

**SOUTH AFRICA:
STATE OF STATE REPORTING UNDER INTERNATIONAL HUMAN
RIGHTS LAW**

RESEARCH PAPER

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RIGHTS LAW: The State of South Africa's State Reporting**

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LIST OF ABBREVIATIONS AND ACRONYMS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
African Children's Charter	African Charter on the Rights and Welfare of the Child
African Commission	African Commission on Human and Peoples' Rights
African Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
AU	African Union
APR	African Peer Review
APRM	African Peer Review Mechanism
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRMW	Convention on the Rights of Migrant Workers
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisations
DIRCO	Department of International Relations and Cooperation
DPSA	Department of Public Service and Administration
ECOSOC	Economic, Social and Cultural Council (UN)
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IGO	Intergovernmental Organisation
NEPAD	New Partnership for Africa's Development
NHRI	National Human Rights Institution
NGO	Non-governmental Organisation
NPA	National Programme of Action
OPCA	Optional Protocol to the CRC on the Involvement of Children in Armed Conflict
OPSC	Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
SADC	Southern African Development Community
UN	United Nations
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

Overview

The aim of this paper is to outline South Africa's reporting obligations and to provide an update of its reporting status under core international human rights treaties at the United Nations (UN) and African regional levels. The paper examines the obligations under these, emphasising those that it has ratified as well as relevant optional protocols. It also considers South Africa's reporting obligations and status under other mechanisms such as the Universal Periodic Review (UPR) and African Peer Review Mechanism (APRM). Before considering the status of South Africa's reporting, the paper sets out the objectives of state reporting in relation to treaties, and the general guidelines on reporting. Treaty-specific guidelines are further considered for each treaty. The objectives of the UPR and APRM are also stated. The paper further considers the role of other actors, such as National Human Rights Institutions (NHRI), Civil Society Organisations (CSOs) and parliament, in the reporting process. The paper ends with a conclusion, including recommendations on improving compliance with South Africa's reporting obligations.

The information contained in the paper is as at 15 September 2010.

Methodology

Desktop research to review state reporting guidelines and a range of UN documents relating to state reporting was undertaken. In addition, state and shadow reports submitted, lists of issues and concluding observations, among other documents were reviewed. Telephonic interviews were conducted with government officials, state institutions and CSOs that are involved in the reporting process. The number of shadow reports submitted to treaty bodies may be higher than is reflected in this paper due to difficulties in accessing this information.

Introduction

International human rights treaties have been adopted that lay down the rights of individuals and groups. They also set out the duties of States in ensuring the enjoyment of these rights. The implementation of human rights requires States to go beyond making a legal commitment to ensuring the actual realisation of the rights through adopting 'appropriate measures'. While most States willingly ratify many human rights treaties, there is a general lack of similar emphasis by many States to ensure the realisation of rights.

State reporting to international human rights treaty bodies is an important mechanism to promote the implementation of human rights. It is aimed at assessing the extent to which States are adhering to their obligations and realising the rights under the human rights

treaties that they have ratified. States thus submit periodic reports on the measures taken and progress in implementing a specific treaty.

International human rights treaties establish ‘treaty monitoring bodies’ or committees of independent experts nominated by State Parties to monitor their implementation. These monitoring bodies are responsible for considering State reports to evaluate the performance of the State. The UPR and APRM review bodies are aimed at complementing the work of treaty bodies by means of peer review as opposed to using independent experts. Treaty bodies have no power to enforce the obligation placed on States to submit regular reports; compliance is thus dependent on the political will of the State.

Governments bear the responsibility to draft the state report. However, the involvement of other stakeholders is considered vital to ensuring the completeness and objectivity of the process. Alternate or ‘shadow’ reports to the main State report can be submitted by stakeholders other than the State including intergovernmental organisations (IGO), NHRI and CSOs. Treaty monitoring bodies consider these when examining the State’s report.

Many treaty bodies issue a ‘list of issues’ subsequent to receiving the State report but prior to the consideration of the report. The State should respond in writing and come before the monitoring body prepared to address these issues. The consideration of reports takes the form of constructive dialogue with State representatives and members of the treaty monitoring body.

After examination of the State report, the treaty monitoring body issues a report which is generally referred to as its ‘concluding observations’. These follow a standard format including positive reflections, concerns and recommendations on the State’s progress in implementing human rights obligations.

Objectives of State reporting

State reporting is an opportunity for a government to reaffirm its commitment to respecting the human rights of its citizens, to take stock of its achievements and failures and adopt measures to remedy any shortcomings, and to show the international community that the government is serious about its international commitments. It must be seen as an opportunity for constructive dialogue between the State concerned and the treaty body, with the treaty body playing a supportive role.

A range of more detailed functions are served through State reporting, these include: a comprehensive review of national legislation, administrative rules and procedures and practices; regular monitoring of the realisation of rights in practice; assistance with policy formulation, public scrutiny of government policies and performance; evaluation of progress

towards realising rights; and improved understanding of obstacles and information exchange among States.

General guidelines on state reporting

Treaty bodies have adopted reporting guidelines that provide direction as to the form and content of State reports. The various treaties specify how reports should be drafted and what should be included in reports. Harmonised guidelines on state reporting have also been adopted.

There are two forms of state reports, the initial and the periodic reports. Initial reports provide, among other things, a background to the country and its laws and serve as a foundation for future dialogue. Periodic reports provide information on developments in the country.

Reporting timelines are set out for each treaty, these set out the timeframes in which the initial report is due, this is usually within one or two years of ratification of the treaty. They also establish the timeframes for regular periodic reports. At the UN, periodic reports are generally required every four or five years with the exception of CERD whereby reports are required every two years. The timeframes for AU treaties are generally shorter at every two to three years. Due to States generally failing to meet reporting timelines, the practice has been to allow States to submit combined reports in order to bring them up to date with their reporting obligations.

State reports should be structured in two parts namely the 'common core document' and the 'treaty-specific document'. The former provides general background information about the State and about the framework protection and promotion of human rights in that State. The latter contains information about the situation in theory and in practice relating to the specific rights in the treaty; information requested in the treaty-specific guidelines; and information on steps taken to address issues that were raised by the treaty body on the State's previous report. At a minimum, State reports must provide information on the measures adopted to give effect to the rights in the treaty; the progress made in the enjoyment of these rights; relevant empirical information; and any problems and difficulties that affect implementation of the treaty.

South Africa's reporting obligations under human rights treaties and its status

South Africa has ratified a range of international and regional human rights instruments. At the UN level, these include the ICCPR, CERD, CEDAW, CAT, CRC and CRPD. At the African regional level, these include the African Charter, the African Children's Charter and the African Women's Protocol. South Africa has signed but not ratified the ICESCR and has

neither signed nor ratified the CRMW. Reporting obligations only apply to treaties that have been ratified. In addition, South Africa is subject to peer review under the UPR and the APRM.

Different government departments have been identified to oversee the implementation of specific treaties. The department is responsible for ensuring compliance with reporting obligations and overseeing the reporting process. However, reporting is undertaken in collaboration with other government departments.

United Nations treaties

States are required under harmonised guidelines to submit a common core document to the UN, which is also made available to all treaty bodies. South Africa submitted its common core document to the UN on 4 December 1997. Further information is considered below in respect of each treaty that South Africa has ratified.

International Covenant on Civil and Political Rights

The supervisory body for the ICCPR is the Human Rights Committee. South Africa ratified the ICCPR in December 1998, the initial report was due in 2000 and two periodic reports have fallen due in March 2005 and March 2010 respectively. No reports have been submitted to date. The government is currently preparing this report; it is reportedly at an advanced stage and will be concluded shortly.

International Convention on the Elimination of All Forms of Racial Discrimination

The supervisory body to the CERD is the Committee on the Elimination of Racial Discrimination. South Africa ratified CERD in December 1998. The initial report was due in January 2000 but was not submitted. The subsequent second and third periodic reports were due in January 2002 and January 2004 respectively. These three reports were consolidated and submitted late in December 2004. Two shadow reports were submitted. In its concluding observations, the CERD Committee noted the delay in reporting and requested that South Africa respect the deadlines for the next report.

The Committee made a number of recommendations in its concluding observations, these primarily relate to obtaining detailed information on a number of issues such as, the ethnic composition of the population, the role of traditional leadership and the status of customary law, measures taken to address *de facto* segregation that persists in South Africa, the socio-economic situation and the situation of indigenous people. The CERD Committee requested that South Africa consult with CSOs in preparation of its subsequent report. The government is currently preparing this report. An additional report was requested for submission in August 2007, this was not submitted. The consolidated fourth, fifth and sixth periodic reports were due in January 2010 and are currently being drafted by the government.

Convention on the Elimination of All Forms of Discrimination against Women

The supervisory body for CEDAW is the Committee on the Elimination of Discrimination against Women. South Africa ratified the CEDAW in December 1995. The initial report was due in January 1997 and was submitted late in February 1998. The initial government report relied largely on information from government sources. Two shadow reports were submitted. The CEDAW Committee recommended in its concluding observations that government reinforce its collaboration with CSOs. It further noted the lack of data disaggregated by sex.

After failing to submit the second and third reports in January 2001 and January 2005 respectively, South Africa consolidated these with the fourth report which was due in January 2009 but was only submitted in July 2009. Five shadow reports have been submitted. This report is yet to be considered by the CEDAW Committee.

The CEDAW Committee has, however, issued its list of issues; key amongst these is the question of the 'extent of consultation and participation of non-governmental organisations' in preparation of the report. Further, the Committee has requested clarity on the status of CEDAW in the national legal system and on measures taken to increase visibility of the Optional Protocol to CEDAW. Further, that South Africa should elaborate on the legal status of the SADC Protocol on Gender and Development, on policies to eliminate gender-based violence in schools and explain measures to increase girls' and women's access to health services. Information on progress towards abolition of unequal inheritance rights and on progress to increase resources to the Commission on Gender Equality is also requested.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The supervisory body for CAT is the Committee against Torture. South Africa ratified the CAT in December 1998. Unlike other treaty monitoring bodies, the CAT Committee prepares lists of issues which are transmitted to States Parties prior to the submission of the periodic report. This is to assist States Parties to prepare focussed reports.

The initial report was due in January 2000 and was submitted late in June 2005. Six shadow reports were submitted. The considerable delay in submission of the initial report was noted by the CAT Committee in its concluding observations. Further concern was raised regarding the lack of analysis as to the implementation of statutory provisions.

A range of recommendations were made in the concluding observations including: more information regarding all cases of extradition, return or removal, statistical data on complaints related to torture, cruel, inhuman or degrading treatment, information on compensation and rehabilitation for victims, and information on bills or laws related to the

implementation of the CAT. The Committee also requested that South Africa disseminate its report and the CAT Committee's conclusions and recommendations widely.

An additional report was requested by the CAT Committee for November 2007 but was not submitted. The CAT Committee set a new date (December 2009) for the submission of the second periodic report, this has not yet been submitted but the government is currently preparing this.

Convention on the Rights of the Child and its Optional Protocols

The supervisory body for the CRC and its Optional Protocols is the Committee on the Rights of the Child. South Africa ratified the CRC in June 1995, the OPSC in June 2003 and the OPCA in September 2009. Its initial report to the CRC was due in July 1997 and submitted slightly late in December 1997. One shadow report was submitted. In its concluding observations to the initial report the CRC Committee commended efforts to submit the report on time. It recommended, amongst other things, that South Africa ratify the ICESCR, strengthen coordination between ministries and departments, review the data collection system, take effective measures to prohibit by law the use of corporal punishment in the family, and wide dissemination of the State report and concluding observations.

The second and third periodic reports fell due in July 2002 and July 2007 respectively. These have not been submitted to date and will be submitted as a consolidated report. The government has indicated that the report has been finalised and submitted to cabinet for final approval. Delays in this stage of the process raise the risk that the content of the report will be outdated by the time it is submitted to the CRC Committee.

South Africa also has not submitted its initial report on the OPSC, which was due in July 2005 and the initial report on OPCA is only due in October 2011.

Convention on the Rights of Persons with Disabilities

The supervisory body for the CRPD is the Committee on the Rights of Persons with Disabilities. South Africa ratified the CRPD in November 2007. The initial report was due in May 2010. No report has been submitted to date and the state of preparation of the report is currently unclear.

African regional treaties

African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The supervisory body for the African Charter and the African Women's Protocol is the African Commission on Human and People's Rights. South Africa ratified the African Charter in July 1996 and the African Women's Protocol in December 2004. The initial report was due in

October 1998 and was submitted on time. In drafting its first report, South Africa drew from the reports submitted to the CRC and CEDAW Committees. Information was sourced from both government departments and NGOs. At the time of submission of the first report, the African Commission had not adopted the practice of issuing concluding observations.

In spite of submitting its initial report on time, the general pattern of late and delayed reporting has subsequently been established in respect of this treaty. The second, third and fourth reports were due in October 2000, October 2002 and October 2004, respectively. These were submitted late as a consolidated report in May 2005. One shadow report was submitted. The report was presented by a high level delegation from South Africa, led by the then Deputy Minister of Justice and Constitutional Development. The African Commission voiced concern with the late submission of the report. It raised specific concern about the lack of detail about measures taken to eradicate xenophobia directed towards African migrants and the high incidence of sexual violence against women and children. The African Commission recommended, amongst others, that South Africa intensify efforts to interact with CSOs and make the necessary declaration under article 34(6) of the Protocol to the African Charter relating to the establishment of an African Court on Human and Peoples' Rights African Court on Human and People's Rights.

The consolidated fifth and sixth periodic reports were due in October 2006 and October 2008 respectively. These are being incorporated into a consolidated report with the seventh periodic report which is due in October 2010, this is currently being drafted.

African Charter on the Rights and Welfare of the Child

The supervisory body for the African Children's Charter is the African Committee of Experts on the Rights and Welfare of the Child. South Africa ratified the African Children's Charter in January 2000. The initial report was due in January 2002 and has not yet been submitted. The ACERWC guidelines on reporting on the African Children's Charter allow that where a State has already submitted a report to the CRC Committee, it may use elements of that report in its report to the ACERWC.

It is unclear if the initial report has already been drafted. However, it is expected that the report would contain similar information to that contained within the report to the CRC Committee.

Role of other stakeholders in the treaty reporting process

Treaty bodies have recommended the involvement of other stakeholders such as CSOs, NGOs, academic institutions and NHRIs in the report process, especially in the preparation of reports. This requires that domestic processes should be transparent and accessible.

Generally, there are two ways in which stakeholders can be involved in the treaty reporting process. They may be involved in the preparation of the State report or give comment on the draft State report prior to it being finalised and submitted, or they can submit alternative or 'shadow' reports.

Treaty bodies have adopted statements on the participation of CSOs and NHRIs in the process. Subsequent to the receipt by the treaty body of the State report and prior to its consideration, relevant information may be submitted at a number of stages by other stakeholders in the form of the shadow report. This includes that they may make oral presentations before treaty bodies. Finally, they may submit information on the implementation of concluding observations by the State Party concerned. A number of treaty bodies have encouraged NGOs to collaborate, coordinate and consult when submitting information and where possible, submit a single consolidated document.

Some shadow reports have been submitted by NHRIs and NGOs to UN treaty monitoring bodies as can be seen in the discussion on each treaty. In spite of this, the level and quality of CSO participation is weak with very few participating in the preparation of shadow reports to the various treaty monitoring bodies. Furthermore, engagement of CSOs into State reports is of serious concern.

In addition to CSOs and NHRIs, Parliament has an important role to play in the reporting process. States have a legal obligation to involve parliaments in the drafting of reports. Parliament's role could be to ensure that government complies with its reporting obligation, comments on the draft report, or participates in the State delegation during the consideration of the report.

Reporting under other mechanisms

Universal Periodic Review

The UPR was established in March 2006. The key goal of the UPR is to address inequalities and all forms of discrimination. Its objectives are to improve human rights on the ground; push States to fulfil their human rights obligations and assess positive developments and challenges; enhance capacity of States; share best practice among States and stakeholders; support cooperation in the promotion and protection of human rights; and encourage full cooperation and engagement with the HRC and other human rights bodies.

Reports are generally due between three and four months before the review. UN Member States prepare questions for the countries under review. Following the review, the HRC issues an 'outcome report', which summarises the proceedings and contains conclusions and recommendations.

Review of South Africa under the UPR

Reporting is required every four years. However, South Africa was drawn for review in the first round. The first report was due in January 2008. South Africa failed to submit its report in advance, this has been widely criticised, and the report was only submitted at the time of the interactive dialogue in April 2008. South Africa was questioned about its general failure to meet reporting deadlines in respect of treaty body reporting. South Africa responded that the obstacle lay in the considerable effort required to prepare these and that it was seeking ways to optimise the preparation of reports. South Africa's second review is due in January 2012.

Participation of other stakeholders in the review of South Africa under the UPR

South Africa failed to meet the requirement of the HRC to consult civil society in the preparation of its report. In spite of these submissions from 18 other stakeholders were compiled into a single document.

African Peer Review Mechanism

The APRM was established by the African Union to ensure compliance with principles of the New Partnership for Africa's Development (NEPAD). It aims to promote the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration. It seeks to achieve this through the sharing of experiences and best practices and through identifying obstacles and assessing the needs for capacity building of participating countries.

Member States accede to the APRM voluntarily. This requires an undertaking to submit to and facilitate periodic peer reviews. The first country review is due within 18 months of acceding; subsequent reviews are undertaken every two to four years. States can also request that they be reviewed and if there are early signs of political or economic crisis a review can be instituted.

Review of South Africa under APRM

South Africa acceded to the APRM in March 2004. South Africa's initial review was thus due in September 2005. This country review report was submitted in June 2006. A number of recommendations were made including the need for South Africa to strengthen and enhance social dialogue and participation of people in the socio-economic development process, enhance partnerships between government and other development stakeholders, and establish regular monitoring and reporting mechanisms within the country. South Africa reportedly dismissed the findings and recommendations.

Participation of other stakeholders in the review of South Africa under the APRM

A key criticism of the first review relates to the ineffective consultation and participation of other stakeholders. The government process is described as not being true consultation but rather a process of providing information as to what was underway. Notwithstanding this criticism, a significant number of submissions were received from other stakeholders including 27 from civil society and 27 from parliament. This stands in strong contrast to the level of engagement of other stakeholders in reporting to human rights treaties and the UPR. Based on the periodic review timeline of every two to four years, the second review is due by 2010.

Conclusion and recommendations

The status of South Africa's reporting under core UN and African human rights treaties paints a gloomy picture. Reporting under other mechanisms such as the UPR and APRM is also a matter of concern. It seems that the approach taken to State reporting is not as a self-critical assessment of its efforts to realise the rights in the treaties it has ratified, but rather a mere formality. The government's general non-compliance with its reporting obligation in terms of the UN and the AU is glaring. Further, a number of reports fail to meet the reporting guidelines and do not include information on the implementation of recommendations made on previous reports.

The following recommendations are made:

- The effective participation of other stakeholders in the reporting process is important to ensuring compliance with the reporting obligation, as the preparation of the State report requires input from a variety of sources.
- Effective civil society involvement in the reporting process is weak. Although the government has commissioned specific CSOs or consultants to prepare reports, this does not qualify as CSO engagement in the reporting process.
- There is also need to improve institutional capacity and coordination between government departments in the preparation of reports.
- The limited role that Parliament has played in the reporting process is also concerning. While Parliament has been more visible in relation to the APRM, the same cannot be said for reporting under the UPR or human rights treaties.
- Parliament must be more involved in the State reporting process. Its oversight function provides it with an opportunity to interrogate government on complying with its reporting obligation and to question the veracity of the information in State reports. Further, Parliament is free to provide inputs on draft reports.
- South Africa does not also seem to take its reporting obligation in relation to the UPR and APRM as seriously as it should. It failed to submit its report under the UPR in advance and the APRM process was rushed, which impacted negatively on the consultation process with other stakeholders.
- State report writing has placed a burden on the South African government. Though the reporting process requires resources, data and technical expertise and can be time consuming, investment in resources to produce a quality report that is part of a

continuing process of realising rights can assist in governments' accountability to its citizens and its international accountability on human rights issues. Note that States can seek technical assistance from a range of UN agencies.

- State reporting requires political will and positive action to prepare a concrete and comprehensive report.
- Government must prepare a methodology to deal with the reporting backlog.
- Findings and recommendations arising from concluding observations or UPR and APRM reports must be mainstreamed into policy discussions and documents, to ensure their effective implementation.
- CSOs and NHRIs need to be proactive in participating in the reporting process and the submission of shadow reports on South Africa's compliance with its human rights obligations.

