



**Human Rights Watch  
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South Africa has failed to clarify its position on the 22 recommendations made during the first UPR cycle in 2008 – making the assessment of the implementation problematic. South Africa should clearly communicate its responses and commitments on all recommendations made during its second UPR cycle.

South Africa continues to grapple with corruption, growing social and economic inequalities, and the weakening of state institutions by partisan appointments and one-party dominance. In November 2011, South Africa's parliament voted to pass a controversial Protection of State Information Bill despite calls of civil society, media and the opposition to hold the vote for further consultation. Ever since the bill was introduced in March 2010, it has been subject to serious criticism as being inconsistent with South Africa's constitution and its international human rights obligations. In April 2011, images of the public brutal murder of Andries Tatane by the police force during a peaceful protest in Ficksburg to demand better service delivery raised grave concern regarding police violence. Whilst these are some examples of legitimate concerns about the protection of human rights in South Africa, South Africa's human rights institutions, such as the Human Rights Commission have the potential to positively advance human rights protection.

**Freedom of expression and Freedom of Information**

Since 2010, concerns have arisen over attempts to limit freedom of expression and freedom of information. The most worrying development is the approval in November 2011 by Parliament of the Protection of State Information Bill. The Bill regulates classification procedures for state information, and imposes penalties of up to 15 to 20 years imprisonment for publishing information deemed to threaten national security. The bill seriously threatens and undermines legitimate activities of the media, whistleblowers and other government critics in exposing government malfeasance and corruption. The Bill has no public interest defence that would exempt the publication of classified information, which serves a compelling public interest, from criminal sanction. The bill was temporarily withdrawn in September following strong public protest and the ruling African National Congress party (ANC) had said it would hold further consultations. However suddenly in November, with no consultations having taken place, they re-introduced the bill with no change, and the Parliament voted to approve it.

In light of the manner in which the Protection of State Information Bill was pushed to a vote, the position of the ANC on the establishment of a Media Appeals Tribunal is worrying. In September 2010 the ANC resurrected a 2007 resolution calling for the establishment of such a tribunal, ostensibly to protect the privacy rights of individuals and human dignity. However, many believe that ANC's proposal to establish a regulatory mechanism will open a back-door path to censorship and suppression of dissidents. The ANC has continued to periodically invoke the spectre of a Media Appeals Tribunal.

Both the media and social activists have also pointed to the ANC's growing hold over the country's public broadcaster, the South African Broadcasting Corporation as a concerning development for media freedom.

### **Women's Rights**

Despite South Africa's relative wealth, reasonably good health care infrastructure, and an enabling legal and policy environment, the maternal death rate is very high. The maternal mortality ratio has increased from 150 to 625 deaths per 100,000 live births between 1998 and 2007, and an estimated 4,500 women die annually due to pregnancy-related complications. Shortcomings in accountability and oversight mechanisms that authorities use to monitor health care system performance, identify failings and needs, and make timely interventions, as well as abuses committed by health care personnel underlie South Africa's high maternal mortality.

Information gathered from maternal death audits is not adequately used to ensure that systemic problems with the provision of care are not repeated. South Africa has not conducted a demographic and health survey, which could gather critical data to help plan, monitor, and evaluate activities designed to reduce maternal mortality, since 2003. Routine monitoring of maternal healthcare programs does not take into account all the emergency obstetric care indicators, and critical information on resources available for providing maternity services is lacking. Maternity patients seeking care in public health facilities face a range of abuses by health workers and substandard care that put them and their newborns at high risk of death or injury, but have few effective mechanisms for seeking redress. This is partly because Chapter Six of the 2003 National Health Act (NHA) that addresses health system accountability has not gone into effect. Human Rights Watch documented a pattern of specific abuses directed at female migrants and women living with HIV, including active discrimination and delayed or denied care.

In January 2011, the Minister of Health published the National Health Amendment Bill 2011 to establish an office of health standards compliance to address its quality of care gaps. However, the minister has not yet introduced it in parliament for discussion and adoption.

### **Refugees and Migrants**

The situation of asylum seekers in South Africa is precarious and remains to be an area of serious concern.

In September 2010 South Africa moved to "regularize the presence of Zimbabweans in South Africa" by ending the special dispensation for Zimbabwean nationals that the government introduced in April 2009, and resuming deportations of those without the new special permits. Those applying for regularization face serious bureaucratic challenges. On 1 August 2011, the Department of Home Affairs announced that it had finished adjudicating 275,762 applications for work, study, and business permits from undocumented Zimbabwean nationals, which had been submitted by 31 December 2010.

On June 1, 2010, South Africa closed its largest reception office in Crown Mines, Johannesburg. Local civil society raised concerns that such action will further exacerbate problems faced by refugees and asylum seekers and will lead to further backlogs in a system already buckling from pressure to meet existing demand. The Department of Home Affairs announced that it was considering moving refugee reception offices to the borders, raising suspicion that South Africa was pushing the problems in its refugee and asylum system further from public scrutiny.

