



INTERNATIONAL
COMMISSION
OF JURISTS

UNITED NATIONS HUMAN RIGHTS COUNCIL
13th Session of the Working Group on the Universal Periodic Review
21 May to 1 June 2012

**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF
SOUTH AFRICA**

Submitted November 2011

The International Commission of Jurists (ICJ) is a non-governmental organisation founded in 1952, in consultative status with the Economic and Social Council since 1957. The ICJ is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. It takes an impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. It provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level.

ICJ submission to the Universal Periodic Review of South Africa

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of South Africa. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) access to justice; (2) sexual violence; (3) migrant rights; (4) police accountability and oversight; and (5) international instruments and mechanisms.

ACCESS TO JUSTICE, ESPECIALLY IN THE CONTEXT OF BUSINESS AND HUMAN RIGHTS

2. Because of South Africa's wealth in natural resources and economic position, the State attracts substantial business activity of transnational corporations. In the context of a plethora of activity of both national and transnational companies, many corporate human rights abuses are committed. South Africa has a duty to protect the victims of such abuses, who must have effective access to justice including to effective remedies and reparation.

3. Marking the close of the *apartheid* era, South Africa adopted a new Constitution and a Bill of Rights. A new Companies Act of 2010 has come into effect, and a new code of corporate governance has been released. Companies are legally required to contribute actively to the realisation of rights and to manage compliance with an increasing array of statutes. Where conflicts between the interests of corporations and local communities lead to corporate human rights abuses, the law offers access to remedies for victims of abuses, but there remain serious protection gaps.

4. The Jurisdiction of Regional Courts Amendment Act 2008 represents a welcome development, increasing access to legal resources needed to resolve claims that victims usually raise against corporations.¹ However, the role of other legal actors, such as law clinics, State-paid public defenders, and public interest legal services bodies, are key to tackling the problem of access to legal representation, and their resources remain limited.²

5. Latest available figures show that an hour's legal consultation costs between 8% and 21% of the average local monthly wage.³ Most victims can only therefore access legal representation if special arrangements are made. Lawyers may enter into contingency fee agreements,⁴ or provide pro-bono legal services. A Legal Services Charter was concluded between the Government and the legal profession, in which the profession undertakes to take steps to increase pro bono work, support law clinics and similar bodies, and enhance access in rural areas.⁵ The Government has yet to officially publish the Charter or the scorecards for measuring compliance,⁶ and it remains a voluntary document.

6. The Legal Aid Board resolved 397,788 matters in 2009/2010.⁷ An evaluation of the contribution of legal aid to litigation against corporations for human rights violations nevertheless raises three concerns. First, the legal aid system is heavily committed to representing criminal defendants and detained persons. Only 10% of Board's resources are allocated to civil matters,⁸ and there the focus is on family and housing law.⁹ Secondly, the Board only provides services to the poorest applicants.¹⁰ Finally, the Legal Aid Board remains over-stretched, in need of assistance from other areas including local government and the profession.¹¹ It is not designed or resourced to construct and litigate complex corporate liability cases.¹²

7. Section 34 of the Constitution grants everyone the right to have legal disputes decided in a fair public hearing before a court or similar body.¹³ Courts have jurisdiction over companies incorporated in South Africa in respect of acts in South Africa. Courts also exercise jurisdiction over all natural persons resident in the courts' area of jurisdiction. Residence is a matter of ordinary habitation,¹⁴ so it includes both citizens and foreigners in South Africa for extended periods.¹⁵ With regards to citizens or foreigners who are non-residents, if there is an 'adequate connection' between a South African court and a legal matter, mere service on the defendant while temporarily present in South Africa will ground jurisdiction.¹⁶

8. The rules relating to companies incorporated in foreign companies are more complex. A court will exercise jurisdiction where a foreign corporation has its 'principal place of business' in the court's jurisdiction.¹⁷ If a foreign company merely 'carries on business' in South Africa, a court can exercise jurisdiction only if the company 'carries on business' in its area of jurisdiction *and* if a further condition is met. According to some authorities, the condition is that the cause of action must arise in the area of jurisdiction of the court;¹⁸ according to others, it must arise particularly from its local business activities.¹⁹ The precise meaning of the phrases 'principal place of business' and 'carries on business' remain unclear.²⁰

9. If a corporation fulfils neither requirement, it is a non-resident and courts will only have jurisdiction if the cause of action arises in the court's area of jurisdiction, or if the plaintiff is resident there. In both cases, there is a further qualification: the court will not exercise jurisdiction unless property of the defendant is attached, and falls within the jurisdiction of the court.²¹ Property held elsewhere in South Africa does not suffice.