1. Introduction

In the field of international human rights law, treaties have been adopted that lay down the rights of individuals and groups, as well as the duties of States in ensuring enjoyment of these rights. This implies that the end results of the treaties should be the enjoyment by individuals and groups of the rights stipulated in the treaties.¹ Accordingly, States are required to implement the rights and obligations in treaties that they have ratified. This is because ratification is a formal expression at the international plane of a state's commitment to be bound by a treaty.² Implementation in the context of international human rights law implies 'moving from a legal commitment, that is, acceptance of an international human rights obligation, to realization by the adoption of appropriate measures and ultimately the enjoyment by all of the rights enshrined under the related obligations'.³ Even where a State has signed but not ratified a treaty, it is under an obligation to refrain, in good faith, from acts that would defeat the object and purpose of the treaty in the period between signature and ratification.⁴

However, as Olivier has observed, States ratify treaties without the political will or ability to fully implement them.⁵ Watt has also stated that 'while states have been willing to agree [to] human rights treaties, they have not been as enthusiastic about the monitoring of their own compliance with such agreements'.⁶ Monitoring the implementation of human rights treaties and compliance with human rights obligations thus becomes relevant in ensuring enjoyment of rights. State reporting is one of the mechanisms through which the implementation of human rights treaties can be monitored in order to avoid any deficiencies resulting from the laxity of States Parties to comply with their obligations.⁷

State reporting is thus at the core of the promotion of human rights, and particularly the supervision of the domestic implementation of treaty obligations. It is a common feature of major international human rights treaties. A reporting system was initially introduced by the International Labour Organization (ILO) based on international instruments it had adopted and in respect of rights within its mandate.⁸ The United Nations (UN) then followed suit, providing for this mechanism in various human rights treaties. Regional human rights treaties also provide for reporting mechanisms.

¹ Vojin Dimitrijevic, 'State reports' in Gudmundur Alfredsson, Jonas Grimheden, Bertram Ramcharan & Alfred de Zayas (eds) *International human rights monitoring mechanisms* (2001, Kluwer Law International) 185-200, 185.

² See article 2(1)(b) of the Vienna Convention on the Law of Treaties of 1969.

³ United Nations, *Report of the High Commissioner for Human Rights on Implementation of Economic, Social and Cultural Rights*, UN doc. E/2009/90, 8 June 2009, para 3.

⁴ See article 18 of the Vienna Convention on the Law of Treaties of 1969.

⁵ Michele Olivier, 'Compliance with reporting obligations under international law: Where does South Africa stand?' (2006) 31 *South African Yearbook of International Law* 179-195, 179.

⁶ Patricia Watt, 'Monitoring human rights treaties' (2004) *Verification Yearbook* 213-232, 213.

⁷ Dimitrijevic (2001) 188.

⁸ Dimitrijevic (2001) 188.

State reporting under international human rights treaties is based on the obligation of States to submit periodic reports on the measures they have undertaken and the progress they have made in implementing the specific treaty. The submission of State reports is important, because assessing compliance with any human rights obligation requires gathering and evaluating information. The obligation to submit reports is an obligation that is not placed on unwilling States, since States willingly ratify human rights treaties providing for such monitoring procedures. State reporting thus relies on the voluntary co-operation of States Parties.

Core international human rights treaties, as seen subsequently in this paper, establish bodies or committees that monitor their implementation. The committees are composed of State Party nominees who are expected to act in their personal capacity. These treaty bodies are entrusted with, among other things, considering the State reports in order to evaluate a State's performance. State reporting is generally aimed at assessing the extent to which States are adhering to their obligations under treaties that they have ratified. The mechanism is a continuous activity designed to promote and enhance respect for human rights by providing feedback on the implementation process and problems.

It should be noted that while the obligation to submit regular reports is entrusted on states, the treaty bodies have no power to enforce the obligation placed on States to submit regular reports, which contributes to delays in submitting reports or even in non-submission in certain instances. Compliance with the reporting obligation thus depends largely on political will. However, a State will be in violation of the respective treaty if it fails to submit reports as required.⁹

In addition to reporting under human rights treaties, the UN and the African Union (AU) have instated other mechanisms for reporting such as the Universal Periodic Review Mechanism (UPR) and the African Peer Review Mechanism (APRM), respectively. The difference between these mechanisms and the State reporting mechanism under human rights treaty is that the former is conducted by independent experts whereas the latter is a peer review. Notwithstanding, the UPR and APRM are aimed at complementing the work of treaty bodies.

Generally, the governments of the reporting States bear the responsibility to draft the report. However, the involvement of other State institutions and stakeholders has been seen as vital in ensuring completeness and objectivity in the process. Accordingly, State reporting under human rights treaties or special mechanism also make provision for other relevant stakeholders to submit information, which are often referred to as 'shadow' or 'alternate' reports in the case of treaty bodies. Such stakeholders include intergovernmental organisations (IGOs), national human rights institutions (NHRIs), civil society organisations (CSOs), including non-governmental organisations (NGOs) and academic institutions. Parliament could also use this opportunity to participate in the reporting processes. Reports submitted by other stakeholders are taken into consideration when examining the State's report.

⁹ See the Limburg Principles on the Implementation of the ICESCR, UN doc. E/CN.4/1987/17, Annex, para 72; reproduced in (1987) 9 *Human Rights Quarterly* 122–135. See also Economic and Social Council Official Records, Supplement No. 2, *Committee on Economic, Social and Cultural Rights: Report on the Fortieth and Forty-First Session*, UN doc. E/2009/22, 2009, para 39.

Following the submission of a report, in the case of treaty bodies for instance, the report is analysed and discussed in public sessions, in the presence of State representatives. While many of the treaty bodies allow for CSOs to be present during the examination of the State's report, they are not always allowed to participate or make oral submissions during the actual examination process.

It should be noted that subsequent to receipt of State reports and prior to the consideration of reports, the treaty bodies, on the basis of the information before it, issues what is called a 'list of issues', which the State should respond to in writing and come prepared to address. Some treaty bodies have in fact set a time frame within which a State should respond to the list of issues.¹⁰ The practice of issuing a list of issues by most treaty bodies should be distinguished from that of the UN Committee against Torture. This Committee prepares and adopt lists of issues to be transmitted to States Parties *prior* to the submission of their respective periodic report. This practice of the Committee against Torture is elaborated on under section 3.1.4 below.

The consideration of reports takes the form of constructive dialogue with State representatives. Even with reporting under other mechanisms such as the UPR and APRM, constructive dialogue is fundamental to the review process. After the examination of a State report, the treaty body concerned issues a report including recommendations. Most treaty bodies refer to these reports as 'concluding observations', which follows a standard format normally consisting of an introduction, a section noting positive aspects and another with the subjects of concern and related recommendations.¹¹

The aim of this paper is to outline South Africa's reporting obligations and to provide an update of its reporting status. The paper examines the obligations and status of South Africa's State reporting under core international human rights treaties at the UN and African regional levels, mainly those that it has ratified. It also considers South Africa's reporting obligations and status under other mechanisms, such as the UPR and APRM. Before considering the status of South Africa's reporting, the paper sets out the objectives of State reporting, particularly in relation to treaties, and the general guidelines on reporting. Treaty-specific guidelines are further considered when dealing with specific treaties. When dealing with the UPR and APRM, the objectives of these peer review processes are also stated. The paper further considers the role of other actors, such as NHRIs, CSOs and Parliament, in the reporting process under treaties as well as under the UPR and APRM. The paper ends with a conclusion, including recommendations on improving compliance with South Africa's reporting obligations.

The information contained in this paper is as at 15 September 2010.

¹⁰ For example, following the submission of reports, the UN Committee on the Elimination of Discrimination against Women provides, in advance, a list of issues and questions, and the reporting State is required to respond to them in writing at least three months before the date the State report is considered. See Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, para K.2.

¹¹ Under the UPR, it is referred to as 'outcome report'. The APRM employs the terminology, country self-assessment report and country review report. Generally, the reports from the monitoring body normally provide an assessment of compliance or non-compliance with rights and obligations.

1.1 Treaties considered

At the UN level, the paper considers the International Covenant on Civil and Political Rights of 1966 (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination of 1966 (CERD), the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT), the Convention on the Rights of the Child of 1989 (CRC), and the Convention on the Rights of Persons with Disabilities of 2006 (CRPD). The International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 (CRMW) are also mentioned, even though South Africa is not a party to these treaties. The protocols to the above treaties that South Africa has ratified are also considered where relevant.

At an African regional level, the paper considers the following treaties: the African Charter on Human and Peoples' Rights of 1981 (African Charter), the African Charter on the Rights and Welfare of the Child of 1990 (African Children's Charter), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (African Women's Protocol).

1.2 Methodology

The materials used were obtained from both desktop research and telephonic interviews with government officials, State institutions and CSOs that have been or are involved in the reporting process. The desktop research included a review of State reporting guidelines, other UN documents relating to State reporting, and articles and reports on State reporting, the State reports submitted, the list of issues, and the concluding observations issued, among other documents. The government departments consulted included the Department of Justice and Constitutional Development, the Department of International Relations and Cooperation, the Department of Women, Children and Persons with Disabilities, and the Department of Public Service and Administration. With regard to State institutions and CSOs, representatives from the South African Human Rights Commission and the Centre for Human Rights were consulted.

It should be noted that based on the difficulties in accessing information, the number of shadow reports submitted are based on those that were consulted during the research for this paper; and include submissions made at pre-sessional meetings of the relevant treaty bodies. The numbers could therefore be more, as there might be other shadow reports that were not accessible.

2. State reporting under international human rights treaties

2.1 Objectives of state reporting

State reporting serves to achieve a variety of objectives that have been outlined in a United Nations Manual on State reporting and it is worth restating here. It is important to first note that State reporting should be seen as an 'opportunity' rather than a 'formality'. It is an opportunity to reaffirm a government's commitment to respecting human rights of its own

citizens, to take stock of its achievements and failures and adopt measures to remedy any shortcomings that have been identified, and to assert to the international community that the government is serious about its international commitments.¹²

The State reporting process is not to be seen as a confrontational one but as ***an opportunity for constructive dialogue*** between the State concerned and the treaty body. This is an important objective of the reporting process as treaty bodies play a supportive role in fostering effective national implementation of international human rights instruments. Notwithstanding, although the treaty bodies aim at constructive dialogue with States, they may still pose critical questions and remarks to the States.

Other functions served by State reporting include the following:¹³

- ***Initial review function:*** Reporting provides an avenue for States to undertake a comprehensive review of national legislation, administrative rules and procedures, and practices in order to ensure their conformity with the treaty. The initial review process relates to the first report that is submitted under a treaty following ratification – the ‘initial’ report.
- ***Monitoring function:*** Reporting ensures that States monitor, on a regular basis, the actual situation in relation to each right, and is aware of the extent of enjoyment by individuals of the various rights. States must thus, in preparing their reports, go beyond describing the legal formalities (the situation in theory) and also describe the situation in practice.
- ***Policy formulation function:*** Reporting can act as a catalyst to the formulation of clearly stated and carefully targeted policies aimed at addressing problems that have been identified. A State would thus have to demonstrate that such policy measures have in fact been undertaken.
- ***Public scrutiny function:*** Reporting facilitates public scrutiny of government policies and its performance in relation to its human rights obligations. It also provides an opportunity, through effective consultation during the preparation of reports, for various sectors of society to be involved in the formulation, implementation and review of the relevant policies. The wide spread dissemination of the State’s report is crucial in this context.
- ***Evaluation function:*** Reporting provides a basis on which the State and the treaty body can effectively evaluate the extent to which progress has been made, over time, towards the realisation of rights and obligations. The setting of benchmarks and goals against which performance can be assessed is thus important.
- ***Function of acknowledging problems:*** Reporting enables States to develop a better understanding of the problems and shortcomings encountered in their efforts to

¹² See United Nations Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research & United Nations Staff College Project, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments* (1997, United Nations) 21-23.

¹³ These are outlined in various UN documents; see for instance, Office of the High Commissioner for Human Rights et al. (1997) 21-23.

realise rights. States are thus required to not only report on successes but also on the 'factors and difficulties' that have inhibited the realisation of the rights in question. Such acknowledgement establishes the good faith of the government in the eyes of both its citizens and the treaty body.

- **Information exchange function:** Reporting facilitates the exchange of information among States so that States could learn from one another. This information exchange also provides the treaty body with a better understanding of the common problems or issues faced by States; and treaty bodies have used this as the foundation for the elaboration of general comments or recommendations by treaty bodies.

Furthermore, various treaty bodies have acknowledged the importance of the reporting procedure in **facilitating their monitoring role**. For example, the UN Committee on Economic, Social and Cultural Rights (Committee on ESCR) has observed that reporting obligation provides a basis on which it can discharge its responsibilities for monitoring States Parties' compliance with their obligations and for facilitating the realisation of the socio-economic rights in the ICESCR.¹⁴

2.2 General guidelines on state reporting

Challenges facing the human rights treaty system include 'delays in submission and/or consideration of reports, non-reporting, and duplication of reporting requirements among treaty bodies.'¹⁵ In order to facilitate the preparation of reports and to ensure that reports are comprehensive and presented in a uniform manner by States Parties, treaty bodies have adopted reporting guidelines that provide direction as to the form and content of State reports.¹⁶ The various treaties specify how reports should be drafted and things to be included in reports. Some of the guidelines are common to all treaties.

To address the question of duplication of reporting requirements among treaty bodies, harmonised guidelines on reporting under international human rights treaties have been adopted. The harmonised guidelines aim at providing guidance to States Parties in fulfilling their reporting obligations under core human rights treaties, namely – the ICCPR, ICESCR, CERD, CEDAW, CAT, CRC and the CMW.¹⁷ The harmonised guidelines do not apply to initial reports prepared by States under article 8 of the Optional Protocol to the CRC on the involvement of children in armed conflict of 2000, and article 12 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography of 2000. This does

¹⁴ See CESCR, General Comment No. 1, *Reporting by states parties*, UN doc. E/1989/22, 24 February 1989, para 1.

¹⁵ UN Office of the High Commissioner for Human Rights, 'Enhancing the human rights treaty body system: Harmonized guidelines on reporting to the treaty bodies' (nd). Available at <http://www2.ohchr.org/english/bodies/treaty/CCD.htm> (accessed: 3 September 2010).

¹⁶ The guidelines regarding the form and content of reports to be submitted by States Parties under core human rights treaties have been compiled into one document, which is regularly updated. See United Nations, *Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties*, UN doc. HRI/GEN/2/Rev.6, 3 June 2009.

¹⁷ See United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, para 1.

not, however, preclude States Parties to these protocols from considering the guidelines when preparing their reports for the treaty bodies.

Though the harmonised guidelines contain information common to all human rights treaties, treaty bodies have also adopted treaty specific guidelines on State reporting as seen in section 3 below. The harmonised guidelines are therefore supplementary to the treaty-specific guidelines. States would have to still consult treaty specific guidelines when preparing their State Reports. This section draws from the harmonised guidelines in stating the general guidelines on State reporting. Treaty specific guidelines are mentioned in the subsequent section, when discussing South Africa's position in relation to specific treaties.

It is important to note from the onset that there are two forms of State reports under core international human rights treaties considered in this paper. An **'initial' report**, submitted subsequent to the ratification of a treaty and within a specified time frame following the entry into force of the treaty for the State Party concerned. The initial report normally provides a background to the country and its laws, and serves as the foundation for future dialogue with the treaty body. Subsequently, **periodic reports** are submitted, which contain information on developments in the country. The treaties or treaty bodies provide specific time frames for the submission of periodic reports.

However, States have more often than not, failed to meet the reporting timelines. Failure to report is a clear case of non-compliance. The failure of States to submit reports has in fact been seen to reach 'chronic proportions', as States either do not report at all or report long after the due date.¹⁸ To remedy this general 'poor' state of reporting, for States that fail to submit reports in time, the practice has been to allow them to submit combined reports. For example, for States that have never submitted a report under the ICESCR and whose reports are overdue, the Committee on ESCR accepts a one-time submission of up to three reports consolidated in a single document, as a means of bringing States up to date with their reporting obligations.¹⁹

The Committee has resorted to proactive measures where reports remained overdue. Where a State's report is very significantly overdue and the State has failed to respond to the Committee's reminders in this regard, the Committee has proceeded to review the implementation of the ICESCR in respect of the State in the absence of a State report.²⁰ Similarly, as seen in section 3 below, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has also proceeded to request the submission of consolidated reports where there has been considerable delay in submitting reports.

¹⁸ United Nations Secretary General, *Strengthening of the United Nations: An agenda for further change*, UN doc A/57/387, 9 September 2002, para 53. See also, United Nations Secretary General, *In larger freedom; Towards development, security and human rights for all*, UN doc A/59/2005, 21 March 2005.

¹⁹ Economic and Social Council Official Records, Supplement No. 2, *Committee on Economic, Social and Cultural Rights: Report on the fortieth and forty-first session*, UN doc. E/2009/22, 2009, para 41.

²⁰ Economic and Social Council Official Records, UN doc. E/2009/22, para 40. The CESCR has in fact been receiving information from international and national non-governmental organisations on the status of the implementation of the rights in the ICESCR in relation to States that have not submitted any report since ratification and entry into force of the ICESCR or states with long overdue periodic reports (para 45).

Table 1: General reporting time lines under core UN human rights treaties

Treaty	Relevant provision	Initial report	Periodic reports	Supervisory body
ICCPR	Article 40	Within <i>one year</i>	Whenever the Committee so requests ²¹	Human Rights Committee
ICESCR	Articles 16 and 17 ²²	Within <i>two years</i>	Every <i>five years</i>	Committee on Economic, Social and Cultural Rights
CERD	Article 9	Within <i>one year</i>	Every <i>two years</i> , and whenever the Committee so request	Committee on the Elimination of Racial Discrimination
CEDAW	Article 18	Within <i>one year</i>	Every <i>four years</i> , and further whenever the Committee so requests	Committee on the Elimination of Discrimination against Women
CAT	Article 19	Within <i>one year</i>	Every <i>four years</i> , and such other reports as the Committee may request	Committee against Torture
CRC ²³	Article 44	Within <i>two years</i>	Every <i>five years</i>	Committee on the Rights of the Child
CRMW	Article 73	Within <i>one year</i>	Every <i>five years</i> , and whenever the Committee so requests	Committee on Migrant Workers
CRPD	Article 35	Within <i>two years</i>	Every <i>four years</i> , and further whenever the Committee so requests	Committee on the Rights of Persons with Disabilities

²¹ Unlike other treaties, the ICCPR does not specify the time frames for periodic reports. In a decision adopted in 1981 and amended in 1982 UN doc. CCPR/C/19.Rev.1, the Human Rights Committee decided to establish specific time frames, requiring States that had submitted initial reports before July 1981 to submit reports every five years following consideration of their initial reports. Why other States have to submit their periodic reports every five years from the date their initial reports were due. The Committee may also defer the date of the submission of a periodic report under certain circumstances. Despite this decision, the current practice is that the Committee, at the end of its concluding observations, gives a date by which the next periodic report should be submitted (see Human Rights Committee, *Consolidated guidelines for state reports under the International Covenant on Civil and Political Rights*, UN doc. CCPR/C/66/GUI/Rev.2, 26 February 2001, para B.2.

²² Economic and Social Council resolution 1988/4 introduced a new reporting cycle other than that under article 17(1) of the ICESCR, but in line with this provision.

²³ The optional protocols to the CRC also place reporting obligations on States. Article 8 of the Optional Protocol to the CRC on the involvement of children in armed conflict requires States Parties to submit a comprehensive report 'within two years' following the entry into force of the Protocol for the State Party, on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment. Article 12 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, also requires States Parties to submit a comprehensive report 'within two years' following the entry into force of the Protocol for the State Party, on the measures it has taken to implement the provisions of the Protocol. For both protocols, subsequent information regarding their implementation should then be included in the State Party's periodic reports under the CRC.

Table 2: General reporting time lines under core African human rights treaties

Treaty	Relevant provision	Initial report	Periodic reports	Supervisory body
African Charter	Article 62	Within two years	Every two years	African Commission on Human and Peoples' Rights
African Children's Charter	Article 43	Within two years	Every three years	African Committee of Experts on the Rights and Welfare of the Child
African Women's Protocol	Article 62 of the African Charter	Not applicable	Every two years	African Commission on Human and Peoples' Rights

Guidelines on State reporting also require that State reports should be **structured in two parts**. The first part, referred to as the '*common core document*' should contain general background information about the reporting State and information on the general framework for the protection and promotion of human rights. This part should also include information on non-discrimination and equality, and effective remedies. The common core document is normally submitted to the UN, including all treaty bodies, and can be subsequently updated and submitted to specific treaty bodies when required. The second part of the report, referred to as the '*treaty-specific document*', submitted to each treaty body, should contain information on the situation of the reporting State, both in theory and practice, with regard to the specific rights in relation to specific treaties. For periodic reports, this is also the part in which the State should include information on any measures towards implementing recommendations made on its previous report.