Human Rights Watch documented that migrants are not only subject to xenophobic violence, internal displacement, and discrimination, but also face serious discrimination in health care facilities, including

verbal abuse, unlawful user fees, and denial of basic and emergency health care services. The South African Department of Health has affirmed the rights of asylum seekers and refugees to obtain care, but Human Rights Watch found that health care workers repeatedly violated these protections and discriminated against patients on the basis of their nationality or lack of documentation of their status. Furthermore, in urban centers throughout the country, refugees, asylum seekers, and migrants are often placed in unsafe temporary shelters, resulting in increased risk of infectious disease transmission, interruption of treatment for chronic illness, and often inadequate nutrition. The delayed, interrupted, or denied treatment of migrant health threatens to further strain South Africa's already stretched health system. When untreated, illness becomes more severe or resistant to first-line drugs, preventable disability can develop, care becomes more costly, and communicable diseases threaten the general public in general.<sup>1</sup>

### **Vulnerable Workers**

Farm workers are very vulnerable in South Africa. South Africa has laws guaranteeing wages, benefits, and safe working and housing conditions for workers and other farm dwellers, however the government largely has failed to monitor conditions and enforce the laws, leaving workers susceptible to abuse and exploitation by employers.<sup>2</sup>

Human Rights Watch's research in the Western Cape, the second-richest province with the largest number of farm workers in South Africa, uncovered rights violations such as occupational health and safety hazards, including exposure to harmful pesticides; evictions without access to alternative shelter and poor housing conditions on farms; difficulties in forming or joining unions; and unfair labor conditions, such as pay below minimum wage. Relevant South African government officials responded by committing to address these problems and ending abuses by properly enforcing South African labor law but concrete actions are yet to be seen.

### **Sexual orientation and gender identity**

As recommended in the 2008 UPR, South Africa showed leadership at the international level in promoting the right of all persons to equality without discrimination based on sexual orientation. During the 17<sup>th</sup> UN Human Rights Council Session in June 2011, South Africa successfully pushed through the adoption of the first-ever UN resolution on Sexual Orientation and Gender Identity. This action affirmed South Africa's endorsement of the rights of lesbian, gay, bisexual, and transgender (LGBT) people worldwide.

However greater efforts are still needed to ensure such protection at the national level. Like sexual assaults of women in general, rapes and other violence against lesbians and gender non-conforming people have reached alarming levels in South Africa<sup>3</sup>. Black lesbians and transgender men in particular face worrying challenges and many live in constant fear for their lives.

Human Rights Watch issued a report in 2011 which found that, despite the country's progressive legislation on the rights of LGBT people, discrimination is institutionalized in families, communities, and in the behaviour of some government officials, such as police, some health care workers, and educators. The case

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<sup>1</sup> HRW, "Improve Migrant's Access to Health Care", December 7, 2009, <http://www.hrw.org/news/2009/12/07/south-africa-improve-migrants-access-health-care>.

<sup>2</sup> HRW, "Farm workers' Dismal, Dangerous Lives", August 23, 2011, <http://www.hrw.org/news/2011/08/23/south-africa-farmworkers-dismal-dangerous-lives>.

<sup>3</sup> HRW, "No Arrests in Lesbian Murder Case", May 2, 2011, <http://www.hrw.org/news/2011/05/02/south-africa-no-arrests-lesbian-murder-case>.

of Noxolo Nogwaza, a black lesbian found raped and brutally murdered in Kwathema Township in April propelled civil society pressure on the government and prompted the Department of Justice and Constitutional Development to announce the formation of a multi-sectoral hate crimes task team to address legal and judicial responses to violence against members of the LGBT community.

### **Recommendations for the Government of South Africa:**

#### **On freedom of expression and freedom of information,:**

- Suspend the enactment of the Protection of State Information Bill, and permit further consultations and amendments to ensure its conformity with ICCPR Article 19 in particular by removing excessive penalties for publication of classified information and the inclusion of a public interest defense

#### **On women's rights:**

- Promulgate the uncontested sections of Chapter Six of the 2003 National Health Act, and later address the contested sections.
- Revise through a transparent and participatory process the current maternal health monitoring indicators ensuring that they track adverse pregnancy outcomes, and bring them in line with "United Nations Process Indicators" for availability and utilization of obstetric services. In addition, it should require all provinces to conduct needs assessments of emergency obstetric care through a transparent and participatory process, and ensure that indicators are disaggregated to identify discrimination as well as to ensure that vulnerable communities are benefiting from healthcare programs.
- Begin a transparent and participatory process of conducting periodic demographic and health surveys.

#### **On the rights of migrants and refugees:**

- Ensure that asylum seekers, refugees, and Zimbabwean migrants are not subject to arbitrary or extra-legal arrest and deportation.
- Enhance protection for migrants from opportunistic criminal violence near the Zimbabwean border and from xenophobic violence throughout South Africa.
- Ensure timely access to healthcare service for migrants and refugees, in line with South African law.
- Publish comprehensive information about HIV-positive individuals deported, including the numbers of individuals removed, grounds for removal, and countries to which they are deported.
- Review national standards on deportation of people living with HIV to ensure compliance with international prohibitions on *refoulement*.
- Together with international agencies and donors, work to harmonize regional standards of care.

#### **On sexual orientation:**

- Require the police services to enforce monitoring and disciplinary measures against police personnel who harass, intimidate, or abuse complainants, with specific focus on women and members of the LGBT community;
- Require the police services, in collecting data on physical and sexual violence, to disaggregate the data by motive to track incidents of homophobic and trans-phobic violence;

- Work with the National Prosecuting Authority to ensure that cases of sexual and physical violence against women and transgender persons come to trial in a timely manner, and that prosecutors prioritize cases involving sexual offences.

**On the rights of workers:**

- The Department of Labor and the Department of Agriculture should support persons facing evictions from farms, including by devising plans to address the short-term shelter needs of evicted farm dwellers and creating a system to track evictions from farms.
- Take immediate action to enforce compliance with existing labor and health protections, including by filling all labor inspector vacancies and ensuring that labor inspectors always speak with workers when conducting inspections.
- Rigorously enforce the rights of foreign and other migrant farm workers to benefits to which they are entitled.
- Revise the Protocol for Access to Farms, which was agreed upon by the Department of Labor, Agri SA and others, to ensure that labor inspectors are not required to set up advance appointments with farm owner.