10. These rules leave a gap. If a corporation commits a wrong in an area of South Africa in which it does not do business and does not have property, and/or if it does not have property in the area of South Africa in which the victim is a resident, no South African court will have jurisdiction. As a result, many victims struggle to hold foreign corporations liable in South African courts for rights abuses committed in South Africa.

11. Some statutes providing for extra-territorial jurisdiction are of particular relevance to victims of corporate human rights abuses.²² However many of these Acts apply only to natural persons, not to corporations.²³ This does not in itself prevent a corporation from being held liable, since liability of natural persons may be imputed to juristic persons. However, a court must establish jurisdiction separately over each party, and so a corporation can only be held liable by South African courts, for acts by a natural person over whom the courts have extra-territorial jurisdiction in respect of either statute, if the courts have jurisdiction over the company based on the rules laid out above.

12. The Rules of Court provide for the discovery procedure, which obliges parties to set out under oath the documents they have or have had that are relevant to the case.²⁴ Courts have the power to order discovery, and ultimately to dismiss a party's claim or defence, if a party fails to discover.²⁵ The Promotion of Access to Information Act (PAIA) provides one of the most extensive mechanisms for obtaining information. Unfortunately, courts are reluctant to permit 'pre-action discovery' through the use of the PAIA prior to the commencement of proceedings to obtain information normally obtained by discovery. Pre-action discovery is vital to situations where there is a danger that rights will not be vindicated if applicants wait until discovery, or are forced to undertake the expense of initiating proceedings in order to obtain discovery.²⁶

13. Once a claim has been brought, applicants face serious delays and lengthy proceedings.²⁷ It often takes two to five years for a matter to get to trial,²⁸ there is a "huge backlog" of appeals from the magistrates' courts burdening the High Courts, and 49,030 detainees were awaiting trial as of May 2010.²⁹ This is attributed to cumbersome procedures and a lack of facilities.³⁰ The Constitutional Court has noted that 'endemic blemishes' in the criminal justice system cause delays, and that 'multiple postponements are endemic' in the system.³¹

14. While judicial remedies are indispensable for implementing and enforcing human rights protections, non-judicial remedies can be complementary and more accessible to some victims. For example, the Commission for Conciliation, Mediation and Arbitration deals with the majority of labour rights cases and usually produces a ruling in weeks; whereas a review in the Labour Court takes two or more.³² More specialised independent tribunals like the CCMA are needed.

SEXUAL VIOLENCE

15. Sexual violence against women and girls in South Africa remains a serious problem of epidemic proportions. Notwithstanding South Africa's progressive Bill of Rights and meritorious jurisprudence echoing international and regional human rights standards, the protection of women against sexual abuse remains in practice very limited and ineffective. Sexual violence continues to be women's daily experience while perpetrators continue to enjoy widespread *de facto* impunity. Meanwhile, incidences of sexual violence continue to escalate to alarming proportions. Crime statistics for 2010/2011 released by the South African Police Service note that 66,196 sexual offenses were reported.³³ The high sexual violence statistics are an alarming indication that South Africa is failing to meet its international human rights obligations.

16. As has been noted by the Committee on the Elimination of Discrimination against Women (CEDAW), civil society groups, and South Africa itself, there have been a number of recent rapes and murders of lesbian women.³⁴ In April 2011, Noxolo Nogwaza, an activist with the Ekurhuleni Pride Organizing Committee, was sexually assaulted and beaten to death in Kwa-Thema township. According to the Sunday Tribune, a thirteen-year old girl was subjected to "corrective rape" in Atteridgeville, Pretoria, for being a lesbian. The attack was condemned by a spokesperson for the Ministry of Justice and Constitutional Development. While South Africa's decision to establish a national taskforce to tackle hate crimes against LGBT individuals is welcome, there is a lack of hate crimes laws and effective prosecution of all acts of violence.