With regard to the **length and format of the State report**, reports should normally not be of excessive length. The harmonised guidelines on reporting under international human rights treaties states that the 'common core documents should not exceed 60-80 pages, initial treaty-specific documents should not exceed 60 pages, and subsequent periodic documents should be limited to 40 pages. Due to these limits, the reports have to be concise and structured, and relevant legislation and policies could be annexed. The harmonised guidelines also go as far as specifying details in relation to the format of the pages – 'A4-size paper, with 1.5 line spacing, and text in 12 point Times New Roman type'.²⁴ Both electronic format and printed paper copy are to be submitted. It should be noted that not all treaty specific guidelines go into much detail in relation to the format as the harmonised guidelines do.

Another key requirement for various treaties is the need to **provide disaggregated statistical data** that show comparison over time. As mentioned in the previous section, reports should contain information on both the *de jure* (in principle) and *de facto* (in practice) situation with regard to the implementation of the rights and obligations.²⁵ Linked to this requirement is the need to **establish appropriate institutional framework** for the collection of data and the preparation reports. In addition, States can seek technical assistance from the UN Office of the High Commissioner for Human Rights (OHCHR) in collaboration with the Division for the

²⁴ United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, para 19.

²⁵ United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, paras 25 & 26.

Advancement of Women, and from other relevant UN agencies.²⁶ States are also required to coordinate the preparation of their reports in coordination with the relevant treaty body.²⁷ This would ensure, among other things, that the State submits the required information.

The information to be included in State reports are summarised in table 2 below. Generally, State reports are expected to provide the following minimum information:

- The measures adopted by a State to give effect to the rights provided for in the treaty;
- The progress made in the enjoyment of those rights;
- The relevant empirical information, including statistical data; and
- Any problems and difficulties affecting the domestic implementation of the treaty.²⁸

Table 3: Summary of information to be included in the State reports²⁹

Core document	Treaty-specific document
<p>1. General information about the reporting State, including:</p> <ul style="list-style-type: none"> • Demographic, economic, social and cultural characteristics of the state • Constitutional, political and legal structure 	<ul style="list-style-type: none"> • Information relating to implementation of each specific right and issue under the relevant treaty • Information requested by the relevant treaty-body in the treaty-specific guidelines • Information on steps taken to address issues raised by the treaty body on the State's previous report
<p>2. Information on the general framework for the protection and promotion of rights, including:</p> <ul style="list-style-type: none"> • The status of main international human rights treaties as well as other international norms related to human rights (ratification, domestication, reservations, derogations, restrictions and limitations) • The legal framework for the protection of rights at the national level • Framework within which rights are promoted (efforts made and actions by government, legislatures, national human rights institutions, among others). • Process by which both parts of the reports are prepared, including participation of civil society and the existence of national coordinating structures. 	
<p>3. Information on non-discrimination and equality and effective remedies</p>	

²⁶ United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, para 15.

²⁷ United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, para 15.

²⁸ See Inter-Parliamentary Union and Office of the UN High Commissioner for Human Rights, *Human rights: A handbook for parliamentarians*, No 8 (2005) 39.

²⁹ This table is not exhaustive; hence for detailed information, see United Nations, UN doc. HRI/GEN/2/Rev.6, Chapter 1, paras 31-60.

3. South Africa's reporting obligations under human rights treaties and its status

As seen in the harmonised guidelines on reporting under human rights treaties discussed in section 2 above, States are required to submit a 'common core document' to the UN, including all treaty bodies. South Africa submitted its core document to the UN dated 4 December 1997.³⁰ The document contained basic demographic, political and other background information but is not specific to any particular treaty. However, the document is accessible to other treaty bodies, and when reporting to these bodies, South Africa does not have to repeat information already contained in the common core document.

South Africa has ratified a range of international and regional human rights instruments. At the UN level, these include the ICCPR, CERD, CEDAW, CAT, CRC and the CRPD. South Africa has signed but is yet to ratify the ICESCR. At an African regional level, South Africa has ratified the core human rights treaties – the African Charter, the African Children's Charter, and the African Women's Protocol. The dates South Africa signed and ratified these core human rights treaties are provided below under the respective treaties. There are specific bodies that oversee States Parties' compliance with these treaties, which are also stated below under the respective treaties.

At the national level, a specific government department has been identified to oversee the implementation of the treaties. The department is thus also responsible for ensuring compliance with the reporting obligation and overseeing the reporting process. However, reporting is done in collaboration with other relevant government departments, as they are required to provide information to be included in the reports. The responsible government departments are stated below under the respective treaties.

The above treaties, with the exception of the ICESCR and CRMW as South Africa is not yet a party to them, place reporting obligations on South Africa. The reporting frequencies vary as stated in section 2 of this paper. South Africa is also subject to peer review under the UPR and has also voluntarily acceded to the APRM. As seen in section 4 below, South Africa has in fact been reviewed under these mechanisms. The reporting obligations on South Africa under the specific treaties and mechanisms that it has ascribed to are elaborated upon below and in section 4. Even though South Africa is not yet a party to the ICESCR and CRMW, it is important to note a few things about reporting under these treaties for future reference.

The ICESCR is the main treaty exclusively on economic, social and cultural rights at the international level. South Africa signed the ICESCR on 3 October 1994. By signing the Covenant, South Africa has committed to refraining from acts that defeat the object and purpose of the ICESCR. It should be noted that the Committee on ESCR, the supervisory body of the ICESCR, is the only body not established by the treaty that it monitors.³¹ The Committee consists of 18 independent experts elected by States Parties to the ICESCR.

³⁰ United Nations, *Core document forming part of the reports of states parties: South Africa*, UN doc. HRI/CORE/1/Add.92, 23 September 1998, paras 3-5.

³¹ The Committee on ESCR was established by the UN Economic and Social Council (ECOSOC) through Resolution 1985/17 of 28 May 1985.

States Parties to the ICESCR undertake to submit reports on the measures which they have adopted and the progress made in achieving the observance of the rights in the Covenant.³² The reports have to be submitted to the UN Secretary-General, who then transmits it to the UN Economic, and Social Council.³³ The ICESCR requires State reports to address both the progress made and failures. In this regard, the ICESCR provides that '[r]eports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.'³⁴

The Committee on ESCRs has adopted guidelines on State reporting under articles 16 and 17 of the ICESCR, which further elaborate on the form and contents of reports to be submitted and information to be provided with regard to the specific rights in the ICESCR.³⁵ The guidelines do not distinguish between initial and periodic reports, but States generally have to avoid repeating information contained in previous reports. The guidelines make reference to the harmonised guidelines – the common core and treaty-specific documents. It further states that treaty-specific document submitted to the Committee on ESCR should not repeat information included in the common core document or merely list or describe the legislation adopted by the State Party. The reports must rather contain specific information relating to the implementation, in law and in fact, of articles 1 to 15 of the ICESCR.³⁶ States must take account of the general comments of the Committee on ESCR and provide information on recent developments in law and practice affecting the full realisation of the rights in the ICESCR. The guidelines specifically require that periodic reports 'address directly the suggestions and recommendations of the previous concluding observations'.³⁷ Once South Africa ratifies the ICESCR, it would have to submit its initial report within two years after its entry into force for South Africa,³⁸ and thereafter every five years.

The CRMW, as its name suggest, provides for the rights of migrant workers and their families. South Africa has neither signed nor ratified the treaty. State Parties to the treaty undertake to submit a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the CRMW.³⁹ The Committee on Migrant Workers, which monitors implementation of the CRMW, consists of 14 independent experts elected by States Parties. Similar to the ICESCR, reports have to indicate factors and difficulties affecting implementation. Article 73(2) requires that the reports 'include information on the characteristics of migration flows in which the State Party concerned is involved'. Furthermore, there are two State reporting guidelines under the CRMW – one on

³² Article 16(1) of the ICESCR.

³³ Article 16(2) of the ICESCR.

³⁴ Article 17(2) of the ICESCR.

³⁵ Committee on Economic, Social and Cultural Rights, *Guidelines on treaty-specific documents to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social And Cultural Rights*, UN doc. E/C.12/2008/2, 24 March 2009.

³⁶ Committee on Economic, Social and Cultural Rights, UN doc. E/C.12/2008/2, para 2.

³⁷ Committee on Economic, Social and Cultural Rights, UN doc. E/C.12/2008/2, para 6.

³⁸ The ICESCR will enter into force three months after the date of the deposit of South Africa's instrument of ratification or instrument of accession (see article 27(2) of the ICESCR).

³⁹ Article 73(1) of the CRMW.

the initial report and the other, on periodic reports. With regard to the initial report, the first part should contain general information and the second part information relating to each article of the CRMW.⁴⁰ The guidelines also recognise the complementary role of harmonised guidelines by providing that States can present their initial report in line with the 'common core document'.⁴¹ The guidelines for periodic reports requires that the treaty-specific document be divided into two sections - the first providing general information and the second, information on specific treaty provisions.⁴² Once South Africa ratifies the CRMW, it will have to submit a report within one year after its entry into force for South Africa,⁴³ and thereafter, every five years as well as when the Committee on Migrant Workers requests.

3.1 United Nations treaties

3.1.1 International Covenant on Civil and Political Rights

The ICCPR deals specifically with civil and political rights. The Human Rights Committee is the supervisory body of the ICCPR and is composed of 18 independent experts elected by States Parties.⁴⁴ South Africa signed the Covenant on 3 October 1994 and ratified it on 10 December 1998. The Department of Justice and Constitutional Development (DoJ&CD) is responsible for overseeing the implementation of the ICCPR at a national level.

By ratifying the ICCPR, South Africa has undertaken to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind.⁴⁵ It also undertook, among other things, to take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights in the Covenant; and to ensure that any person whose rights or freedoms are violated have access to an effective and enforceable remedies, including remedies provided by way of the judiciary.⁴⁶

South Africa further undertook to submit reports on the measures it has taken to give effect to the rights in the ICCPR, and on the progress made in the enjoyment of the rights.⁴⁷ The reports are submitted to the UN Secretary-General and then transmitted to the Human Rights Committee for consideration. The Human Rights Committee has developed consolidated guidelines for initial and periodic reports.⁴⁸ The elaboration of the guidelines

⁴⁰ United Nations, Compilations of Guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties, UN doc. HRI/GEN/2/Rev.2/Add.1, 6 May 2005.

⁴¹ United Nations, UN doc. HRI/GEN/2/Rev.2/Add.1, para 6.

⁴² Committee on Migrant Workers, Guidelines for the periodic reports to be submitted by States Parties under article 73 of the Convention, UN doc. CMW/C/2008/1.

⁴³ The CRMW will enter into force on the first day of the month following a period of three months after the date of the deposit of South Africa's instrument of ratification or accession (see article 87(2) of the CRMW).

⁴⁴ Articles 28 and 29 of the ICCPR.

⁴⁵ Article 2(1) of the ICCPR.

⁴⁶ Article 2(3) and (4) of the ICCPR.

⁴⁷ Article 40 (1) of the ICCPR.

⁴⁸ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2.

was based on the fact that reports submitted by States prior to the guidelines were very brief and general. The consolidated guidelines are aimed at ensuring that State reports are presented in a uniform manner and a complete picture of the situation in each State as regards the implementation of the rights is provided.⁴⁹

General comments of the Human Rights Committee must be taken into account in the preparation of reports; and reports should generally address not only positive aspects but also difficulties.⁵⁰ The inclusion of sufficient data and statistics is also noted as crucial in enabling the Committee assess progress in the enjoyment of rights.⁵¹ Also, where the Committee has issued a decision against a State, the report must include information on the implementation of that decision.⁵² The **general part of reports**, for both initial and periodic reports, should be prepared in line with the harmonised guidelines. The Human Rights Committee's consolidated guidelines stipulate that if a State has already prepared a core document in terms of the harmonised guidelines, this would be available to the Committee but should be updated as necessary in the State's report to the Committee.⁵³

The consolidated guidelines require the **initial report**, in relation to the provisions of the ICCPR, to specify the constitutional and legal framework for the implementation of rights in the ICCPR, the legal and practical measures adopted to give effect to the rights, and progress made in ensuring enjoyment of the rights.⁵⁴ States Parties have to deal specifically with every provision in parts I, II and III of the ICCPR, describing the factual situation, the availability, effect and implementation of remedies, and report on the incorporation of the Covenant in the domestic legal system.⁵⁵ The starting point for **periodic reports** is the recommendations made on the previous report and the progress made towards enjoyment of rights.⁵⁶ It should be *structured* according to the articles in the ICCPR, and if there is nothing new to report in relation to a specific provision, the State must say so explicitly.⁵⁷

As per article 49 of the ICCPR, the Covenant entered into force for South Africa, three months after it deposited its instrument of ratification. Following this, as per article 40(1) of

⁴⁹ Office of the High Commissioner for Human Rights, 'Overview of the working methods of the Human Rights Committee' (nd). Available at <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a2> (accessed: 5 September 2010).

⁵⁰ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, paras C.1 and C.4.

⁵¹ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para C.6.

⁵² Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para F.1. On 28 August 2002, South Africa 'acceded' to the First Optional Protocol to the ICCPR of 1966, thus recognising the competence of the Human Rights Committee to receive complaints in relation to alleged violations of the Covenant rights by South Africa. South Africa thus has an obligation to report on the implementation of the Committee's decisions against it. It should be noted that 'accession' is an act by which a State signifies its agreement to be legally bound by the terms of a particular treaty. It has the same legal effect as ratification, but is not preceded by an act of signature.

⁵³ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para C.8.

⁵⁴ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para D.1.

⁵⁵ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para D.2.

⁵⁶ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para E.1.

⁵⁷ Human Rights Committee, UN doc. CCPR/C/66/GUI/Rev.2, para E.2.

the ICCPR, South Africa had to submit its initial report within a year, and thereafter, submit periodic reports as specified by the Human Rights Committee. As South Africa ratified the ICCPR on 10 December 1998, its initial report was due on 9 March 2000, its second periodic report on 9 March 2005, and its third periodic report on 9 March 2010.⁵⁸ South Africa, however, failed to meet its reporting obligation under the ICCPR.

The report under the ICCPR is among the State reports that the government is currently preparing. The Department of Justice and Constitutional Development has commissioned the Centre for Human Rights to draft the report. There is currently not much information on the drafting process. However, the Centre for Human Rights has indicated that '[w]ork on producing the reports under the listed treaties is at a very advanced stage and will be concluded shortly'.⁵⁹

Table 4: South Africa's reporting status under the ICCPR

Treaty: ICCPR				
Signature: 3/10/1994				
Ratification: 10/12/1998				
Responsible department: DoJ&CD				
Reporting requirement: Within one year; thereafter, when the Human Rights Committee decides				
Reports	Due	Received	Shadow reports	Considered
Initial	9/3/2000	Not yet submitted (currently being drafted)		
Second periodic	9/3/2005			
Third periodic	9/3/2010			

3.1.2 International Convention on the Elimination of All Forms of Racial Discrimination

The CERD is the principal international treaty on the elimination of racism, racial discrimination, and other forms of intolerance. It has been described as 'the international community's **only** tool for combating racial discrimination'.⁶⁰ The Committee on the Elimination of Racial Discrimination (CERD Committee) monitors the implementation of the Convention and is comprised of 18 independent experts elected by States Parties to the CERD.⁶¹ South Africa signed the treaty on 3 October 1994, and ratified it on 10 December 1998. The Department of Justice and Constitutional Development is also responsible for overseeing the implementation of the CERD.

⁵⁸ 'Reporting history: CCPR – South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_ccpr.pdf (accessed: 5 September 2010).

⁵⁹ Centre for Human Rights, 'State reporting project' (nd). Available at <http://www.chr.up.ac.za/index.php/about-the-project.html> (accessed: 11 September 2010).

⁶⁰ Office of the High Commissioner for Human Rights et al. (1997) 267.

⁶¹ Article 8 of the CERD.

South Africa, through ratification of the CERD, has committed 'to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'. It also has an obligation to, among others, effectively review governmental, national and local policies, and to amend or repeal any laws and regulations that have the effect of creating or perpetuating racial discrimination wherever it exists.⁶² When necessary, South Africa has to adopt special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them so as to guarantee them the full and equal enjoyment of their human rights and fundamental freedoms.⁶³

South Africa has also undertaken 'to submit to the Secretary-General of the United Nations, for consideration by the [CERD] Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention'.⁶⁴ The CERD does not provide any further information as to the form and content of reports. Accordingly, as is the practice, the CERD Committee has adopted guidelines on State reporting under CERD, aimed at advising States Parties on the form and content of their reports, in order to ensure that the reports are presented in a comprehensive and uniform manner.⁶⁵ The guidelines reiterate the objectives of State reporting – not just as a means to ensure compliance with obligations, but also an opportunity to fully comprehend the state of human rights protection within a State, in order to plan and implement the CERD efficiently. The guidelines further reiterate the need to involve NGOs in the preparation of reports so as to enhance the quality of reports as well as promote the enjoyment by all of the rights in the CERD.⁶⁶

Unlike the guidelines under the ICCPR, the guidelines under CERD do not deal with initial and periodic reports in separate sections. Nonetheless, a distinction is made where a specific requirement relates to the initial or periodic report. The guidelines take into consideration the harmonised guidelines, and require that the CERD-specific document should not repeat information in the common core document.⁶⁷ The information in the CERD-specific document should be arranged according to articles 1-7 of the CERD.⁶⁸ The guidelines go further to specify the information required under each provision. The report must reflect the actual situation on the ground in relation to the implementation of the CERD, and with regard to periodic reports, information should be provided on the implementation of

⁶² Article 2(1) of the CERD.

⁶³ Article 2(2) of the CERD.

⁶⁴ Article 9(1) of the CERD.

⁶⁵ Committee on the Elimination of Racial Discrimination, *Guidelines for the CERD-specific document to be submitted by states parties under article 9, paragraph 1, of the Convention*, UN doc. CERD/C/2007/1, 13 June 2008, para 2.

⁶⁶ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/2007/1, para 3.

⁶⁷ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/2007/1, para 5.

⁶⁸ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/2007/1, para 6.

recommendations in concluding observations on previous reports and those contained in the decisions of the CERD Committee in relating to the reporting State.⁶⁹

The Convention entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, as per article 19 of the CERD. South Africa then had to submit, in accordance with article 9(1) of the CERD, its initial report within one year and thereafter every two years or whenever the CERD Committee so requests. South Africa, as stated above, ratified the CERD on 10 December 1998, meaning that its initial report was due on 9 January 2000, and its second and third periodic reports due on 9 January 2002 and 9 January 2004, respectively.⁷⁰

South Africa delayed in meeting this reporting obligation, but submitted a consolidated report dated 2 December 2004,⁷¹ containing its initial to third periodic reports.⁷² The 68-page document is divided into three parts: part I contains general information on, among other things, the history and background of South Africa and the role of the courts; part II deals with the provisions of the CERD; and part III is the conclusion. The report deals with measures that have been adopted and challenges faced, including responses to the challenges.

The CERD Committee examined the report on 4 August 2006. It also provided a list of issues regarding the report, including whether the CERD can be invoked directly before the domestic courts,⁷³ to which South Africa responded.⁷⁴ In its concluding observations, the CERD Committee noted that the report was presented after a delay of approximately five years and requested that South Africa respects the deadline set for the submission of its next report.⁷⁵ The concerns raised by the CERD Committee in relation to the gaps in the report included:

- The absence of disaggregated information on the composition of the population making it difficult for the one to have an adequate vision of the diversity of the South

⁶⁹ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/2007/1, para 6. When South Africa ratified the CERD, it made a declaration under article 14 of the Convention, recognising the competence of the CERD Committee to receive and consider individual complaints

⁷⁰ 'Reporting history: CERD – South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_cerd.pdf (accessed: 5 September 2010).

⁷¹ This is the date the report was received.

⁷² Committee on the Elimination of Racial Discrimination, *Initial to third periodic reports of South Africa*, UN doc. CERD/C/461/Add.3, 19 May 2005.

