ CAT/C/ZAF/CO/1, para. 23.

⁶⁸ See report of the Special Rapporteur on the sale of children, child prostitution and child pornography on his mission to South Africa (E/CN.4/2003/79/Add.1), paras. 76-79.

⁶⁹ See CERD/C/ZAF/CO/3, para. 16.

⁷⁰ CAT/C/ZAF/CO/1, para. 23.

⁷¹ UNICEF UPR submission on South Africa, p. 3.

⁷² See report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/4/34/Add.1), paras. 631-633.

⁷³ CERD/C/ZAF/CO/3, para. 30 and CAT/C/ZAF/CO/1, para. 24.

⁷⁴ UNFPA, *State of the World Population 2006*, p. 47.

⁷⁵ CAT/C/ZAF/CO/1, para. 25.

⁷⁶ CRC/C/15/Add.122, para. 28.

⁷⁷ CERD/C/ZAF/CO/3, para. 26.

⁷⁸ Ibid., para. 25.

⁷⁹ CAT/C/ZAF/CO/1, para. 17.

⁸⁰ Ibid., para. 21.

⁸¹ CERD/C/ZAF/CO/3, para. 24.

⁸² CRC/C/15/Add.122, para. 42.

⁸³ Ibid., para. 17.

⁸⁴ CAT/C/ZAF/CO/1, para. 18.

⁸⁵ Ibid.

⁸⁶ E/CN.4/2006/7/Add.3, para. 58.

⁸⁷ Ibid., para. 58.

⁸⁸ Ibid., para. 59.

⁸⁹ Ibid., paras. 58 and 59.

⁹⁰ CAT/C/ZAF/CO/1, para. 19.

⁹¹ CERD/C/ZAF/CO/3, para. 15.

⁹² Ibid., para. 18.

⁹³ UN-Habitat submission to UPR, p. 3.

⁹⁴ A/HRC/7/16/Add.3, para. 37.

⁹⁵ Ibid., paras. 41-53.

⁹⁶ UN-Habitat submission to UPR, p. 3.

⁹⁷ A/HRC/7/16/Add.3; see paras. 62-70.

⁹⁸ Ibid., para. 77; see also paras. 88-90.

⁹⁹ Ibid., paras. 84-87.

¹⁰⁰ CERD/C/ZAF/CO/3, para. 20; see also CRC/C/15/Add.122, para. 31.

¹⁰¹ CERD/C/ZAF/CO/3, para. 20.

¹⁰² UNDP, *Human Development Report 2007/2008*, p. 259.

¹⁰³ UNICEF UPR submission on South Africa, p. 2.

¹⁰⁴ CRC/C/15/Add.122, para. 34.

¹⁰⁵ UNICEF UPR submission on South Africa, p. 2.

¹⁰⁶ CERD/C/ZAF/CO/3, para. 19.

¹⁰⁷ E/CN.4/2006/78/Add.2, para. 23.

¹⁰⁸ Ibid., para. 15.

¹⁰⁹ Ibid., para. 34.

¹¹⁰ Ibid., para. 33.

¹¹¹ Ibid., para. 87.

¹¹² Ibid., para. 45.

¹¹³ Ibid., paras. 58-64

¹¹⁴ Ibid., para. 50.

¹¹⁵ CERD/C/ZAF/CO/3, para. 23; see also CAT/C/ZAF/CO/1, para. 16, and UNHCR, UPR submission on South Africa.

¹¹⁶ CERD/C/ZAF/CO/3, para. 23.

¹¹⁷ CAT/C/ZAF/CO/1, para. 16.

¹¹⁸ CRC/C/15/Add.122, para. 35; see also UNCHR UPR submission on South Africa.

¹¹⁹ A/HRC/6/17/Add.2, para. 13.

¹²⁰ E/CN.4/2006/7/Add.3, para. 77; see also UNHCR UPR submission on South Africa, pp. 3-4.

¹²¹ Ibid., para. 85.

¹²² Ibid., para. 77.

¹²³ Ibid., paras. 75-76.

¹²⁴ A/HRC/6/17/Add.2, para. 38.

¹²⁵ Ibid.

¹²⁶ Ibid., para. 67.

¹²⁷ Ibid., para. 14.

¹²⁸ Ibid., para. 61.

¹²⁹ Ibid., paras. 24-25.

¹³⁰ Ibid., para. 72.

¹³¹ A/HRC/7/16/Add.3, para. 8.

¹³² Ibid., para. 15.

¹³³ A/HRC/6/17/Add.2, para. 28.

¹³⁴ UN-Habitat UPR submission on South Africa, p. 3.

¹³⁵ E/CN.4/2006/7/Add.3, para. 57.

¹³⁶ CERD/C/ZAF/CO/3, para. 5.

¹³⁷ United Nations Development Assistance Framework (UNDAF) for South Africa, 2007-2010, p. 10.

¹³⁸ UNICEF UPR submission on South Africa, p. 3.

¹³⁹ E/CN.4/2003/79/Add.1, para. 74.

¹⁴⁰ Ibid., para. 75.

¹⁴¹ WHO, *The World Health Report 2004*, p. 68.

¹⁴² A/61/889, annex, pp. 3-4.

¹⁴³ CAT/C/ZAF/CO/1, para. 29.

¹⁴⁴ CERD/C/ZAF/CO/3, para. 33.

¹⁴⁵ United Nations Development Assistance Framework (UNDAF) for South Africa, 2002-2007, p. 10.

¹⁴⁶ United Nations Development Assistance Framework (UNDAF) for South Africa, 2007-2011, p. 11.

¹⁴⁷ UNICEF submission to the UPR on South Africa, pp. 4-5.