17. International human rights law obliges South Africa to exercise due diligence to prevent, investigate and punish sexual violence.³⁵ Failing to do so implicates numerous human rights guarantees, most significantly the right to bodily and psychological integrity and security of person, including freedom from torture or ill-treatment, the right to equality in the enjoyment of human rights, the right to inherent dignity and respect and protection thereof.³⁶

PROTECTION OF MIGRANT RIGHTS

18. The South African Bill of Rights covers issues relevant to the protection of migrants, in particular the right to freedom and security of the person (section 12), the prohibition of slavery, servitude or forced labour (section 13), freedom of employment and fair labour practices (sections 22-23), the right of all to adequate housing (sections 26), to health care, food, water and social security services (section 27) and education (section 29), and the protection of children (section 28).³⁷

19. The constitutional and legislative steps taken have not, however, translated into effective protection of the human rights of migrants. In many cases, violations of rights of non-citizens – refugees, asylum seekers, and other immigrants – which include physical attacks, attacks on property and administrative barriers, remain a matter for serious concern. While victims of those violations usually struggle to access justice and adequate remedies, perpetrators are often not held accountable, reinforcing perceptions of impunity for crimes and other attacks against foreign nationals. While the Victim Empowerment Programme's Policy Guidelines identify victims of 'hate victimization' as a priority group and provide for compensation and restitution,³⁸ its provisions are rarely applied to victims of xenophobic violence.

20. The plight of immigrants in South Africa has been particularly echoed by the UN Special Rapporteur on the human rights of migrants, who drew the attention of national authorities to the need to "improve social cohesion and measures against discrimination, exploitation, a tendency by the police to ignore the rights of migrants, and the overall lack of a comprehensive immigration policy that incorporates human rights protection".³⁹ The Special Rapporteur also urged South Africa to adopt a clear and comprehensive immigration policy, which would go beyond managing the entry and stay of migrants, and have a human rights-based approach in order to protect the rights of migrants and their families.

POLICE ACCOUNTABILITY AND OVERSIGHT

21. While the Independent Complaints Directorate (ICD) is now well established to investigate alleged abuse of police power, particularly concerning deaths in police custody or otherwise as a result of police action, the under-resourcing of this body has exposed it to other problems such as corruption, misconduct, torture, and the failure to deliver the required services. As a result, police abuses have rarely been investigated and few perpetrators effectively punished, leading to a state of near-impunity. As a result, laws fail to provide deterrence and victims often have little faith in the system. Furthermore, the ICD still has no authority to enforce its recommendations on policing.⁴⁰

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

22. South Africa is a party to several of the core human right treaties, with the notable exceptions of ICESCR,⁴¹ OPCAT,⁴² CPED,⁴³ and ICRMW.⁴⁴

23. Despite South Africa's commitment to "continue to submit country reports to human rights Treaty Monitoring Bodies" when standing for election to the Human Rights Council in 2007,⁴⁵ South Africa has failed to adhere to several reporting deadlines:

- South Africa has failed to submit its initial report to the Human Rights Committee (HRCttee) (due 2000), as well as its second and third periodic reports (due 2005 and 2010 respectively);
- It has failed to submit additional information requested by the Committee against Torture (CAT) concerning its initial report (due 2007) as well as its second periodic report (due 2009);
- South Africa has failed to submit its second and third periodic reports to the Committee on the Rights of the Child (CRC) (due 2002 and 2007).

24. Although South Africa has issued a standing invitation to the Special Procedures, it failed to respond to requests to carry out country visits by three of the Special Procedures, dating back to 2003.⁴⁶

RECOMMENDATIONS

25. The ICJ calls upon the Working Group and the Council to urge the Government of South Africa to:

Concerning access to justice

- i). Increase access to pro-bono legal services and create stronger requirements on lawyers to provide such services;
- ii). Set up a public interest litigation group within the legal aid system focusing on abuses by business enterprises;
- iii). Increase access both to judicial and non-judicial remedies, for example the creation of more specialised independent tribunals as well as an ombudsman or similar mechanism;
- iv). Encourage the Human Rights Commission to adopt business and human rights as a focus area and address pressing issues, for example mining relocations;
- v). Pass legislation allowing for pre-action discovery, with enforceable requirements of disclosure so as to enable victims to gain information that can provide the basis for a case;
- vi). Adopt legislation to enable companies registered in South Africa to be held liable for violations of rights beyond South Africa's borders;
- vii). Recognise under law that company directors have fiduciary duties to realise fundamental rights;
- viii). Amend the Companies Act to require that companies' memoranda of association comply with the applicable provisions of the Bill of Rights;
- ix). Require that companies set up internal policies and procedures to address abuses of rights that have occurred or are at risk occurring, and require, in line with their

obligations under the Constitution, that they report on the extent to which they are contributing to the realisation of human rights.