⁷³ Committee on the Elimination of Racial Discrimination, *Questions posed by the Rapporteur in connection with the consideration of the first to third reports of South Africa* (2006). Available at http://www.bayefsky.com/issues/southafrica_re_cerd_c_461_add_3_2006.pdf (accessed: 5 September 2010).

⁷⁴ Committee on the Elimination of Racial Discrimination, Responses to questions put by the CERD Committee members (2006). Available at http://www.bayefsky.com/issuesresp/southafrica_cerd_2006.pdf (accessed: 5 September 2010).

⁷⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the initial to third periodic reports of South Africa*, UN doc. CERD/C/ZAF/CO/3, 19 October 2006, para 4.

African society or have an accurate perception of the effective enjoyment of the rights in the CERD by different ethnic groups; and

- The lack of information on how the Traditional Leadership and Governance Framework Act of 2003 addresses the status of customary law and traditional leadership, in relation to both national and provincial legislation.⁷⁶

The CERD Committee made a number of recommendations in relation to the provision of information in South Africa's next report. South Africa was requested to provide, among other things:

- A qualitative description of the ethnic composition of its population, in particular indigenous peoples and non-citizens;
- Detailed information on the role of traditional leadership and on the status of customary law, including on the measures adopted to ensure that the application of such laws does not have the effect of creating or perpetuating racial discrimination;
- Detailed information on the specific measures adopted to address the situation of *de facto* segregation that persists in South Africa, and the impact of the measures;
- Information on the socio-economic situation of the population, particularly in relation to disadvantaged ethnic groups;
- Detailed information on the situation of the indigenous people;
- Detailed information on any specific training programmes and courses for law enforcement officials on human rights and on the provisions of the CERD and their application;
- Information on measures taken to implement the Durban Declaration and Programme of Action at the national level.⁷⁷

The CERD Committee further requested that, in preparing its next periodic report, South Africa consults with CSOs working in the area of combating racial discrimination and the South African Human Rights Commission (SAHRC). South Africa was also required to provide the CERD Committee with information on the implementation of its recommendations, within one year. The Committee also recommended that South Africa submits its fourth periodic report jointly with its fifth and sixth periodic reports in a single report by 9 January 2010, which should address all points raised in the present concluding observations. These fourth to sixth periodic reports are yet to be submitted. As is the case with the ICCPR, the Centre for Human Rights is working with the Department of Justice and Constitutional Development in preparing this report, which it has indicated will be completed shortly.

⁷⁶ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/ZAF/CO/3, paras 11, 12.

⁷⁷ Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/ZAF/CO/3, paras 11, 12, 13, 15, 19, 23, 28.

Table 5: South Africa's reporting status under the CERD

Treaty: CERD				
Signature: 3/10/1994				
Ratification: 10/12/1998				
Responsible department: DoJCD				
Reporting requirement: Within one year; thereafter, every two years & whenever the CERD Committee requests				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	9/1/2000	2/12/2004	2 ⁷⁸	4/8/2006
Second periodic	9/1/2002			
Third periodic	9/1/2004			
Additional report requested	16/8/2007	Not yet submitted		
Fourth periodic	9/1/2010	Not yet submitted (currently being drafted)		
Fifth periodic	9/1/2010			
Sixth periodic	9/1/2010			

3.1.3 Convention on the Elimination of All Forms of Discrimination against Women

The CEDAW focuses on the rights of women and issues affecting women. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) is responsible for overseeing its implementation, and is composed of 23 experts on women's rights elected by States Parties.⁷⁹ South Africa signed the CEDAW on 29 January 1993, and ratified it on 15 December 1995. The Department of Women, Children and Persons with Disabilities (DWCPD) is responsible for overseeing the implementation of the CEDAW.

As a State Party, South Africa undertook to 'pursue by all appropriate means and without delay a policy of eliminating discrimination against women', including adopting appropriate legislative and other measures, repealing discriminatory laws and ensuring judicial enforcement of women's rights.⁸⁰ It also committed to ensuring the full development and advancement of women.⁸¹ Temporary special measures aimed at accelerating *de facto* equality between men and women may also be adopted but should be discontinued when the objectives of equality of opportunity and treatment have been achieved.⁸²

⁷⁸ Submitted by the South African Human Rights Commission; and the South African National Anti-Discrimination Forum- Faze 2, together with the National Consortium for Refugee Affairs, the Human Rights Institute of South Africa; and Ditshwanelo.

⁷⁹ Article 17 of the CEDAW.

⁸⁰ Article 2 of the CEDAW.

⁸¹ Article 3 of the CEDAW.

⁸² Article 4 of the CEDAW.

South Africa also accepted 'to submit to the Secretary-General of the United Nations, for consideration by the [CEDAW] Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect'.⁸³ In terms of this reporting obligation, CEDAW goes further to stipulate that reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the Convention.⁸⁴

The CEDAW Committee has adopted guidelines for State reporting under the CEDAW, which must be applied in conjunction with the harmonised reporting guidelines on a common core document.⁸⁵ With regard to the contents of reports (both initial and periodic), the reports should follow paragraphs 24 to 26 and 29 of the harmonised guidelines, provide information on progress as well as difficulties, and the CEDAW-specific document should include specific data and statistics disaggregated by sex. The general recommendations of the CEDAW Committee must be taken into consideration⁸⁶ and States are also required to report on the implementation of decisions for those States that have ratified the Optional Protocol to the CEDAW of 1999.⁸⁷ States are further required to report on measures taken to implement outcomes of UN conferences, summits and reviews.⁸⁸

Initial reports are intended to provide a detailed and comprehensive description of the position of women, the extent to which the laws and practices of a country comply with the CEDAW, and the practical availability, implementation and effectiveness of remedies. The CEDAW-specific initial report should not exceed 60 pages and should deal specifically with the provisions in parts I to IV of the Convention.⁸⁹ **Periodic reports** are intended to update the previous report, and should therefore focus on the period between the consideration of the previous report and the presentation of the current report.⁹⁰ The periodic reports should be limited to 40 pages and the structure should also follow parts I to IV of the CEDAW, and where there is nothing new to report, that must be explicitly stated.⁹¹ Similar to the ICCPR guidelines, the CEDAW guidelines identify three starting points for periodic reports: information on the implementation of concluding observations to previous reports and

⁸³ Article 18(1) of the CEDAW.

⁸⁴ Article 18(2) of the CEDAW.

⁸⁵ See Committee on the Elimination of Discrimination against Women, *Reporting guidelines*. UN doc. E/CN.6/2008/CRP.1, 11 February 2008, Annex I.

⁸⁶ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, paras C.1 – C.4.

⁸⁷ South Africa acceded to this Protocol on 18 October 2005, and therefore has an obligation to report on the implementation of any decisions issued against it.

⁸⁸ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, paras I.1 – I.3.

⁸⁹ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, paras D.1 – D.2 and J.1 .

⁹⁰ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, para E.1.

⁹¹ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, paras E.2 and J.1.

explanations for non-implementation or difficulties; an analytical and result-oriented examination by the State of additional legal and other appropriate steps and measures it has taken towards implementing the CEDAW; and information on any obstacles to the enjoyment of rights.⁹² The periodic reports should also analyse impact of measures and trends over time in eliminating discrimination against women and ensuring their enjoyment of rights, and address the implementation of the CEDAW in relation to different groups of women.⁹³

The Convention entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, based on article 27 of the CEDAW. Following this, as per article 18(1) of the CEDAW, South Africa had to report within one year, and thereafter, every four years as well as when the CEDAW Committee so requests. Ratification occurred on 15 December 1995, implying that South Africa's initial report was due on 14 January 1997, its second, third and fourth periodic reports were due on 14 January 2001, 14 January 2005 and 14 January 2009, respectively.⁹⁴

South Africa failed to meet these reporting time frames. Its initial report was received on 5 February 1998, following a year's delay. The 122-page report was based largely on information from government sources.⁹⁵ The report acknowledged other limitations relating to its preparation, including deficiencies in data and statistics. The CEDAW Committee considered the initial report on 24 June 1998. Though the report was based largely on government sources, the delegation during the consideration of the report, which was headed by the then Minister for Welfare and Population Development, included representatives of NGOs.⁹⁶ The concerns raised by the CEDAW Committee in its concluding observations related largely to the implementation of the Convention. However, of relevance in terms of reporting, is the recommendation that the government reinforces its collaboration with CSOs and NGOs.⁹⁷ The CEDAW Committee also noted the lack of sufficient data disaggregated by sex.⁹⁸ It further requested that the concluding observations be widely disseminated so that people can be aware of the steps that have been taken to ensure *de facto* equality for women.⁹⁹

There was considerable delay with regard to the submission of the second and third periodic reports, and a comparatively minimal delay in relation to the fourth periodic report. These

⁹² Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, para E.3.

⁹³ Committee on the Elimination of Discrimination against Women, UN doc. E/CN.6/2008/CRP.1, Annex I, paras E.4 and E.5.

⁹⁴ 'Reporting history: CEDAW – South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_cedaw.pdf (accessed: 5 September 2010).

⁹⁵ Committee on the Elimination of Discrimination against Women, *Initial report of South Africa*, UN doc. CEDAW/C/ZAF/1, 25 February 1998.

⁹⁶ Committee on the Elimination of Discrimination against Women, *Concluding observations on the initial report of South Africa*, contained in UN doc. A/53/38/Rev.1, Supplement No. 38, 1998, para 110.

⁹⁷ Committee on the Elimination of Discrimination against Women, UN doc. A/53/38/Rev.1, para 123.

⁹⁸ Committee on the Elimination of Discrimination against Women, UN doc. A/53/38/Rev.1, para 133.

⁹⁹ Committee on the Elimination of Discrimination against Women, UN doc. A/53/38/Rev.1, para 137.

reports were received on 2 July 2009 in consolidated format.¹⁰⁰ The report was drafted by the Office on the Status of Women (OSW), which is now integrated into the DWCPD. The OSW contracted an independent consultant to draft this report. The 173-page report acknowledged the importance of the CEDAW reporting process in giving South Africa the opportunity to critically analyse the situation of women in the country. The report outlined progress, achievements and challenges since the initial report and also briefly touched on the concluding observations of the CEDAW Committee with regard to the initial report. The report seemed to indicate that there was broader consultation, but without providing further details. The CEDAW Committee has thus raised a question in this regard as seen below.

The consideration of the report by the CEDAW Committee is pending. However, the Committee has already issued its list of issues for South Africa to respond to. A key issue raised by the CEDAW Committee relating to the preparation of the report is:

According to the report (Overview, at pp. 34-36), the methodology used for its preparation comprised, inter alia, discussions with individual gender experts and a presentation to the Women's Parliament held in the National Parliament in August 2008. Please specify the extent of consultation and participation of non-governmental organizations and whether the report was submitted to Parliament.¹⁰¹

The CEDAW Committee also requested, among other things, that South Africa:

- Clarifies the status of CEDAW in the national legal system;
- States whether it is considering specific Gender Equality Act containing a definition of discrimination against women in line with article 1 of the CEDAW;
- Provides information on the measures taken to increase visibility of the Optional Protocol to the CEDAW;
- Elaborates on the legal status of the Southern African Development Community (SADC) Protocol on Gender and Development;
- Provides information on the policies to eliminate gender-based violence in the context of schools;
- Explains the measures and programmes that have been initiated to address the identified challenge of increasing women's access to adequate and efficient health services, especially for girls.¹⁰²

The CEDAW Committee further requested information in relation to some of the recommendations made in its concluding observations relating to South Africa's initial report: first, the progress made to enact a uniform family code with the aim of abolishing unequal inheritance rights, land rights and polygamy, as recommended in the concluding

¹⁰⁰ Committee on the Elimination of Discrimination against Women, *Consolidated second, third and fourth periodic reports of South Africa*, UN doc. CEDAW/C/ZAF/2-4, 24 March 2010.

¹⁰¹ Committee on the Elimination of Discrimination against Women, *List of issues and questions with regard to the consideration of periodic reports*, UN doc. CEDAW/C/ZAF/Q/4, 6 August 2010, para 1.

¹⁰² Committee on the Elimination of Discrimination against, UN doc. CEDAW/C/ZAF/Q/4, paras 2-5, 19 and 23.

observations to the initial report; and second, the progress made in providing adequate financial and human resources in relation to the national machinery and the Commission on Gender Equality.¹⁰³

It is worth noting that South Africa's fifth periodic report under the CEDAW is due on 14 January 2013.¹⁰⁴

Table 6: South Africa's reporting status under the CEDAW

Treaty: CEDAW				
Signature: 29/1/1993				
Ratification: 15/12/1995				
Responsible department: DWCPD				
Reporting requirement: Within one year; thereafter, every four years & whenever the CEDAW Committee requests				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	14/1/1997	5/2/1998	2 ¹⁰⁵	24/6/1998
Second periodic	14/1/2001	2/7/2009	5 ¹⁰⁶	Pending consideration (list of issues transmitted)
Third periodic	14/1/2005			
Fourth periodic	14/1/2009			
Fifth periodic	14/1/2013			

3.1.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The CAT, as its name suggests, prohibits all forms of torture and cruel, inhuman and degrading treatment or punishment. The Committee against Torture (CAT Committee), consisting of 10 independent experts elected by States Parties, is responsible for overseeing its implementation.¹⁰⁷ South Africa signed the CAT on 29 January 1993, and ratified it on 10

¹⁰³ Committee on the Elimination of Discrimination against, UN doc. CEDAW/C/ZAF/Q/4, paras 6 and 7.

¹⁰⁴ 'Reporting history: CEDAW – South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_cedaw.pdf (accessed: 5 September 2010).

¹⁰⁵ Submitted by the Masimanyane Women's Support Centre, together with 12 other NGOs) and the National Institute for Public Interest Law and Research (NIPILAR) compiled the "NGO commentary document on the first South African government report on the Women's Convention" based on input from women's NGOs from the Gauteng Province.

¹⁰⁶ Submitted by Global Initiative to End All Corporal Punishment of Children, International Disability Alliance, Women's Legal Centre, People Opposing Women Abuse, together with the AIDS Legal Network and on behalf of the One in Nine Campaign and the Coalition for African Lesbians, and the Commission on Gender Equality.

¹⁰⁷ Article 17 of the CAT.

December 1998. The Department of Justice and Constitutional Development is responsible for overseeing the implementation of the CAT.

As a State Party to the CAT, South Africa has an obligation to ‘take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’, and may not invoke an exceptional circumstance, be it a state of war or a threat of war, internal political instability or any other public emergency, as a justification of torture.¹⁰⁸ It is also under an obligation not to expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.¹⁰⁹ The CAT further imposes obligations on States Parties relating to the implementation of the CAT and the prohibition of cruel, inhuman or degrading treatment or punishment.¹¹⁰

South Africa has also undertaken to ‘submit to the [CAT] Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention’.¹¹¹ In order to assist States in the collection of materials for the preparation of reports and to ensure the uniform presentation of reports, the CAT Committee has adopted guidelines on State reporting under the CAT. It has adopted separate guidelines for initial reports and another for periodic reports. States have to also take into consideration, the harmonised guidelines on State reporting under human rights treaties.

Initial reports are to be presented in two parts. Part I should contain general information, including information on the implementation of the CAT and the legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited.¹¹² The information provided in this part should not repeat what is contained in the common core document. Part II of the report should contain information on each of the rights in the CAT. With respect to each article, the guidelines specify information that must be provided.¹¹³ **Periodic reports**, on the other hand, should be presented in three parts. Part I should provide information on new measures taken to implement the CAT during the period between the submission of the last report and the submission of the periodic report. Part II should include information requested by the CAT Committee during the consideration of the State’s previous report. Part III should provide information on the measures taken to comply with the conclusions and recommendations made following the consideration of the State’s preceding report.¹¹⁴

¹⁰⁸ Article 2 of the CAT.

¹⁰⁹ Article 3 of the CAT.

¹¹⁰ Articles 4-16 of the CAT.

¹¹¹ Article 19 of the CAT.

¹¹² Committee against Torture, *Guidelines on the form and content of initial reports under article 19 to be submitted by states parties to the Convention against Torture*, UN doc. CAT/C/4/Rev.3, 18 July 2005.

¹¹³ Committee against Torture, UN doc. CAT/C/4/Rev.3, paras 6-25.

¹¹⁴ Committee against Torture, *General guidelines regarding the form and contents of periodic reports to be submitted by states parties under article 19, paragraph 1, of the Convention*, UN doc. CAT/C/14/Rev.1, 2 June 1998, para 3.

In May 2007, the CAT Committee adopted a new optional reporting procedure, through which it will prepare and adopt lists of issues to be transmitted to States Parties *prior* to the submission of their respective periodic report.¹¹⁵ The procedure relates only to periodic reports and States have a choice as to whether they want to avail themselves of this procedure. The list of issues is transmitted at least one year in advance of the due date of the report. The reply of the States to the list of issues would then constitute the State's report under article 19 of the CAT. The adoption of this new procedure was based on the CAT Committee's belief that it could assist States Parties in preparing focused reports, that it would facilitate reporting, and would strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.¹¹⁶ This procedure should be distinguished from that by other treaty bodies, for instance under CEDAW, where the list of issues is provided after the submission of a State report.

The Convention entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, according to article 27 of the CAT. As per article 19(1) of the CAT, South Africa then had to submit a report within one year, and thereafter, every four years on any new measures taken as well as submit other reports when the CAT Committee requests. Since South Africa ratified the CAT on 10 December 1998, its initial report was due on 8 January 2000.¹¹⁷ South Africa failed to comply with this obligation in a timely manner as its initial report was received on 28 June 2005, following several years of delay. The 49-page report, contrary to the guidelines on initial reports has three parts.¹¹⁸ Part I of the report provided information on the historical background, part II dealt with information of a general nature, and part III provided information relating to articles 2 to 16 of the CAT.

The CAT Committee considered the initial report on 14 November 2006. South Africa's delegation comprised of representatives from several departments.¹¹⁹ In its concluding observation, the CAT Committee noted its regret that the report was submitted after a considerable delay, does not fully conform to the guidelines for preparation of initial reports and limits itself mainly to statutory provisions instead of analysing the implementation of the provisions of the CAT.¹²⁰ The CAT Committee made a number of recommendations, including requests for South Africa to provide in the next periodic report, among other things:

¹¹⁵ See UN doc. A/62/44, paras. 23 and 24; see Office of the High Commissioner for Human Rights, 'New optional reporting procedure adopted by the Committee against Torture'. Available at <http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm> (accessed: 5 September 2010).

¹¹⁶ Stated in UN doc. A/62/44 (2007), paras. 23, 24 and 27; see also, Office of the High Commissioner for Human Rights, 'New optional reporting procedure adopted by the Committee against Torture'. Available at <http://www2.ohchr.org/english/bodies/cat/reporting-procedure.htm> (accessed: 5 September 2010).

¹¹⁷ 'Reporting history: CAT - South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_cat.pdf (accessed: 5 September 2010).

¹¹⁸ Committee against Torture, *Initial report of South Africa*, UN doc. CAT/C/52/Add.3, 25 August 2005.

¹¹⁹ Committee against Torture, Concluding observations on the initial report of South Africa, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, para 4.

¹²⁰ Committee against Torture, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, para 3.

- Detailed information on all cases of extradition, return or removal that are subject to receipt of assurances or guarantees and that have occurred since the CAT entered into force, what the minimum contents for such assurances or guarantees are, and what measures of subsequent monitoring South Africa has undertaken in such cases;
- Detailed disaggregated statistical data on complaints related to acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials, and of the investigations, prosecutions and convictions relating to such acts, including with regard to the abuses reportedly committed by South African peacekeepers;
- Detailed information on compensation and rehabilitation provided to the victims;
- Detailed information on the bills criminalizing torture, on child justice, and on any other bills or laws related to the implementation of the CAT;
- Information on existing training programmes for law enforcement officials and on monitoring mechanisms in mental health and other welfare institutions, and on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.¹²¹

South Africa was also requested to disseminate widely, and in all appropriate languages, through official websites, the media and NGOs, its State report, the written answers to the CAT Committee's oral questions, and the conclusions and recommendations of the Committee.¹²² Furthermore, the CAT Committee requested that South Africa submits, within one year, information on its responses to the recommendations made in paragraphs 15, 16, 21, 27 and 28 of its concluding observations, which are included above. The due date for the submission of this was thus November 2007.¹²³ The Committee further set a new date for the submission of the periodic report, which was 31 December 2009.¹²⁴ South Africa is yet to comply with these. The Centre for Human Rights is also working with the Department of Justice and Constitutional Development in preparing the second periodic report to CAT. It should be noted that when ratifying the CAT, South Africa made a declaration under article 22 recognising the competence of the CAT Committee to receive and consider individual complaints. It therefore has to also report on the implementation of any decisions made against it under this procedure.