Concerning sexual violence, migrant rights and police accountability

- x). Adopt a more integrated and effective approach to break the cycle of sexual violence, including through widespread social and economic reforms to address the causes of violence;
- xi). Enact hate crimes laws and ensure effective prosecution of all acts of violence.;
- xii). Improve policing practices, promote tolerance, and fundamentally revise the management of migration from Africa and elsewhere;
- xiii). Implement the recommendation of the Special Rapporteur on migrants to “establish institutionalised programmes designed to create the necessary conditions for the integration of migrants into South African society and the respect of their rights, including to work, health, housing and education, without discrimination”;
- xiv). Strengthen police accountability and oversight mechanisms to ensure respect for human rights in policing actions.

Concerning international instruments and mechanisms

- xv). Become a party to: ICESCR; OPCAT; and the Convention for the Protection of All Persons from Enforced Disappearance; and the ICRMW;
- xvi). Immediately sign, with a view to ratification, the Third Optional Protocol to the Convention on the Rights of the Child;
- xvii). Provide without delay: its initial report and second and third periodic reports to the HRCtee; its second periodic report and the additional information requested to the CAT; its second and third periodic reports to the CRC;
- xviii). Accept at the earliest opportunity the requests to undertake official missions in South Africa by the Special Rapporteur on food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on racism; and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions;
- xix). Present to the Council, during the plenary session to adopt the outcome document for the UPR of South Africa, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments;
- xx). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

¹ The Jurisdiction of Regional Courts Amendment Act 31 was promulgated on 5 November 2008.

² Recent research suggests that South African public interest litigation bodies suffer from loss of staff to the private sector, reduced community mobilisation, and a shortage of funds. Gilbert Marcus & Steven Budlender *A Strategic Evaluation of Public Interest Litigation in South Africa* (Atlantic Philanthropies, June 2008) at 15-17, 22-23, 126

³ These approximate figures are based on the current government quarterly employment figures, available at www.statssa.gov.za/keyindicators/keyindicators.asp (giving an average salary of R5775 per month), and the current median rates charged by attorneys according to the September 2008 National Survey of the Attorney's Profession prepared for the Law Society of South Africa, available at [www.lssa.questweb.co.za/Uploads/files/National Survey of the Attorneys Profession 2008.pdf](http://www.lssa.questweb.co.za/Uploads/files/National_Survey_of_the_Attorneys_Profession_2008.pdf), at 19, giving median hourly consultation fees of between R450 and R1200 per hour.

⁴ These are subject to certain limitations intended to protect the client. Contingency Fees Act 66 of 1997, s 2(1) and (2). See also a written opinion by Advocate EC Labuschagne dated 30 May 2002, available at <http://www.northernlaw.co.za/content/view/51/84/>

⁵ See the Legal Services Charter, adopted by government and representatives of the legal profession in December 2007, available at www.justice.gov.za/LSC/legal_charter.htm, esp. at 8-11

⁶ According to the Law Society of South Africa's website, www.lssa.questweb.co.za, last accessed 28 June 2009; the Bill is not listed among the 'current bills' of the Department of Justice and Constitutional Development, available at <http://www.justice.gov.za/legislation/bills/bills.htm>. However, it is worth noting that the Law Society for the Northern Provinces has published a scorecard compliance document and this document is applicable to legal professionals within the Northern Provinces of SA.

⁷ Legal Aid Board Annual Report 2009/10, available at <http://www.legal-aid.co.za/images/publications/annual-reports/annualreport2010.pdf>, at 20

⁸ Legal Aid Board Annual Report 2007/08, available at <http://www.legal-aid.co.za/images/publications/annualreports/2008.pdf>, at 4

⁹ Van As, Hennie 'Taking Legal Aid to the People: Unleashing legal aid in South Africa' (2005) 26 *Obiter p.* 187 at 207; see the letter from the Legal Aid Board indicating that it did not support personal injury claims submitted to the English Courts in *Lubbe v Cape plc* [2000] 4 All ER (HL) 268 at 278

¹⁰ Indeed, in a distinctly tragic irony, if corporations violate the rights of their workers or communities established around their industries, the wages they pay will likely make their employees and their families too rich for legal aid, without being rich enough to engage in litigation. (The provision of subsidised government housing can have a similar effect. Van As *Ibid* at 205

¹¹ McQuoid-Mason Op. Cit. note 170 at 220-30; Van As *Ibid* at 199-205; Arthur Chaskalson 'Legal Interns could solve legal aid problems' 1997 *De Rebus* 782, Editorial 'Legal Aid Again: The profession should not be side-lined' 1998 *De Rebus* 5; Legal Aid Board Report at 3