¹²¹ Committee against Torture, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, paras 15 and 27-28.

¹²² Committee against Torture, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, para 30.

¹²³ Committee against Torture, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, para 29.

¹²⁴ Committee against Torture, UN doc. CAT/C/ZAF/CO/1, 7 December 2006, para 31.

Table 7: South Africa's reporting status under the CAT

Treaty: CAT				
Signature: 29/1/1993				
Ratification: 10/12/1998				
Responsible department: DoJ&CD				
Reporting requirement: Within one year; thereafter, every four years & whenever the CAT Committee requests				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	8/1/2000	28/6/2005	6 ¹²⁵	14/11/2006
Additional report requested	11/2007	Not yet submitted		
Second periodic	31/12/2009	Not yet submitted (currently being drafted)		

3.1.5 Convention on the Rights of the Child and its Optional Protocols

The CRC provides for the rights of the child including the related obligations of States Parties. The Committee on the Rights of the Child (CRC Committee) is the supervisory body of the Convention, and is composed of 18 experts elected by States Parties to the CRC.¹²⁶ South Africa signed the CRC on 29 January 1993 and ratified it on 16 June 1995. The Department of Women, Children and Persons with Disabilities is currently responsible for overseeing the implementation of the CRC and its Optional Protocols.

South Africa has committed under the CRC to respect and ensure the rights in the Convention to each child within its jurisdiction and without discrimination of any kind.¹²⁷ It has also undertaken to adopt all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment.¹²⁸ It furthermore has an obligation to adopt 'all appropriate legislative, administrative, and other measures' for the implementation of the rights in the CRC; and in relation to economic, social and cultural rights, undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.¹²⁹

South Africa has further undertaken to submit to the CRC Committee, through the UN Secretary-General, reports on the measures it has adopted which give effect to the rights in

¹²⁵ Submitted by Global Initiative to End All Corporal Punishment against Children, Amnesty International, Civil Society Prison Reform Initiative, Children's Rights Project of the Community Law Centre, Centre for the Study of Violence and Reconciliation, World Organization against Torture (OMCT).

¹²⁶ Article 43 of the CRC.

¹²⁷ Article 2(1) of the CRC.

¹²⁸ Article 2(2) of the CRC.

¹²⁹ Article 4 of the CRC.

the CRC and on the progress made on the enjoyment of the rights.¹³⁰ The CRC goes further to provide information on the content of reports. State reports have to indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the CRC, and should contain sufficient information to provide the CRC Committee with a comprehensive understanding of the implementation of the CRC in the country concerned.¹³¹ Where a State has submitted a comprehensive initial report to the CRC Committee, it need not in its subsequent reports, repeat basic information previously provided.¹³² States Parties are also required to make their reports widely available to the public in their respective countries.¹³³

Similar to the CAT Committee, the CRC Committee has adopted separate guidelines for initial and periodic reports. The CRC Committee notes that the reporting process provides States with an opportunity to conduct a comprehensive review of the various measures undertaken and to monitor progress made in the enjoyment of the rights in the CRC. It also sees the process as entailing an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the rights in the CRC.¹³⁴ The general part of state reports should be prepared in accordance with the harmonised guidelines. The CRC Committee has grouped the provisions in the Convention thematically in the reporting guidelines relating to **initial reports**. The thematic clusters are: general measures of implementation; definition of the child; general principles; civil rights and freedoms; family environment and alternative care; basic health and welfare; education, leisure and cultural activities; and special protection measures. Under each theme, the guidelines further elaborate on information to be provided.¹³⁵ States are also required to provide specific statistical information and indicators relevant to refugee children, children in armed conflict, children in conflict with the law, children in situations of exploitation, and children belonging to a minority or indigenous group.¹³⁶

Periodic reports also have to be structured according to the themes above, and for each theme: the first paragraph should contain information on measures taken with regard to the concluding observations on the State's previous report; the subsequent paragraphs should provide information on comprehensive national programmes and monitoring, budgetary and other resources allocation, and disaggregated statistical data; the last paragraph should contain information on factors and difficulties affecting the fulfilment of rights in the CRC.¹³⁷

¹³⁰ Article 44(1) of the CRC.

¹³¹ Article 44(2) of the CRC.

¹³² Article 44(3) of the CRC.

¹³³ Article 44(6) of the CRC.

¹³⁴ Committee on the Rights of the Child, *General Guidelines regarding the form and content of initial reports to be submitted by states parties under article 44, paragraph 1(a), of the Convention*, UN doc. CRC/C/5, 30 October 1991, paras 3 and 4.

¹³⁵ See Committee on the Rights of the Child, UN doc. CRC/C/5, 30 October 1991, paras 9-24.

¹³⁶ See Committee on the Rights of the Child, UN doc. CRC/C/5, 30 October 1991, paras 24.

¹³⁷ Committee on the Rights of the Child, *General guidelines regarding the form and content of periodic reports submitted by states parties under article 44, paragraph 1(b), of the Convention*, UN doc. CRC/C/58/Rev.1, para 6.

The CRC entered into force for South Africa on the thirtieth day after the deposit of its instrument of ratification, according to article 49(2). Article 44(1) then requires South Africa to report within two years, and thereafter, every five years. The CRC Committee may also request further information from States.¹³⁸ South Africa, as mentioned above, ratified the CRC on 16 June 1995, and therefore had to submit its initial report on 15 July 1997.¹³⁹ There was a few months delay in the submission of this report, which was received on 4 December 1997. The initial report was structured according to the thematic clusters.¹⁴⁰ Prior to the consideration of the report, the CRC Committee issued a list of issues to which South Africa responded. In its list of issues, the CRC Committee requested information on, among other things, indicators that have been developed and disaggregated data collected on the status of children, especially the most vulnerable groups.¹⁴¹

The CRC Committee considered the report on 25 January 2000. In its concluding observation, considering the very minimal delay in the submission of the report, the Committee commended South Africa for its efforts to ensure that its initial report was submitted on time.¹⁴² The CRC Committee recommended that South Africa should, among other things:

- Ratify the ICESCR, on the basis that ratification will strengthen the situation of children in the country;
- Strengthen its efforts to ensure greater coordination between ministries and departments;
- Review the system of data collection;
- Ensure adequate periodic review of placements in the foster care programme;
- Take effective measures to prohibit by law the use of corporal punishment in the family and, in this context, examine the experience of other countries that have already enacted similar legislation.¹⁴³

The CRC Committee further recommended the wide dissemination of the State report, written replies and its concluding observations.¹⁴⁴

¹³⁸ Article 44(4) of the CRC.

¹³⁹ 'Reporting history: CRC- South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_crc.pdf (accessed: 5 September 2010).

¹⁴⁰ Committee on the Rights of the Child, *Initial report of South Africa*, UN doc. CRC/C/51/Add.2, 22 May 1999.

¹⁴¹ Committee on the Rights of the Child, Draft list of issues to be taken up in connection with the consideration of the initial report of South Africa, UN doc. CRC/C/Q/SAFR/1, 19 September 1999.

¹⁴² Committee on the Rights of the Child, *Concluding observation on the initial report of South Africa*, contained in UN doc. CRC/C/94, 3 March 2000, paras 414-456, 415.

¹⁴³ Committee on the Rights of the Child, UN doc. CRC/C/51/Add.2, paras 424, 425, 427, 438 and 441.

¹⁴⁴ Committee on the Rights of the Child, UN doc. CRC/C/51/Add.2, para 456.

With regard to South Africa's periodic reports, the second periodic report was due on 15 July 2002 and its third periodic report on 15 July 2007.¹⁴⁵ These reports are yet to be submitted. The DWCPD has indicated that the report under the CRC has been finalised and submitted to cabinet for final approval.¹⁴⁶ Though this report was submitted for approval some time back, there is no information on when the report is expected to be approved and submitted to the treaty body. There is therefore the risk of the report being outdated by the time it is submitted to the CRC Committee.

In addition to its reporting obligation under the CRC, South Africa has an obligation to report under the Optional Protocols to the CRC. The CRC Committee is the supervisory body of the Optional Protocols. As noted earlier, the harmonised reporting guidelines do not apply to these Protocols.

South Africa acceded to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC) on 30 June 2003. The OPSC places obligations on States Parties in relation to the prohibition of the sale of children, child prostitution and child pornography. Article 14 of the Protocol also places a reporting obligation on States Parties. The CRC Committee has adopted guidelines on initial reports to be submitted under the Protocol.¹⁴⁷ Reports should contain information on the process of the preparation of the reports, how the general principles in the CRC have been taken into account in implementing the OPSC, the extent to which the measures taken to implement the OPSC has contributed to the implementation of the CRC, the legal status of the OPSC and measures taken to implement the Protocol.¹⁴⁸ Data in the report must be disaggregated.¹⁴⁹ The guidelines also require information on international assistance and cooperation,¹⁵⁰ among other things.

The Protocol entered into force for South Africa one month after the date of the deposit of its instrument of ratification, as per article 14(2) of the OPSC. Following its entry into force, South Africa is obliged under article 12(1) of the OPSC to submit, within two years, a report to the CRC Committee providing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, it is required under article 12(2) to include in its reports under the CRC, any further information with respect to the implementation of the Protocol. Since it acceded to the Protocol on 30 June 2003, South Africa's initial report was due on 30 July 2005.¹⁵¹ It is yet to submit this report.

¹⁴⁵ 'Reporting history: CRC- South Africa'. Available at http://www.bayefsky.com/pdf/southafrica_t3_crc.pdf (accessed: 5 September 2010).

¹⁴⁶ Based on discussion with an official from the Department.

¹⁴⁷ Committee on the Rights of the Child, Revised guidelines regarding initial reports to be submitted by states parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, UN doc. CRC/C/OPSC/2, 3 November 2006.

¹⁴⁸ Committee on the Rights of the Child, UN doc. CRC/C/OPSC/2, paras 1-6.

¹⁴⁹ Committee on the Rights of the Child, UN doc. CRC/C/OPSC/2, para 9.

¹⁵⁰ Committee on the Rights of the Child, UN doc. CRC/C/OPSC/2, para 38.

¹⁵¹ 'Reporting history: Optional Protocol (Sale of Children/Prostitution/Pornography): South Africa. Available at http://www.bayefsky.com/pdf/southafrica_t3_crc_sc.pdf (accessed; 5 September 2010).

With regard to the Optional Protocol to the CRC on the involvement of children in armed conflict (OPCA), South Africa signed it on 8 February 2002, and ratified it on 24 September 2009. The Protocol places obligations on States Parties in relation to the prevention of the involvement of children in armed conflict. Article 8 of the OPCA also places a reporting obligation on States. Similar to the OPSC, the CRC Committee has adopted guidelines on reporting under the OPCA.¹⁵² Reports under the OPSC should also contain information on, among other things, its implementation and the responsible government department, the process of preparation of the State report, and include disaggregated data and the mechanism for the collection of such data.¹⁵³

As per article 10(2) of the OPCA, the Protocol entered into force for South Africa one month after the date of the deposit of its instrument of ratification. Under article 8(1), South Africa then had to report, within two years, providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment. Thereafter, article 8(1) requires it to include in its reports under the CRC, any further information with respect to the implementation of the Protocol. As it ratified the Protocol on 24 September 2009, South Africa's initial report under the OPCA is due on 24 October 2011.¹⁵⁴

It is currently not clear whether the preparation of the reports under the above protocols has commenced.

¹⁵² Committee on the Rights of the Child, Revised guidelines regarding initial reports to be submitted by states parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN doc. CRC/C/OPAC/2, 19 October 2007.

¹⁵³ Committee on the Rights of the Child, UN doc. CRC/C/OPAC/2, paras 1-8.

¹⁵⁴ 'Reporting history: Optional Protocol (Armed conflict): South Africa. Available at http://www.bayefsky.com/pdf/southafrica_t3_crc_ac.pdf (accessed; 5 September 2010).

Table 8: South Africa's reporting status under the CRC

Treaty: CRC		Signature: 29/1/1993 Ratification: 16/6/1995		
Protocol: OPSC		Accession: 30/6/2003		
Protocol: OPCA		Signature: 8/2/2002 Ratification: 24/9/2009		
Responsible department: DoJ&CD				
Reporting requirement: Within two years; thereafter, every five years				
Reports	Due	Received	Shadow reports submitted	Considered
CRC				
Initial	15/7/1997	4/12/1997	1 ¹⁵⁵	25/1/2000
Second periodic	15/7/2002	Not yet submitted (has been drafted pending cabinet approval)		
Third periodic	15/7/2007			
OPSC				
Initial	30/7/2005			
OPCA				
Initial	24/10/2011			

3.1.6 Convention on the Rights of Persons with Disabilities

The CRPD deals with the rights of persons with disabilities and the corresponding obligations on States Parties to it. The Committee on the Rights of Persons with Disabilities (CRPD Committee) is responsible for overseeing its implementation,¹⁵⁶ and consists of 12 independent experts elected by States Parties to the Convention. South Africa signed the CRPD on 30 March 2007 and ratified it on 30 November 2007. The Department of Women, Children and Persons with Disabilities is currently responsible for overseeing the implementation of the CRPD.

South Africa has undertaken, under the CRPD, 'to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'.¹⁵⁷ This includes the adoption of all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention. It has also undertaken to 'take all necessary measures to ensure

¹⁵⁵ Submitted by the National Children's Rights Committee, together with 250 community organisations.

¹⁵⁶ Article 34 of the CRPD.

¹⁵⁷ Article 4(1) of the CRPD.

the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children'.¹⁵⁸

South Africa has further committed to 'submit to the [CRPD] Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard'.¹⁵⁹ With regard to guidelines on this reporting obligation, the CRPD requires that where a state has submitted a comprehensive initial report, it should not repeat information previously provided.¹⁶⁰ States are also required to prepare their reports in an open and transparent process and to closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.¹⁶¹ The CRPD further states that '[r]eports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention'.¹⁶²

The CRPD Committee has adopted guidelines on the form and content of reports under the CRPD in order to facilitate the preparation of reports.¹⁶³ The Committee observes that the reporting process would assist States in conducting a comprehensive review of its measures, monitor progress in promoting enjoyment of rights, identify problems and shortcomings in its approach to implementation, and plan and develop appropriate policies.¹⁶⁴ States are required to facilitate the involvement of NGOs, including organisations of persons with disabilities in the preparation of reports.¹⁶⁵ The guidelines further emphasise the inclusion of disaggregated statistical data in the report.¹⁶⁶ Reports should be submitted in electronic and print format and the text should be submitted in accordance with the harmonised guidelines on reporting.¹⁶⁷ Where a State is a party to the Optional Protocol to the CRPD, it has to also report on the implementation of any decisions made against it or in response to an inquiry.¹⁶⁸ South Africa signed the Optional Protocol on 30 March 2007 and ratified it on 30 November 2007, and is therefore required to include this information in its report.

The guidelines deal with initial reports as well as periodic reports. The **initial report** comprises the initial CRPD-specific document together with the common core document.¹⁶⁹

¹⁵⁸ Article 7(1) of the CRPD.

¹⁵⁹ Article 35(1) of the CRPD.

¹⁶⁰ Article 35(4) of the CRPD.

¹⁶¹ Article 35(4) of the CRPD.

¹⁶² Article 35(5) of the CRPD.

¹⁶³ Committee on the Rights of Persons with Disabilities, Guidelines on the treaty-specific document to be submitted by States Parties under article 35 of the Convention on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, 18 November 2009.

¹⁶⁴ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para 3.

¹⁶⁵ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para 3.

¹⁶⁶ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.3.

¹⁶⁷ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.7.

¹⁶⁸ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.12.

¹⁶⁹ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.4.1.

States are required to deal specifically with every article in the CRPD, and the initial report should include a detailed analysis of the impact of legal norms on persons with disabilities' factual situation, and the practical availability of remedies for violations.¹⁷⁰ The report should further outline distinctions or restrictions made, even if on a temporary basis, on persons with disabilities.¹⁷¹

The **periodic report** should focus on the period between the consideration of the previous report and the presentation of the current report.¹⁷² The structure should follow the articles in the CRPD.¹⁷³ Similar to other treaty bodies, the guidelines identify three starting points for periodic reports: provision of information on the implementation of concluding observations, particularly the concerns raised and recommendations made; an analytical and result-oriented examination, by the State, of additional legal and appropriate steps taken; and provision of information on obstacles to the exercise and enjoyment by persons with disabilities of their rights.¹⁷⁴ In addition, the report should address the impact of measures, the implementation of the CRPD in relation to different groups of persons with disabilities, and provide information on any fundamental changes impacting on the implementation of the Convention.¹⁷⁵

The reporting guidelines further specify what should be included in the State report under the respective articles of the CRPD.¹⁷⁶

The CRPD entered into force for South Africa, as per article 45(2), on the thirtieth day after the deposit of its instrument of ratification. Thereafter, South Africa had to submit its initial report within two years, as per article 35(1); and thereafter submit periodic reports every four years and also whenever the CRPD Committee so requests, as per article 35(2). Since South Africa ratified the CRPD on 30 November 2007, its initial report was due on 3 May 2010.¹⁷⁷ This report has not yet been submitted. It is currently not clear at what stage the preparation of this report is.

¹⁷⁰ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.4.2.

¹⁷¹ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.4.3.

¹⁷² Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.5.1.

¹⁷³ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.5.2.

¹⁷⁴ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.5.3.

¹⁷⁵ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para A.5.4.

¹⁷⁶ Committee on the Rights of Persons with Disabilities, UN doc. CRPD/C/2/3, para B-E.

¹⁷⁷ 'Reporting history: CRPD – South Africa'. Available at

http://www.bayefsky.com/pdf/southafrica_t3_crpdpdf (accessed; 5 September 2010).

Table 9: South Africa's reporting status under the CRPD

Treaty: CRPD				
Signature: 30/3/2007 Ratification: 30/11/2007				
Responsible department: DWCPD				
Reporting requirement: Within two years; thereafter, every four years & whenever the CRPD Committee requests				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	3/5/2010	Not yet submitted		

3.2 African regional treaties

3.2.1 African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The African Charter is the main human rights treaty at the African regional level. It guarantees civil, political, economic, social and cultural rights. The African Women's Protocol guarantees women's rights, including rights that are not recognised in the African Charter, such as reproductive health rights. These treaties also place specific obligations on States in relation to the rights and freedoms contained in them. The African Commission on Human and Peoples' Rights (African Commission) is responsible for overseeing the implementation of both treaties. It consists of eleven members elected by the Assembly of Heads of State and Government of the African Union, from a list of persons nominated by States Parties to the African Charter.¹⁷⁸ South Africa signed and ratified the African Charter on 9 July 1996. It signed the African Women's Protocol on 16 March 2004 and ratified it on 17 December 2004. The Department of Justice and Constitutional Development (DOJ&CD) is responsible for overseeing the implementation of these treaties and the reporting process at the national level.

By ratifying the African Charter, South Africa has undertaken to adopt legislative or other measures to give effect to the rights, duties and freedoms in it.¹⁷⁹ It has to also ensure equality in the enjoyment of the rights and freedoms.¹⁸⁰ South Africa has further undertaken to treat women equally in the enjoyment of rights, by ratifying the African Women's Protocol. This includes combating all forms of discrimination against women through appropriate legislative, institutional and other measures.¹⁸¹ It has also undertaken to adopt all necessary

¹⁷⁸ See articles 30-45 of the African Charter, and the Preamble to the African Women's Protocol.

¹⁷⁹ Article 1 of the African Charter.

¹⁸⁰ Article 3 of the African Charter.

¹⁸¹ Article 2 of the African Women's Protocol.

measures, especially providing budgetary and other resources for the full and effective implementation of the rights in the African Women's Protocol.¹⁸²

South Africa has further undertaken under the African Charter to submit reports on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter.¹⁸³ Under the African Women's Protocol, South Africa has committed to include in its periodic reports submitted to the African Commission in accordance with the African Charter, the legislative and other measures it has undertaken for the full realisation of the rights in the African Women's Protocol.¹⁸⁴

The African Commission has recommended that reports should not only indicate measures undertaken but should also state the difficulties and obstacles impeding the effective implementation of the Charter.¹⁸⁵ The Commission also stated some of the advantages of the reporting process: it enables the State to constantly check the whole government machinery; it gives the Commission a better understanding of the problems faced by states in seeking to transform the provisions in the African Charter into reality; and it permits the Commission to collect information on common experiences so that States can learn from each other.¹⁸⁶

Similar to the UN system, reports are divided into initial and periodic reports. However, unlike with the UN treaties considered above, reporting to the African Commission is guided by 'a confusing array of guidelines'.¹⁸⁷ In 1989, the African Commission made the first attempt to provide guidelines for national periodic reports.¹⁸⁸ The guidelines suggest that States begin with an **initial general report**, subsequently followed by **detailed periodic reports**. Where a State has submitted a voluminous and comprehensive initial report, the subsequent reports may be reduced in volume.¹⁸⁹ The guidelines have separate sections for civil and political rights, for economic, social and cultural rights, and for rights related to the family, among other rights, and under each section, the requirements for initial and periodic reports are dealt with. Though elaborate, the 1989 Guidelines have been criticised as very lengthy, complicated and not readily accessible, making compliance with the reporting obligation impossible.¹⁹⁰ This resulted in the development of simplified guidelines, which have never been formally adopted by the African Commission but have been considered by States when

¹⁸² Article 26(2) of the African Women's Protocol.

¹⁸³ Article 62 of the African Charter.

¹⁸⁴ Article 26(1) of the African Women's Protocol.

¹⁸⁵ African Commission on Human and Peoples' Rights, State reporting procedure, Fact Sheet No. 4. Available at http://www.achpr.org/english/info/state_procedure_en.html (accessed: 11 September 2010).

¹⁸⁶ African Commission on Human and Peoples' Rights, Fact Sheet No. 4.

¹⁸⁷ Frans Viljoen, *International human rights law in Africa* (2007, Oxford University Press) 371.

¹⁸⁸ African Commission on Human and Peoples' Rights, Guidelines for national periodic reports under the African Charter, 1989 (hereinafter 1989 Guidelines). Available at http://www.chr.up.ac.za/images/files/documents/ahrdd/theme02/african_commission_resolution_13.pdf (accessed: 11 September 2010).

¹⁸⁹ African Commission on Human and Peoples' Rights, 1989 Guidelines, para 3.

¹⁹⁰ Viljoen (2007) 371-372.

reporting.¹⁹¹ They are, however, an improvement from the 1989 Guidelines. Recently, the Working Group on Economic, Social and Cultural Rights in Africa, established by the African Commission, has drafted guidelines on reporting in relation to economic, social and cultural rights.¹⁹² The draft Tunis Reporting Guidelines state the information to be provided under specific economic, social and cultural rights, and that the guidelines should be used in conjunction with the 1989 Guidelines.

As per article 65 of the African Charter, it entered into force for South Africa three months after the date it deposited its instrument of ratification. South Africa's instrument of ratification was deposited on the same day it ratified the Charter. South Africa then, as per article 62 of the African Charter, had to submit a report every two years. As South Africa deposited its instrument of ratification on 9 July 1996, its initial report was due on 9 October 1998. Its subsequent periodic reports were due on 9 October 2000, 9 October 2002, 9 October 2004, 9 October 2006, 9 October 2008, and 9 October 2010.

South Africa complied with the reporting obligation in relation to the initial report, which it submitted in October 1998.¹⁹³ It has not been possible to have access to the report; hence this section relies on secondary sources as regards the preparation and content of the initial report.¹⁹⁴ In the preparation of the initial report, South Africa drew from its previous reports submitted to the CRC Committee and the CEDAW Committee. The then Department of Justice coordinated the preparation of the report, together with the South African Human Rights Commission. Information was sourced from both government departments and NGOs. The 146 page report follows the requirements for reporting in the simplified guidelines:

[T]he first two chapters deal with the history of the country and provide an introduction to the South African legal system. Chapter 3 deals with the general measures for the implementation of the Charter, including actions taken in respect of vulnerable groups. Chapter 4 forms the bulk of the report and provides details about steps taken to implement the rights set out in the African Charter. Chapter 5 highlights South Africa's use of the African Charter in relations with other states. Chapter 6 contains a conclusion.¹⁹⁵

The report was scheduled to be discussed in October 1998 but no South African representative was present. As a result the report was only considered by the African Commission in May 1999.¹⁹⁶ The report was presented by the then Deputy Minister of Justice, Manto Tshabalala-Msimang. The factors that limited the report as pointed out by the

¹⁹¹ Simplified guidelines for state reporting under article 62 of the African Charter on Human and Peoples' Rights. See Frans Viljoen, 'State reporting under the African Charter on Human and peoples' Rights: A boost from the South' (2000) 44(1) *Journal of African Law* 110-118, where these guidelines are considered.

¹⁹² 'Draft state party reporting guidelines for economic, social and cultural rights in the African Charter on Human and peoples' Rights (Tunis Reporting Guidelines)' (on file with author).

¹⁹³ African Commission on Human and Peoples' Rights, Status on submission of state initial/periodic reports to the African Commission (updated: May 2010). Available at http://www.achpr.org/english/info/statereport_considered_en.html (accessed: 11 September 2010).

¹⁹⁴ The information regarding the initial report is drawn from Viljoen (2000) 114.

¹⁹⁵ Viljoen (2000) 114.

¹⁹⁶ See African Commission on Human and Peoples' Rights, Status on submission of state initial/periodic reports to the African Commission (updated: May 2010).

South African representative were that the report largely depicted the national and not the provincial picture, and that data was unavailable and unreliable.¹⁹⁷ The African Commission posed a number of questions to South Africa, one of which related to the process of drafting the report – it wanted to know how inclusive the drafting process was.

At the time the initial report was submitted, the African Commission had not adopted the practice of issuing concluding observations. Hence, there are no observations regarding the responses of the government to the questions posed.¹⁹⁸ The African Commission does not also adopt a ‘list of issues’, but poses questions to the reporting State that it could answer during the dialogue or send written responses to the questions after dialogue on the report.

It was hoped that the initial report marked an emerging trend in taking reporting obligations seriously. That was unfortunately not the case, as South Africa’s next report was only submitted on 14 May 2005, which included the third and fourth periodic reports. The 136-page report aimed to provide basic information on the country, depict developments and difficulties since the presentation of the initial report, and identify areas for further action.¹⁹⁹ The report was divided into seven parts: part I was the introduction; part II on the history of the country; part III on the legal system; part IV on general measures of implementation; part V on measures taken to promote and ensure the respect for rights through teaching, education and publication; part VI on how South Africa uses the African Charter in relation with other States Parties or subjects of international law; and part VII the conclusion.

The African Commission considered the report in December 2005. The report was presented by the then Minister of Justice and Constitutional Development, Bridgette Mabandla. The African Commission expressed its satisfaction with the high-ranking delegation stating that it would allow for a fuller assessment of the South Africa’s compliance with its obligations under the African Charter.²⁰⁰ The Commission voiced its concern at the fact that ‘the report was submitted almost four years after it was prepared making most of the information and statistics therein outdated during the time of examination by the African Commission.²⁰¹ Other concerns raised included the following:

- The provision of general description of the provisions of the African Charter and the legislation or policies in place, without indicating how they have contributed in enhancing rights;

¹⁹⁷ Viljoen (2000) 114-115.

¹⁹⁸ Viljoen (2000) 116.

¹⁹⁹ Republic of South Africa: First Periodic Report on the African Charter on Human and Peoples’ Rights: 2001. Available at http://www.achpr.org/english/Archives/State%20reports/eng/South%20Africa/RSA%20report_2_eng.pdf (accessed: 11 September 2010).

²⁰⁰ African Commission on Human and Peoples’ Rights, *Concluding observations and recommendations on the first periodic report of the Republic of South Africa* (2005) paras 4 and 5. Available at http://www.chr.up.ac.za/images/files/documents/ahrdd/southafrica/southafrica_concluding_observations_periodic_report_2005.pdf (accessed: 11 September 2010).

²⁰¹ African Commission on Human and Peoples’ Rights, *Concluding observations: South Africa*, para 16.

- The lack of details on the measures taken by the State Party to eradicate the phenomenon of xenophobia directed towards African migrants in particular; and
- The high incidence of sexual violence against women and children.²⁰²

South Africa undertook to submit additional information and updated statistics on issues that the African Commission sought further clarification on, which included family matters, HIV and AIDS, sexual offences, and child justice, among others.²⁰³ Recommendations made by the African Commission included directions that South Africa should:

- Intensify efforts to interact more with members of its civil society organizations;
- Make the declaration under article 34(6) of the Protocol to the African Charter relating to the establishment of an African Court on Human and Peoples' Rights;
- Consider lifting the reservation made on article 6(d) of the African Women's Protocol; and
- Take appropriate steps to present its next periodic report in conformity with article 62 of the African Charter.²⁰⁴

The African Women's Protocol had not entered into force by the time South Africa submitted the above report. South Africa ratified the African Women's Protocol before the treaty entered into the force. As per article 29(1) of the Protocol, it entered into force on 25 November 2005, thirty days after the deposit of the fifteenth instrument of ratification. South Africa's next report to the African Commission, as per article 26(1) of the Protocol, will have to include information on the legislative and other measures its has undertaken for the full realisation of the rights in the African Women's Protocol. The Centre for Human Rights is also currently drafting South Africa's report under the African Charter.

²⁰² African Commission on Human and Peoples' Rights, *Concluding observations: South Africa*, paras 18-20.

²⁰³ African Commission on Human and Peoples' Rights, *Concluding observations: South Africa*, para 22.

²⁰⁴ African Commission on Human and Peoples' Rights, *Concluding observations: South Africa*, paras 28, 30-31.

Table 10: South Africa's reporting status under the African Charter/African Women's Protocol

Treaty: African Charter		Signature: 9/7/1996 Ratification: 9/7/1996		
Protocol: African Women's Protocol		Signature: 16/3/2004 Ratification: 17/12/2004		
Responsible department: DoJ&CD				
Reporting requirement: Every two years				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	9/10/1998	10/1998		5/1999
Second periodic	9/10/2000	5/2005	1 ²⁰⁵	12/2005
Third periodic	9/10/2002			
Fourth periodic	9/10/2004			
Fifth periodic	9/10/2006	Not yet submitted (currently being drafted)		
Sixth periodic	9/10/2008			
Seventh periodic	9/10/2010			

3.2.2 African Charter on the Rights and Welfare of the Child

The African Children's Charter guarantees the rights and freedoms of children. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is responsible for overseeing its implementation. It consists of eleven members elected by the Assembly of Heads of State and Government from a list of persons nominated by States Parties to the African Children's Charter. ²⁰⁶ South Africa signed the African Children's Charter on 10 October 1997 and ratified it on 7 January 2000. The Department of Women, Children and Persons with Disabilities is responsible for overseeing its implementation at the national level.

As a State Party to the African Children's Charter, South Africa has committed to adopt legislative or other measures as may be necessary to give effect to the provisions of the Charter.²⁰⁷ It has also undertaken to discourage any custom, tradition, cultural or religious

²⁰⁵ Jointly submitted by the Centre for Human Rights, Socio-economic Rights Project of the Community Law Centre, Human Rights Institute of South Africa, Lawyers for Human Rights, Central and Gauteng Mental Health Society, Gauteng Children's Rights Committee, and the Community Law and Rural Development Centre.

²⁰⁶ See articles 32-41 of the African Children's Charter.

²⁰⁷ Article 1(1) of the African Children's Charter.

practice that is inconsistent with the rights, duties and obligations contained in the Charter.²⁰⁸

South Africa has further undertaken to submit to the ACERWC, through the Secretary-General of the African Union, reports on the measures it has adopted to give effect to the provisions of the African Children's Charter.²⁰⁹ The Charter goes further to provide some guidance on the form and content of State reports. The reports submitted to the ACERWC must 'contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country', and should 'indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter'.²¹⁰ Where a State has submitted a comprehensive initial report, it need not repeat in its subsequent report the basic information provided in its previous report.²¹¹

The ACERWC has further adopted guidelines for initial reports; and plans to develop guidelines for periodic reports in due course. Similar to the African Commission and other treaty bodies, the ACERWC is of the view that the reporting process provides States with an opportunity to conduct a comprehensive review of various measures they have undertaken.²¹² Similar to the CRC Committee, the ACERWC groups the provision of the African Children's Charter into various sections: general measures of implementation; definition of the child; general principles such as non-discrimination, best interest of the child, right to life, survival and development, respect of the views of the child, provision of information to children and promotion of their participation; civil rights and freedoms; family environment and alternative care; health and welfare; seventh, education, leisure and cultural activities; special protection measures; and responsibilities of the child.²¹³

The guidelines also provide that where a State has already submitted a report to the CRC Committee, it may use elements of that report for the report that it submits to the ACERWC. However, the report must highlight areas of rights particular to the African Children's Charter.²¹⁴ State reports must also include information on compliance with recommendations made by the CRC Committee as well as the ACERWC.²¹⁵

South Africa ratified the African Children's Charter after it came into force and as per article 43, had to then report within two years and thereafter every three years. South Africa's initial

²⁰⁸ Article 1(3) of the African Children's Charter.

²⁰⁹ Article 43(1) of the African Children's Charter.

²¹⁰ Article 43(2) of the African Children's Charter.

²¹¹ Article 43(3) of the African Children's Charter.

²¹² African Committee on the Rights and Welfare of the Child, Guidelines for initial reports of states parties

(prepared by the African Committee of Experts on the Rights and Welfare of the Child pursuant to the provision of article 43 of the African Charter on the Rights and Welfare of the Child), cmttee/ACRWC/2 II.Rev2, para 3.

²¹³ African Committee on the Rights and Welfare of the Child, cmttee/ACRWC/2 II.Rev2, paras 8-23.

²¹⁴ African Committee on the Rights and Welfare of the Child, cmttee/ACRWC/2 II.Rev2, para 24.

²¹⁵ African Committee on the Rights and Welfare of the Child, cmttee/ACRWC/2 II.Rev2, para 25.

report was due on 7 January 2002.²¹⁶ South Africa has failed to meet this reporting obligation, as it is yet to submit a report. Based on communications with the DWCPD, it is not clear if the report to the ACERWC has already been drafted. However, it is expected that the report would mainly contain information from South Africa's report to the CRC Committee, which is permitted by the ACERWC.

Table 11: South Africa's reporting status under the African Children's Charter

Treaty: African Children's Charter				
Signature: 10/10/1997				
Ratification: 7/1/2000				
Responsible department: DWCPD				
Reporting requirement: Within two years; thereafter, every three years				
Reports	Due	Received	Shadow reports submitted	Considered
Initial	7/1/2002	Not yet submitted		

3.3 The role of other stakeholders in the treaty reporting process

Treaty bodies in their guidelines on State reporting, as seen in sections 3.1 and 3.2 above, have in fact recommend the involvement of other stakeholders in the report process, especially in the preparation of reports. This means that domestic processes should be transparent and accessible. Treaty bodies have welcomed the participation of other stakeholders in this process. For example, in a statement on **national human rights institutions** (NHRIs), the CEDAW Committee welcomed the country-specific information on State reports that these institutions provide. It also stated that '[n]ational human rights institutions may provide comments and suggestions on a State party's reports in any way they see fit'.²¹⁷ Furthermore, as seen in some of the concluding observations mentioned above, treaty bodies have been concerned about the lack of or the limited involvement of other stakeholders in the reporting process. Various treaty bodies also consider the reports in public, during which other stakeholders are in attendance.

Generally, there are two ways in which other stakeholders can be involved in the treaty reporting process. On the one hand, they may be involved in the reporting process or be given an opportunity to comment on the draft State report before it is submitted to the treaty body. On the other hand, they can submit 'shadow' or alternative reports to the State report. It should be noted that the fact that CSOs or NHRIs have been involved in the reporting process is not a bar to them subsequently submitting a 'shadow' or alternative reports to the

²¹⁶ See African Committee on the Rights and Welfare of the Child, Dates for submission of initial reports on the implementation of the African Charter on the Rights and Welfare of the Child. Available at <http://www.africa-union.org/child/Due%20date%20of%20Submission%20of%20Reports.pdf> (accessed: 11 September 2010).

²¹⁷ See Committee on the Elimination of Discrimination against Women, Statement by the Committee on the Elimination of Discrimination against Women on its relationship with national human rights institutions, UN doc. E/CN.6/2008/CRP.1, 11 February 2008, Annex II.

treaty bodies. The submission of ‘shadow’ reports becomes crucial in ensuring that their views reach the relevant treaty body, especially in instances where other stakeholders are not allowed to participate in the actual examination process of a State report.

Treaty bodies have adopted statements or documents on the participation of CSOs or NHRIs in the reporting process. The Committee on ESCR, for instance, has outlined the stages in which **NGOs** can participate in relation to the consideration of State reports under the ICESCR:

- Once the treaty has entered into force, establish contact with the Committee on ESCR;
- From the receipt of a State Party's report until its consideration, submit any relevant information (these are then placed in country files that have been established and maintained by the secretariat of the Committee on ESCR);
- Prior to the pre-sessional working group,²¹⁸ submit written information to the secretariat; and/or during pre-sessional working group, submit information directly to the members of the Committee on ESCR responsible for drafting the list of issues (with copy to the secretariat)
- During the session at which a State Party's report is scheduled for consideration, submit to the secretariat a written statement or information in the form of a report, make oral presentations before the Committee on ESCR, within the framework of its ‘NGO hearings’; observing the Committee on ESCR’s dialogue with the State Party delegation;
- After the concluding observations have been issued, submit information to the secretariat on their implementation in the State Party concerned.²¹⁹

The above stages are common to many other treaty bodies. The CAT Committee, for instance, also receives information from NGOs at different stages of the reporting process.²²⁰ The Committee on ESCR further recommends that ‘national NGOs collaborate, coordinate and consult when submitting information to the Committee’, and where possible, ‘produce a single consolidated submission representing a broad consensus by a number of NGOs’.²²¹

²¹⁸ A pre-sessional working group of the Committee on ESCR consists of five of its members. The group meets in private after each Committee session for a week to prepare for the next session. Each member of the group serves as a ‘country rapporteur’ and is tasked with the drafting of a list of issues concerning one of reports to be considered. See Committee on Economic, Social and Cultural Rights, *NGO participation in the activities of the Committee on Economic, Social and Cultural Rights*, UN doc. E/C.12/2000/6, 7 July 2000, para 14.

²¹⁹ Committee on Economic, Social and Cultural Rights, UN doc. E/C.12/2000/6, 7 July 2000, para 4.

²²⁰ Committee against Torture, *Participation of non-governmental organizations (NGOs) and National Human Rights Institutions (NHRIs) to the reporting process to the Committee against Torture*. Available at http://www2.ohchr.org/english/bodies/cat/follow_up_ngo.htm (accessed 14 September 2010).

²²¹ Committee on Economic, Social and Cultural Rights, UN doc. E/C.12/2000/6, 7 July 2000, para 6.

The CAT Committee also encourages NGOs to coordinate their inputs and to submit consolidated reports with factual, reliable, precise, and clear information. The information presented by NGOs and NHRIs has to be organised under the respective articles of the CAT or thematic issues, and should include relevant concerns and recommendations.²²²

Similarly, the Human Rights Committee has also invited NGOs and NHRIs to provide reports containing country-specific information on States Parties whose reports are before the Committee. The information is to be submitted in writing and 'preferably well in advance of the relevant session'. These stakeholders can also provide oral information during the first morning meeting of each plenary session or during lunch time briefings.²²³

The CEDAW Committee has also indicated that it welcomes country-specific information from NGOs relating to State Parties whose reports are before it.²²⁴

Accordingly, reverting to the South African context, CSOs, NGOs and NHRIs have submitted shadow reports to South Africa's State reports under different treaties. For example, in July 2010, the Commission on Gender Equality (CGE) submitted a 53-page shadow report on South Africa's implementation of the CEDAW, in relation to the country's periodic State report that was submitted in 2009.²²⁵ The shadow report focused on the shortcomings of the State report, highlighting the ineffective implementation of policies and legislation, and addressed concerns that were raised in the concluding observations to South Africa's initial report. The report also highlighted the inadequate consultation with CSOs in the report compilation process, which is something that the CEDAW Committee was also concerned about, as seen from the question in its list of issues.

Also, with regard to South Africa's consolidated initial to third periodic reports submitted to the CERD Committee in 2004, the South African Human Rights Commission (SAHRC) submitted a 56-page shadow report in June 2006, providing a review of South Africa's compliance with its international obligations under the CERD and information on the gaps in the State report.²²⁶ The shadow report furthermore noted the fact that the State report was outdated, especially as it contained outdated statistics. In addition, the SAHRC participated in the discussions of the State report with the CERD Committee.²²⁷ A 7-page shadow report

²²² Committee against Torture, *Participation of non-governmental organizations (NGOs) and National Human Rights Institutions (NHRIs) to the reporting process to the Committee against Torture*.