¹² However, it should be noted that the Board has recently established a Strategic Impact Unit, designed to fund litigation with a wider public interest. The Unit, with partners, has engaged in a sizeable litigation relevant to this study, involving a series of test cases on behalf of ex-miners suffering from silicosis. The parties are currently in talks pursuing a settlement. Richard Meeran 'Open Letter to the Special Representative of the UN Secretary-General on Business and Human Rights: The genesis and development of MNC litigation in South Africa and a possible model for the future', available at <http://edit.business-humanrights.org/Links/Repository/353808/jump>; author's personal communication with Bongumusa Sibiyi of the Legal Resources Centre, 5 June 2009

¹³ Section 34 applies to all legal disputes other than criminal matters, which are not seen as 'disputes' and are regulated by section 35: see *S v Pennington* 1997 (4) SA 1076 (CC) at para 46

¹⁴ *Erasmus Ibid.* at A1-23-1-24; *Herbstein & Van Winsen Ibid.* at 59. There is High Court authority to the effect that mere domicile does not suffice for residence: *Geyser v Nedbank Ltd: In re: Nedbank Ltd v Geyser* 2006 (4) SA 544 (W) at 546D-E. It may be doubted whether this is correct. See on the point *Erasmus Ibid.* at A1-24; *Harms* at A4.12; *Herbstein & Van Winsen Ibid.* at 58-59; *Pollak Op. Cit* note 203 at 42-43, 47-48, 53; Forsyth 'The Impact of the Domestic on the International: Some Crucial Deficiencies in the South African Law of Jurisdiction with their Regional and International Consequences' (2006) 18 *South African Mercantile Law Journal* 1 at 7-11. It would serve victims if domicile does suffice, given the complications of establishing jurisdiction over non-residents (see below), and this is arguably defensible. A domicile may not be present in a country (the usual reason for rejecting it as a ground), but domicile does establish a link between person and court.

¹⁵ *Mayne v Main* 2001 (2) SA 1239 (SCA) esp. at paras 24-26

¹⁶ *Bid Industrial Holdings* at para 56

¹⁷ *Herbstein & Van Winsen Op. Cit* 207 at 69; *Pollak Op. Cit* note 203 at 77-78; Forsyth, Christopher *Private International Law: The Modern Roman-Dutch Law including the Jurisdiction of the High Courts 4 Ed* (Juta & Co., Cape Town, 2003) at 196.

¹⁸ Van Loggerenberg, DE & Farlam P *Erasmus: Superior Court Practice* [Service 2009] (Juta & Co, Cape Town) at A1-25 – 1-26; Cilliers, AC et al *Herbstein & Van Winsen: The Civil Practice of the High Court and Supreme Court of Appeal of South Africa 5 ed* (Juta & Co, Cape Town, 2009) at 69; David Pistorius *Pollak on Jurisdiction 2 ed* (Juta & Co, Cape Town, 1993) at 78.

¹⁹ The condition is applied in this way in the case of *Joseph v Air Tanzania Corporation* 1997 (3) SA 34 (W), where a court refused to treat a foreign company as a resident of its jurisdiction.

²⁰ *Erasmus Op. Cit.* note 203 at A1-25 – 1-26; *Herbstein & Van Winsen Op. Cit* note 207 at 69-70

²¹ *Erasmus Op. Cit* note 203 at A1-32-A1-32^a; Following the decisions in *Estate Agents Board v Lek* 1979 (3) SA 1048 (A) and *Ewing McDonald Co Ltd v M & M Products Co* 1991 (1) SA 252 (A); see further Forsyth *Op. Cit* note 220 at 187-88.

²² Examples include the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, Preventing of Counterfeiting of Currency Act 16 of 1965, the Admiralty Jurisdiction Regulation Act 105 of 1983, the Financial Intelligence Centre Act 38 of 2001, the Private Security Industry Regulation Act 56 of 2001, and the Defence Act 42 of 2002. See further FAFO *Op. Cit* note 49 at 29-35.

²³ Examples include the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, and the Prevention and Combating of Corrupt Activities Act 12 of 2004.

²⁴ See generally Harms *Op. Cit* note 195 at B35. Discovery includes the obligation to disclose documents that may damage a party's own case: South African courts apply the rule as stated in the English case of *Compagnie Financiere et Commerciale du Pacific v Peruvian Guano Co* (1882) 11 QBD 55; see *Swissborough Diamond Mines v Government of the Republic of South Africa* 1999 (2) SA 279 (T) at 316D-H and cases there cited.