²²³ Human Rights Committee, Overview of the working methods of the Human Rights Committee. Available at <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#n10> (accessed 14 September 2010).

²²⁴ Committee on the Elimination of Discrimination against Women, 'Information note prepared by OHCHR for NGO participation' (nd). Available at http://www2.ohchr.org/english/bodies/cedaw/docs/NGO_Participation.final.pdf (accessed: 5 September 2010).

²²⁵ Commission on Gender Equality, *Report to the CEDAW Committee on South Africa's implementation of CEDAW: 1998-2008* (2010). Available at <http://www.pmg.org.za/files/docs/100721report.pdf> (accessed: 5 September 2010).

²²⁶ South African Human Rights Commission, *Shadow report on South Africa's compliance with the provisions of the international Convention against All Forms of Racial Discrimination* (2006). Available at www.info.gov.za/view/DownloadFileAction?id=70080 (accessed: 5 September 2010).

²²⁷ Olivier (2006) 187.

was provided in August 2006 by CSOs as well, coordinated by the South African National Anti-Discrimination Forum- Faze 2, the National Consortium for Refugee Affairs, the Human Rights Institute of South Africa, and Ditshwanelo.²²⁸ This report also expressed disappointment at the considerable delay by South Africa in meeting its reporting obligation under the CERD, as well as the fact that the State report does not sufficiently address the question of the impact of its measures.

Furthermore, shadow reports were also submitted to South Africa's initial report under the CAT that was submitted in 2005. Also, a number of CSOs submitted a shadow report to the periodic report of South Africa to the African Commission in 2005.²²⁹ The organisations voiced their concern about the late reporting by South Africa in respect of its obligation under the African Charter and other human rights instruments. The shadow report noted that 'the government is no longer eager to comply with their regional and international obligations especially with regard to the African instruments of human rights'. Other concerns related to the lack of civil society involvement in the preparation of the report, the outdated nature of the report, especially as it uses outdated data, and the State report's failure to address concerns raised during the examination of South Africa's initial report.

Despite the above examples, the effective participation of CSOs in reporting processes is still an issue of concern. For example, while workshops and consultation conferences in relation to a State report have in some cases been held, these are often organised on short notice, and the input provided by CSOs is often not reflected in the final reports submitted to the relevant bodies. It is also disappointing that even where CSOs have initiated a meeting to facilitate participation in the reporting process, the relevant government department had been absent. For example, the Civil Society and Prison Reform Initiative (CSPRI) of the Community Law Centre, as a way of facilitating the collection of information for South Africa's report under the CAT that is currently being drafted, set up a meeting with CSOs working on issues related to the CAT. This expert consultative meeting took place on 18 August 2010 and involved representatives of over ten CSOs, as well as the South African Human Rights Commission and the Judicial Inspectorate for Correctional Services. The relevant government department, although invited, was not present at this meeting.

Apart from CSOs, NGOs and NHRIs, it is important to note that **Parliament** also has a role to play in the reporting process. States have a legal obligation to involve parliaments in the drafting of reports.²³⁰ The CEDAW Committee has 'strongly encouraged [States] to establish

²²⁸ South African Anti-Discrimination Forum, *Comments on the South African government's first country report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination* (2006). Available at www2.ohchr.org/.../cerd/.../Alternative_Report_by_SAF_Civil_Society_Org_English.doc (accessed: 5 September 2010).

²²⁹ 'Shadow report to South Africa's first periodic state report to the African Commission on Human and Peoples' Rights, to be presented at the 38th session of the African Commission on Human and Peoples' Rights, 21 November - 5 December 2005, Banjul, the Gambia', 18 November 2005. Available at http://www.chr.up.ac.za/images/files/documents/ahrdd/southafrica/southafrica_ngo_shadow_report_2005.pdf (accessed: 11 September 2010).

²³⁰ Committee on the Elimination of Discrimination against Women, *National parliaments and the Convention on the Elimination of All Forms of Discrimination against Women*, para 5. Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/statements/Parliamentarians.pdf> (accessed 18 July 2010).

an appropriate mechanism to facilitate collaboration between Parliament and Government with regard to the input of its Parliament in the elaboration of reports, and its role in following up on the concluding observations of the Committee'.²³¹ Parliament's role could be in the form of ensuring that government complies with its reporting obligation, commenting on the draft report, and/or being part of the delegation during the consideration of the State report.²³²

An opportunity for Parliament to engage in the drafting of State reports presented itself when the Office on the Status of Women did present the recent CEDAW State report to the Joint Monitoring Committee on 'Improvement of Quality of Life and Status of Women' in a meeting held on 16 May 2008. However, the Joint Committee did not adequately engage with the report. The consultant responsible for drafting the report briefed the Joint Committee on the preparation of the report, stating among other things that it was based on desktop research and several consultations were held. However, the extent to which CSOs were consulted is not clear from the briefing. The Joint Committee then made comments on some of the issues. The chairperson of the Joint Committee, for instance, stated that 'there should be a shift of focus from administrative issues to more practical issues that dealt with women's interests'.²³³

4. Reporting under other mechanisms

4.1 Universal Periodic Review

4.1.1 Overview of UPR process

In resolution 60/251 adopted on 15 March 2006, which established the Human Rights Council (HRC), the UN General Assembly decided that the Council shall:

Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session.²³⁴

²³¹ Committee on the Elimination of Discrimination against Women (nd), para 5; Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth, fifth, sixth and seventh periodic reports of Uruguay*, UN doc. CEDAW/C/URY/CO/7, 2008, para 9.

²³² For further reading on the role of parliament in the reporting process, see Lilian Chenwi, 'The role of the South African parliament in promoting rights through ensuring compliance with international human rights obligations' (2010) Community Law Centre Research Paper (on file with author).

²³³ Parliamentary Monitoring Group, 'Convention on the Elimination of Discrimination against Women: Implementation report by Office on Status of Women' (2009). Available at <http://www.pmg.org.za/print/11925> (accessed: 17 September 2010).

²³⁴ Resolution 60/251. Human Rights Council adopted by the General Assembly, UN doc. A/RES/60/251, 3 April 2006, para 5(e).

The UPR applies universally and uniformly, as its creation was based on criticisms that all regions were not given equal attention under previous UN mechanisms.²³⁵ The HRC, through the UPR, reviews UN Member States on a periodic basis on the fulfilment of their human rights obligations and commitments.

In resolution 5/1, adopted on 18 June 2007, the HRC explained the basis of the review, the objectives, periodicity, process and modalities.²³⁶ The basis of the review is the UN Charter of 1945, the Universal Declaration on Human Rights of 1948 (UDHR), human rights treaties that have been ratified by the State under review, and voluntary pledges and commitments made by the State, including those the State took when presenting their candidature for election to the HRC.²³⁷ Among the principles that guide the UPR are the fact that it is a cooperative mechanism based on objective and reliable information and on **interactive dialogue**, it is aimed at complementing the State reporting mechanism under human rights treaties, it ensures the **participation of all relevant stakeholders**, and fully integrates a gender perspective.²³⁸

The objectives of the UPR include:

- Improving the human rights situation on the ground;
- Pushing States to fulfil their human rights obligations and commitments, and assessing the positive developments and challenges they face;
- Enhancing the capacity of States, including technical assistance to States, in consultation with them and with their consent;
- Sharing best practice among States and stakeholders;
- Supporting cooperation in the promotion and protection of human rights; and
- Encouraging full cooperation and engagement with the HRC, other human rights bodies and the OHCHR.²³⁹

Addressing inequalities and all forms of discrimination is also a key goal of the UPR. As with reporting under specific treaties, the UPR sets time lines for the review. States are currently reviewed every four years.²⁴⁰ States have to prepare and submit information in the form of a national report, which should not exceed 20 pages. The government report for the UPR is generally due three to four months prior to the review.²⁴¹ States are further encouraged to

²³⁵ Urban Justice Centre, *A practical guide to the United Nations' Universal Periodic Review (UPR)* (2010) 5. Available at <http://www.hrpujc.org/documents/UPRtoolkit.pdf> (accessed: 3 September 2010).

²³⁶ See Resolution 5/1. Institution-building of the United Nations Human Rights Council, adopted by the Human Rights Council.

²³⁷ Resolution 5/1, para 1.

²³⁸ Resolution 5/1, para 3.

²³⁹ Resolution 5/1, para 4.

²⁴⁰ Resolution 5/1, para 14.

²⁴¹ Urban Justice Centre (2010) 9.

prepare their reports through a broad consultation process at the national level with all relevant stakeholders.²⁴² Other reports taken into consideration during the review process are: a report compiled by the OHCHR drawing from reports of treaty bodies, special procedures and other UN documents, and a report containing 'credible and reliable' information from other relevant stakeholders. Both should be 10-page reports.²⁴³

The HRC has adopted guidelines for the preparation of information under the UPR.²⁴⁴ All reports should include information on:

- The methodology and the broad consultation process followed for the preparation of the State report;
- The background on the country and framework, provide information on the promotion and protection of human rights on the ground;
- Achievements, best practices, challenges and constraints;
- Key national priorities, initiatives and commitments that the State intends to undertake to overcome the challenges and constraints and improve human rights situations on the ground;
- Expectations of the State in terms of capacity-building and requests for technical assistance;
- The follow up to the previous review.

Following the review, the HRC issues an 'outcome report', which summarises the proceedings and also contains conclusions and recommendations, and the voluntary commitments of the State.²⁴⁵ A State would then have to report at the next review on the implementation of the recommendations and pledges and on the human rights situation in the country since the previous review.

The first UN Member States that were reviewed were chosen by the drawing of lots from each regional group, while full respect for equitable geographic distribution. In deciding who to review first among the selected countries, an alphabetical order is applied.²⁴⁶

²⁴² Resolution 5/1, para 15.

²⁴³ Resolution 5/1, para 15.

²⁴⁴ Human Rights Council, *Decision 6/102: Follow-up to Human Rights Council resolution 5/1*, 27 September 2007. Available at http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf (accessed: 14 September 2010)

²⁴⁵ Resolution 5/1, para 26.

²⁴⁶ Resolution 5/1, para 12.

Table 12: Reporting under UPR at a glance

Mechanism	Periodic review	Procedure	Supervisory body
UPR	Every four years	Preparation of documents → interactive dialogue between a State under review and UN Member States → development of outcome document by UPR working group → adoption of document by HRC → follow up to conclusions and recommendations from the review	HRC (Note: Reviews are conducted by the UPR working group consisting of 47 members of the HRC)

4.1.2 Review of South Africa under the UPR

It was indicated during the research for this paper that the Department of Justice and Constitutional Development is the responsible department in relation to reporting under the UPR. In this regard, it is interesting to note that none of the representatives during the review, as seen below, were from this department. South Africa was one of the first countries to be reviewed under the UPR. South Africa was reviewed on 15 April 2008. South Africa, however, did not seem to have taken its obligation seriously as it did not submit a report in advance. This has been criticised by many, including the SAHRC, which has expressed its disappointment at the fact that South Africa did not submit a report prior to appearing for the interactive dialogue.²⁴⁷

The 17-page State report was submitted during the interactive dialogue. The delegation of South Africa was headed by Glaudine J. Mtshali, the Permanent Representative of South Africa in Geneva.²⁴⁸ The report does not follow the guidelines as it does not, for example, include information on consultation processes in the preparation of the report. The report included a background section which highlighted, among other things, the treaties that South Africa has ratified and those that it is in the process of ratifying. Another section of the report was devoted to the practical enjoyment of rights.²⁴⁹

The documents considered also included a compilation from the OHCHR, containing information from the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents.²⁵⁰

²⁴⁷ See Parliamentary Monitoring Group, Strategic planning workshop: Human Rights Commission, Commission on Gender Equality, Child Rights Institute, Human Sciences Research Council, University of Stellenbosch, Disability Alliance presentations (2009). Available at

<http://www.pmg.org.za/report/20090812-women-youth-children-and-people-disabilities-portfolio-committee-strat> (accessed: 14 September 2010).

²⁴⁸ The delegation consisted of a representative from the Department of Home Affairs and five other representatives from the then Department of Foreign Affairs.

²⁴⁹ See South Africa's country report to the Human Rights Council's Universal Periodic Review Mechanism: 15 April 2008. Available at http://www.upr-info.org/IMG/pdf/South_Africa_State_report_Off_E_2008.pdf (accessed: 14 September 2010).

²⁵⁰ Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1*, UN doc. A/HRC/WG.6/1/ZAF/2, 11 April 2008.

The compilation also referred to documents dated after 1 January 2004. This compilation included a section on South Africa's cooperation with treaty bodies, which showed that South Africa has showed non-compliance, as many reports were overdue.²⁵¹

Prior to the review of South Africa, similar to the practice of most treaty bodies, a list of questions was prepared in advance by Ireland, Germany, Portugal, Canada, Denmark, the United Kingdom of Great Britain and Northern Ireland, Finland and Sweden and transmitted to South Africa.²⁵² Following the review of South Africa on 15 April 2008, the UPR Working Group adopted its outcome report on 18 April 2008. The report included a summary of the proceedings of the review process. Some of the statements made by other States related to South Africa's reporting obligation. The following statement by New Zealand, for instance, is worth noting;

[New Zealand] noted that South Africa has been unable to submit a number of reports to treaty bodies, and enquired about the major obstacles encountered in this regard, and what steps South Africa has taken or plans to take to overcome them. New Zealand asked whether South Africa has established time frames for the submission of its treaty body reports and whether it has given thought to the preparation of a common core document. New Zealand welcomed the delegation's comments on the submission by South Africa of its outstanding treaty body reports, in particular its initial reports, within its period of membership of the Human Rights Council. It also welcomed any comments on possible technical assistance that South Africa might require to meet its treaty body reporting obligations.²⁵³

South Africa's response to the above was that 'there was no political obstacle to the preparation of reports, but rather that it consumed a considerable effort, and South Africa was seeking ways to optimize the preparation of such reports'.²⁵⁴ South Africa further committed to submit its overdue report to the CERD Committee.²⁵⁵

The UPR Working Group made a number of recommendations, some also relating to South Africa's reporting obligation. The Working Group recommended, among other things, that South Africa should follow up on the recommendation made by the CAT Committee to adopt all necessary measures to prevent, combat and punish violence against women and children and to follow up on the recommendations of the CERD Committee.²⁵⁶

The HRC adopted the report of the Working Group on 11 June 2008.²⁵⁷ South Africa is yet to provide information on the implementation of the recommendations made. Notwithstanding,

²⁵¹ Human Rights Council, UN doc. A/HRC/WG.6/1/ZAF/2, part II.

²⁵² See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: South Africa*, UN doc. A/HRC/8/32, 23 May 2008, para 4. The questions are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZAQuestions.aspx> (accessed: 14 September 2010).

²⁵³ Human Rights Council, UN doc. A/HRC/8/32, para 38.

²⁵⁴ Human Rights Council, UN doc. A/HRC/8/32, para 49.

²⁵⁵ Human Rights Council, UN doc. A/HRC/8/32, para 57.

²⁵⁶ Human Rights Council, UN doc. A/HRC/8/32, para 67.

²⁵⁷ Human Rights Council, *Decision 8/114. Outcome of the universal periodic review: South Africa*, 11 June 2008. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/zasession1.aspx> (accessed: 14 September 2010).

it would have to report on the implementation of the recommendations during its next review in April 2012.

4.1.3 Participation of other stakeholders in the review of South Africa under the UPR

South Africa was required as per resolution 5/1 of the HRC to consult civil society in the preparation of the country report. It however, also failed to meet this requirement. Notwithstanding, a range of stakeholders made written submissions to the HRC, which were compiled in a 14-page document.²⁵⁸ Because the periodicity of the review for the first cycle was four years, the information provided related to events that occurred after 1 January 2004. The submissions highlighted various issues relating to the protection and promotion of human rights in South Africa.

Table 13: South Africa's reporting status under the UPR

Mechanism: UPR				
Establishment: 15/3/2006				
Responsible department: DoJ&CD				
Reporting requirement: Every four years				
Review	State report due	State report received	Submissions from other stakeholders	Peer reviewed
First review	1/2008 ²⁵⁹	15/4/2008	18	15/4/2008
Second review	1/2012			

4.2 African Peer Review Mechanism

4.2.1 Overview of the APRM process

The APRM is a self-monitoring and control mechanism established by the African Union to ensure compliance with principles of the New Partnership for Africa's Development

²⁵⁸ See Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*, UN doc. A/HRC/WG.6/1/ZAF/3, 11 March 2008. The stakeholders that made submissions were: the Joint Working Group, Centre for Human Rights, University of Pretoria, Centre for the Study of Violence and Reconciliation, Global Initiative to End All Corporal Punishment of Children, UPR Submission, Community Law Centre, University of Western Cape, Human Rights Watch, Voice of Wrongfully Imprisoned, UPR Submission, November 2007, Johannesburg; Cultural Survival, Unrepresented Nations and Peoples Organization, Masimanyane Women's Support Centre, Centre on Housing Rights and Evictions, Commonwealth Human Rights Initiative, Reporters Without Borders, International Federation for Human Rights, Centre for the Study of AIDS, University of Pretoria, UPR Submission, Amnesty International, Children Now, Alliance of South African NGOs, South African Human Rights Commission.

²⁵⁹ The month of January is stated, based on the fact that the government report for the UPR is generally due three to four months prior to the review.

(NEPAD).²⁶⁰ The APRM aims to promote the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration. This would be achieved through the sharing of experiences and reinforcement of successful best practices, including identifying deficiencies and assessing the needs for capacity building of participating countries.²⁶¹ A core principle that guides the review is that it be technically competent, credible and free of political manipulation.

Member States of the African Union voluntarily accede to the APRM, by undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and be guided by agreed parameters for good political governance and good economic and corporate governance. Remedies for deficiencies are implemented through a National Programme of Action (NPA). The timeframes of review are as follows: the first country review, which is referred to as the '**base review**' is done within 18 months of a country becoming a member of the APRM. The **periodic reviews** are then undertaken every two to four years. Furthermore, States can request that they be reviewed, or where there are early signs of imminent political or economic crisis in a country, a review could also be instituted.²⁶²

As with the UPR and State reporting under human rights treaties, the APRM aims to **facilitate dialogue** between the State and society. There are various stages to the review process under the APRM, these include:

- The establishment of structures to manage the review process;
- The APRM secretariat collects background information from different sources, including a detailed questionnaire completed by the government of the State being reviewed;
- An APRM review team undertakes a country visit to consult with government, political entities such as the parliament and political parties, and civil society;
- A report is prepared in draft format and discussed with the State;
- Any responses of the State are then annexed to the report and submitted to the Participating Heads of State and Government, which then considers and adopts the report. The committee of Participating Heads of State and Government is responsible for the overall management and implementation of the APRM, and is also referred to as the 'APR Forum'.

²⁶⁰ NEPAD is a programme of action for the redevelopment of the African continent, developed by African leaders and launched in 2001. It is a strategic framework on the basis of which Africa intends to interact with the rest of the world. Its objectives include the eradicate poverty, placing African countries, both individually and collectively, on a path of sustainable growth and development, halting the marginalisation of Africa in the globalisation process, and accelerating the empowerment of women.

²⁶¹ See 'The African Peer Review Mechanism (PRM): The rules and procedures of the APR panel and the APR secretariat', NEPAD/APR FORUM1/02-2004/Rules/Doc2a, para 1. Available at <http://www.aprm.org.za/docs/APRMPanelrulesandproceduresFINAL.pdf> (accessed: 3 September 2010).

²⁶² See New Partnership for Africa's Development, 'The African Peer Review Mechanism' (2003) 4. Available at <http://www.dfa.gov.za/au.nepad/nepad49.pdf> (accessed: 3 September 2010).

- The report is lodged with key regional and sub-regional institutions such as the Pan-African Parliament, the African Commission and the Economic, Social and Cultural Council (ECOSOCC) of the African Union, among others.²⁶³

Table 14: Reporting under APRM at a glance

Mechanism	Base (initial) review	Periodic review	Review process	Supervisory body
APRM	Within 18 months from accession to APRM	Every two to four years	Establishment of structures to manage the review process → collection and study of information by APRM secretariat → country visit by APRM team → preparation of country report and discussion with state under review → submission to, consideration and adoption of report by participating Heads of State and Government → lodging of report with key regional and sub-regional institutions	Participating Heads of States and Government of the African Union (APR Forum)

4.2.2 Review of South Africa under the APRM

South Africa acceded to the APRM on 9 March 2004. Responsibility for reporting and follow-up with regard to APRM lies with the Governing Council, coordinated by the Department of Public Service and Administration (DPSA). South Africa was the fourth country to undergo its first review under the APRM. It is important to also note that the APRM secretariat is based in South Africa.