²⁵ See Uniform Rules 35(6) and (7)

²⁶ See the idea of 'assistance' in *Cape Metropolitan Council* at paras 28-29.

²⁷ This is despite the fact that the legislature introduced a new article, s 342A, into the Criminal Procedure Act permitting courts to investigate unreasonable delays and make orders to circumvent delay.

²⁸ Sandile Ngcobo 'Delivery of Justice: Agenda for Change' (2003) 120 *South African Law Journal* 688 at 688, 692-93.

²⁹ Department of Correctional Services Annual Report 2009/2010, available at <http://judicialinsp.pwv.gov.za/Annualreports/Annual%20Report%202009%20-2010.pdf>, at 13

³⁰ Ngcobo, *Ibid* at 693, 705-06

³¹ *Wild v Hoffert NO* 1998 (3) SA 695 (CC) at paras 12, 30

³² Author's interview with Johan Kruger, attorney at the Solidarity trade union's Labour and Constitutional Law Unit, 27 May 2009. As noted in the section on delay, a case that goes beyond the Labour Court may take seven or more years to resolve.

³³ For rape statistics as reported by the South African Police Services see: < http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm > (accessed 11 November 2011). See also Ursula Lau *Intimate Partner Violence Fact Sheet*, research undertaken by the Medical Sciences Research Council which reveals that 1 in 4 women in the general South African

³⁴ Committee on the Elimination of Discrimination against Women, *Concluding Observations: South Africa*, UN Doc CEDAW/C/ZAF/CO/4 (2011), paras. 39-40.

³⁵ Articles 3 & 4, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa; Article 4(c), Declaration on the Elimination of Violence Against Women, 20 December 1993, General Assembly Resolution A/RES/48/104; Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, 24 January 2008, U.N. Doc. CAT/C/GC/2, Para.18; Committee on the Elimination of Discrimination Against Women, Case of A.T. v. Hungary, Communication No. 2/2003, 26 January 2005, A/60/38, Paras. 9.2 - 9.3.; Committee on the Elimination of Discrimination Against Women, Case of Vertido v. The Philippines,, UN Doc CEDAW/C/46/D/18/2008

³⁶ Those internationally guaranteed rights are enshrined in Sections 10, 11 and 12 of the Constitution of South Africa.

³⁷ Legislation regulating migration issues includes the Refugees Act (1998), the Immigration Act (2002) (last amended in 2004), the Immigration Regulations (2005), the Criminal Procedure Act (Act No. 51 of 1977), the Defence Act (Act No. 42 of 2002) and the Child Care Act (1983) for minors.

³⁸ Adopted in May 2007. Available at www.info.gov.za/view/DownloadFileAction?id=111693 (Accessed on 12 November 2011)

³⁹ Jorge Bustamante, Report of the Special Rapporteur on the human rights of migrants (2 May 2011), available at <http://daccess-ods.un.org/TMP/3393737.37573624.html> (Accessed on 12 November 2011).

⁴⁰ Anton du Plessis and Antoinette Louw Crime and Crime Prevention in South Africa: 10 Years After *Revue canadienne de criminologie et de justice pénale* (April 2005) 441.

⁴¹ South Africa became a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 3 October 1994, but has failed to lodge its instrument of ratification. This contrasts with the statement made by South Africa in 2007 that it was in the process of ratifying ICESCR: see Note Verbale dated 26 April 2007 from the Permanent Mission of South Africa to the United Nations, presenting South Africa's candidature to the Human Rights Council (hereafter "Voluntary Pledge"), p. 5, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/327/13/PDF/N0732713.pdf?OpenElement>.

⁴² South Africa became a signatory to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 20 September 2006, but is yet to lodge its instrument of ratification. This contrasts with the statement made by South Africa in April 2007 that it was in the process of ratifying OP-CAT: see Voluntary Pledge, above note 41, p. 5.

⁴³ Convention for the Protection of All Persons from Enforced Disappearance.

⁴⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This contrasts with the statement made by South Africa in April 2007 that it was in the process of ratifying ICRMW: see Voluntary Pledge, above note 41, p. 5.

⁴⁵ See Voluntary Pledge, above note 41, p. 4.

⁴⁶ Namely, the Special Rapporteur on food (request in 2003), the Special Rapporteur on extrajudicial, summary or arbitrary executions (request in 2008), and the Special Rapporteur on racism (request in 2008, reiterated in 2010).