The first review of South Africa under the APRM process commenced in 2005 and was completed in 2006. This first review process has been dealt with extensively in several writings that have also identified the milestones of the review process.²⁶⁴ These milestones as summarised are restated in Table 16 below. This section of the paper thus focuses mainly on key issues in the report and challenges that have been highlighted in relation to the process, and which impact on government's ability to report effectively.

²⁶³ For further reading on the APRM, see generally, United Nations Economic Commission for Africa (UNECA), 'African Peer review Mechanism: Process and procedures' (2002) 11(4) *African Security Review*. Available at <http://www.iss.co.za/pubs/ASR/11No4/Feature1.html> (accessed: 16 September 2010). Annie Barbara Chikwanha, 'The APRM: A case study in democratic institution building?' (2007) Institute for Security Studies Paper 115, Available at <http://www.africanreview.org/docs/isspaper151.pdf> (accessed: 3 September 2010).

²⁶⁴ See, for example, Ross Herbert and Steven Gruzd, *The African Peer Review Mechanism: Lessons from the pioneers* (2008, The South African Institute of International Affairs) 255-311; and Nobuntu Mbelle, *The APRM process in South Africa* (2010, Open Society Initiative for Southern Africa)

The 404-page Country Review Report deals with the achievements, the status of governance, best practices or lessons to be learnt, and areas of deficiency.²⁶⁵ The strengths of South Africa identified in the report included the existence of a political environment that is conducive to political debate, dialogue and contestation, and a good framework for the protection of human rights.²⁶⁶ The key challenges included problems in the translation of democratic ideals into practice and the pervasive and costly legacy and distortions of apartheid, particularly in relation to discrimination in the provision of education.²⁶⁷ The report also notes that South Africa needs transformation of both the economic base and social structure of society, which would create an environment in which the majority of people can participate fully in development. It then called on all stakeholders and government to work together in implementing the NPA that emerged from the review.²⁶⁸ The primary purpose of the NPA, as stated in the report, is 'to guide and mobilise the country's efforts in implementing the necessary changes to improve its state of governance and socio-economic development.'²⁶⁹ A number of recommendations were made to South Africa, including the need for South Africa to:

- Strengthen and enhance social dialogue and participation of people in the socio-economic development process;
- Enhance partnerships between government and other development stakeholders; and
- Establish regular monitoring and reporting mechanisms within the country.²⁷⁰

South Africa was, however, not receptive of the report; it dismissed the findings and recommendations.²⁷¹ Notwithstanding, South Africa presented its first progress report on the implementation of its NPA to the APR Forum on 4 February 2009. The report, however, does not adequately discuss and analyse progress on the commitments made in the NPA, thus failing to provide evidence of South Africa's compliance with the NPA.²⁷² South Africa is currently in the second year of implementing its NPA. Based on the periodic review timelines of every two to four years, the second review is due by 2010.

²⁶⁵ African Peer Review Mechanism, *South Africa: Country Review Report* (2007). Available at <http://www.aprm.org.za/docs/SACountryReviewReport5.pdf> (accessed: 15 September 2010).

²⁶⁶ African Peer Review Mechanism (2007) 29-30.

²⁶⁷ African Peer Review Mechanism (2007) 30-31.

²⁶⁸ African Peer Review Mechanism (2007) 31.

²⁶⁹ African Peer Review Mechanism (2007) 288-289.

²⁷⁰ African Peer Review Mechanism (2007) 271.

²⁷¹ See Brendan Boyle, 'South Africa rejects African Peer Review Mechanism report' (2007). Available at <http://www.africafiles.org/article.asp?ID=15042> (accessed: 15 September 2010).

²⁷² See Yarik Turianskyi, 'Off track? Findings from South Africa's first APRM implementation report' South African Institute of International Affairs Occasional Paper, No 53 (2010) 5. Available at http://www.saiia.org.za/images/stories/pubs/occasional_papers/saia_sop_53_turianskyi_20100125.pdf (accessed: 15 September 2010).

4.2.3 Participation of other stakeholders in the review of South Africa under the APRM

One of the key criticisms that have been levied at the first review related to ineffective consultation and participation of other stakeholders in the process. The process has been criticised on the basis that it was rushed with insufficient time for stakeholders to prepare for events or compile substantial and detailed responses, which resulted in 'superficial' consultation.²⁷³ As seen in table 4.5 below, the time frames were very tight. The process of consultation has been described in the following words:

The government's understanding of consultation appears to have meant informing those attending meetings of what was under way, rather than any kind of equal interaction. A weakness in the consultative conferences was the inability to facilitate meaningful discussion in areas contested by civil society and government. Also, these conferences created expectations in those members of civil society who attended that the views they expressed would be incorporated in the CSAR [Country Self-Assessment Report]. In most cases, not only did participants receive the relevant material too late to prepare their responses, but the time allocated to each theme was generally one day, allowing limited time for debate. NGOs and CSOs aired these concerns and expressed their lack of trust in aspects of the process to the CRM in July 2006.²⁷⁴

Notwithstanding, a number of stakeholders including CSOs, individuals, and Parliament, did make submissions in the end.²⁷⁵ This stands in strong contrast to the level of engagement of other stakeholders in reporting to human rights treaties and the UPR.

²⁷³ Herbert and Grudz (2008) 267 and 271.

²⁷⁴ Mbelle (2010) 26.

²⁷⁵ The submissions from civil society came from: South African Older Person's Forum, Black Sash, Business Unity South Africa, First Children's Consultative Workshop Children's Sector Report, Congress of South African Trade Unions, Culture Sector, Disability Sector, Federations of Unions of South Africa, Human Sciences Research Council, Institute for Democracy in Africa, Institute for Economic Research on Innovation, Joint Working Group LGBT, Media Institute of Southern Africa, National Council of Trade Unions, National Council for Persons with Physical Disabilities, Open Democracy Advice Centre, South African Institute of Chartered Accountants, South African Institute of Corporate Fraud Management, South African Institute for International Affairs, South African National Civic Organisation, South African National Equestrian Federation, South African National NGO Coalition, Treatment Action Campaign, Women's Sector, Youth Sector, and an individual - Athi Majija. A number of submissions – about 27 – have also been listed as coming from Parliament. See <http://www.aprm.org.za> (accessed: 15 September 2010). It should be noted that the parliamentary submissions include information from other CSOs. For instance, the Community Law Centre's Socio-Economic Rights Project made a submission on 2 December 2005 to the Joint Ad-Hoc Committee on Democracy and Good Governance of Parliament.

Table 15: South Africa's reporting status under the APRM

Mechanism: APRM				
Accession: 9/3/2004				
Responsible department: DPSA				
Reporting requirement: Within 18 months, and thereafter every two-four years				
Review	Review due	Country Review Report received (by APRM Secretariat)	Submissions from other stakeholders	Peer reviewed
First review	9/2005 ²⁷⁶	30/6/2006	27 (civil society) 27 (parliament)	1 July 2007 (peer review by APR Forum)
Second review	9/2010			

Table 16: Milestones in the first review process of South Africa²⁷⁷

Milestones	Date
Acceded to APRM process	9/3/2004
Nomination of the focal point	11/2004
Public launch of the process	13/9/2005
First national consultative conference to officially launch the process	28-29/9/2005
Inauguration of National Governing Body	29/9/2005
First visit of APRM Secretariat Country Support Mission	9-11/11/2005
Signed memorandum of understanding with APRM Secretariat on the procedures for undertaking the review at national level	11/11/2005
Second visit of APRM Secretariat Country Support Mission	4-7/12/2005
National Governing Body selected four research institutes to be involved in the preparation of the Country Self-Assessment Report	16/2/2006
First draft Country Self-Assessment Report and draft Programme of Action completed	31/3/2006
Workshops held to review the draft reports	4-7/4/2006
Second national consultative conference to validate the draft reports	4-5/5/2006
Draft Country Self-Assessment Report adopted by cabinet	9/6/2006
Country Self-Assessment Report and Programme of Action submitted to APRM Secretariat	30/6/2006
Visit of APRM Secretariat Country Review Mission	11-25/7/2006
Programme of Action finalised	8/2006
Country Review Report submitted to APR Forum	12/2006
Country Review Report reviewed by APR Forum	1/7/2007
First implementation report of the Programme of Action presented to APR Forum	4/2/2009

²⁷⁶ This date is based on the fact that South Africa acceded to the APRM in 2004 and the first review had to be done within 18 months.

²⁷⁷ This table is derived from Herbert and Grudz (2008) 9-10; Mbelle (2010) 5; and African Peer Review Mechanism, (2007).

5. Conclusion and recommendations

State reporting should be seen as an opportunity for dialogue between States and independent experts in the case of treaty bodies, or their peers, in the case of peer review. This paper has considered the extent to which South Africa has complied with its reporting obligations under various international human rights treaties and mechanisms. The status of South Africa's reporting under core UN and African human rights treaties represents a gloomy picture. Its reporting under other mechanisms such as the UPR and APRM is also a matter of concern. It seems the government approaches State reporting as a mere formality and not as a self-critical assessment of its efforts to realise the rights in the treaties it has ratified or to meet the commitments it has made. What is more, it would seem that adequate attention is not given to State reporting, as it seems to have a low profile in government.

With regard to reporting under treaty bodies, the government's non-compliance with its reporting obligation is quite glaring. In the main, reports have either not been submitted or are submitted after considerable delays. Some of the reports do not meet the reporting guidelines of the treaty bodies, especially in relation to the information contained in them; and have been based largely on government sources. Also, more often than not, the reports do not include information on the implementation of recommendations made on previous reports.

Furthermore, effective civil society involvement in the reporting process is lagging behind. As seen in sections 3.1 and 3.2 above, the government has commissioned the preparation of reports from a specific CSO or consultant. However, it is problematic to qualify that as involvement of CSOs in the reporting process. The limited role that Parliament has thus far played in the reporting process is also an issue of concern. While Parliament has been more visible in relation to the APRM, the same cannot be said for reporting under the UPR or human rights treaties. In some instances, the involvement of Parliament has been limited to briefing the relevant portfolio committee on the report. It is therefore not surprising that the CEDAW Committee's list of issues includes a request for South Africa to provide clarity on the extent of consultation and participation of NGOs and whether the report was submitted to Parliament.

South Africa does not also seem to take its reporting obligation in relation to the UPR and APRM as seriously as it should. As seen in section 4.1, it failed to submit its report under the UPR in advance. The APRM process, on the other hand, was rushed, which impacted negatively on the consultation process with other stakeholders. Even the submission of the implementation report was rushed so as to meet a time frame.

State report writing has no doubt placed a burden on the South African government. However, the reporting process should not be seen as a burden imposed on South Africa as it willingly ratified treaties or acceded to these mechanisms. Though the reporting process requires resources, data and technical expertise and can be time consuming, investment in resources to produce a quality report that is part of a continuing process of realising rights can assist in governments' accountability to its citizens and its international accountability on human rights issues. Moreover, some UN bodies and agencies are able to provide expert and technical assistance to States, upon request, on the preparation of reports or on addressing specific issues in their State reports. With regard to the latter, for instance, the

Joint United Nations Programme on HIV/AIDS has committed to assisting States in addressing HIV and AIDS issues in their reports.²⁷⁸ Also, as noted in section 2.2 of this paper, in the preparation of reports, States can seek technical assistance from the OHCHR in collaboration with the Division for the Advancement of Women, and from other relevant UN agencies.

State reporting is an important strategy to ensure compliance with international human rights norms. South Africa's improved compliance with its reporting obligation is therefore vital. The obligation to report requires positive action, implying that a prerequisite for the realisation of this obligation is political will to prepare a concrete and comprehensive report. Government also needs to have a methodology in place to deal with the reporting backlog. The effective participation of other stakeholders in the reporting process is important to ensuring compliance with the reporting obligation, as the preparation of the State report requires input from a variety of sources. There is also need to improve institutional capacity and coordination between government departments in the preparation of reports. During the efforts to collect information for this paper, the lack of coordination 'between' and 'within' departments was apparent. Officials within a responsible department were not even aware that the department is in charge of overseeing the specific treaty. Furthermore, findings and recommendations arising from concluding observations or UPR and APRM reports have to be mainstreamed into policy discussions and documents, so as to ensure their effective implementation.

In addition, CSOs and NHRIs need to be proactive in relation to participating in the reporting process and the submission of information to treaty bodies or mechanisms on South Africa's compliance with its human rights obligations. This paper has outlined the ways and steps at the reporting process in which other stakeholders can get involved in the process. Parliament needs to be more involved in the State reporting process as well. Its oversight function provides it with an opportunity to interrogate government on complying with its reporting obligation, to question the veracity of information contained within draft State reports and Parliament is free to provide inputs on draft reports.

²⁷⁸ Joint United Nations Programme on HIV/AIDS (UNAIDS) and Inter-Parliamentary Union (IPU), *Handbook for legislators on HIV/AIDS, law and human rights: Action to combat HIV/AIDS in view of its devastating human, economic and social impact* (UNAIDS, 1999) 106.

ANNEX I

A SCHEMATIC PRESENTATION OF SOUTH AFRICA'S REPORTING STATUS UNDER HUMAN RIGHTS TREATIES AND OTHER MECHANISMS AT THE UNITED NATIONS AND AFRICAN REGIONAL LEVELS

UNITED NATIONS HUMAN RIGHTS SYSTEM

Treaty / mechanism	Signature & Ratification	Reporting requirement	Responsible department	Report due	Report received	Shadow reports / Submissions from other stakeholders	Report considered / peer reviewed
ICCPR	S:03/10/1994 R:10/12/1998	2 years after ratification, then every 5 years	DoJ&CD	Initial: 10/12/2000	---	---	---
ICESCR	S:03/10/1994	2 years after ratification, then every 5 years	Not yet clear which department will take this up	---	---	---	---
CERD	S:03/10/1994 R:10/12/1998	1 year after the entry in force, then every 4 years	DoJ&CD	Initial: 10/12/1999	19/05/2005 ¹ , incl. 1 st , 2 nd , 3 rd periodic report	2 ²	19/10/2006 ³
				4 th periodic: 09/01/2010	---	---	---
CEDAW	S:29/01/1993 R:15/12/1995	1 year after the entry in force, then, at least, every 4 years	DWCPD	Initial: 14/01/1997	05/02/1998 ⁴	2 ⁵	06/1998 ⁶
				14/01/2001	Combined 2 nd ,3 rd , 4 th 24/03/2010 ⁷	5 ⁸	Scheduled to be considered at the 48 th session, January 2011
				14/01/2005			
14/01/2009							
CAT	S:29/01/1993 R:10/12/1998	1 year after ratification, then every 4 years	DoJ&CD	Initial: 10/12/1999	25/08/2005 ⁹ , incl. 1 st periodic	6 ¹⁰	07/12/2006 ¹¹
				31/12/2009 (as requested by CAT)	---	---	---

CRC	S:29/01/1993 R:16/06/1995	2 years after ratification, then every 5 yrs	DWCPD	Initial: 16/06/1997	04/12/1997 ¹²	1 ¹³	22/02/2000 ¹⁴
				2 nd , 3 rd , overdue since 2002 and 2007, 4 th in 2010	---	---	---
CRC OPAC	S:08/02/2002 R:24/09/2009	2 years after ratification, then every 5 years	DWCPD	Initial: 24/09/2011	---	---	---
CRC OPSC	A:30/06/200 ¹⁵	2 years after ratification/accession, then every 5 years	DWCPD	Initial: 30/07/2005	---	---	---
CRPD	S:30/03/2007 R:30/11/2007	2 years after ratification, then every 4 years	DWCPD	CRPD entered into force on 03/05/2008, initial report due 2 years later: 02/05/2010	---	---	---
CRMW	---	---	---	---	---	---	---
UPR	UPR established ON 15/03/2006 by UN GA Resolution 60/251	Every 4 years	DoJ&CD	January 2008 ¹⁶	15/04/2008 ¹⁷	18 ¹⁸	23/05/2008 ¹⁹
				April 2012			

AFRICAN HUMAN RIGHTS SYSTEM

Treaty / mechanism	Signature & Ratification	Reporting requirement	Responsible department	Report due	Report received	Shadow reports / Submissions from other stakeholders	Report considered / peer reviewed
African Charter and Women's Protocol	S: 09/07/1997 R: 09/07/1997	Every 2 years	DoJ&CD	Initial: 09/1998	10/1998, incl. combined 1 st and 2 nd .	---	05/ 1999 ²⁰
	S: 16/03/2004 R: 17/12/2004			2001 2003 2005	05/2005, combined 3 rd and 4 th	1 ²¹	05/2005 ²²
African Children's Charter	S: 10/10/1997 R: 07/01/2000	2 yrs after ratification, then every 3 years	DWCPD	01/2002	---	---	---
APRM	South Africa acceded to the APRM on 09/03/2004	Base review within 18 months, then every 2 to 4 years	DPSA	09/2005 ²³	06/2006	---	Country Review Mission 9-25/07/2006, Peer Review 1/07/2007

¹ CERD/C/461/Add.3 , 69th Session (31 July – 18 August 2006)

² Submitted by the South African Human Rights Commission and the South African National Anti-Discrimination Forum - Faze 2, together with the National Consortium for Refugee Affairs, the Human Rights Institute of South Africa and Ditshwanelo.

³ CERD/C/ZAF/CO/3, 69th Session (31 July-18 August 2006)

⁴ CEDAW/C/ZAF/1

⁵ Submitted by the Masimanyane Women's Support Centre (including submissions of 12 other NGOs) and the National Institute for Public Interest Law and Research (NIPILAR), which compiled the "NGO commentary document on the first South African government report on the Women's Convention" based on input from women's NGOs from the Gauteng Province.

⁶ CEDAW/C/SR.387, 388 and 393, 19th Session (24 and 29 June 1998)

⁷ CEDAW/C/ZAF/2-4, 48th Session (17 January – 4 February 2011)

⁸ Submitted by the Global Initiative to End All Corporal Punishment of Children, International Disability Alliance, Women's Legal Centre, People Opposing Women Abuse (together with the AIDS Legal Network and on behalf of the One in Nine Campaign and the Coalition for African Lesbians), and the Commission on Gender Equality.

⁹ CAT/C/52/Add.3

¹⁰ Submitted by Global Initiative to End All Corporal Punishment against Children, Amnesty International, Civil Society Prison Reform Initiative, Children's Rights Project of the Community Law Centre, Centre for the Study of Violence and Reconciliation, World Organization against Torture (OMCT).

¹¹ CAT/C/ZAF/CO/1, 37th Session (06-24 November 2006)

¹² CRC/C/51/Add.2

¹³ The National Children's Rights Committee (NRCC) facilitated the compilation of a Supplementary CRC Report to the UN, involving 250 community organisations.

¹⁴ CRC/C/15/Add.122, 23rd Session (25-26 January 2000)

¹⁵ "A" stands for acceded.

¹⁶ The month of January is stated, based on the fact that the government report for the UPR is generally due three to four months prior to the review.

¹⁷ Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ZA/A_HRC_WG6_1_ZAF_1_E.pdf.

Also see the OHCHR compilation of 11/04/2008, A/HRC/WG.6/1/ZAF/2.

¹⁸ Submitted by Joint Working Group, Braamfontein; Centre for Human Rights, University of Pretoria, Pretoria; Centre for the Study of Violence and Reconciliation, Braamfontein; Global Initiative to End All Corporal Punishment of Children, London; Community Law Centre, University of Western Cape, Human rights situation in South Africa: some areas of concern, Bellville; Human Rights Watch, New York (USA); Voice of Wrongfully Imprisoned, Johannesburg; Cultural Survival, Cambridge (USA); Unrepresented Nations and Peoples Organization, The Hague (the Netherlands); Masimanyane Women's Support Centre, East London; COHRE: Centre on Housing Rights and Evictions, Geneva (Switzerland); Commonwealth Human Rights Initiative, New Delhi (India); Reporters Without Borders, Paris (France); International Federation for Human Rights, Paris (France); Centre for the Study of AIDS, University of Pretoria, Pretoria; Amnesty International, London (UK); Children Now, Alliance of South African NGOs; South African Human Rights Commission, Johannesburg. See summary of stakeholders' information of 11/03/2008, A/HRC/WG.6/1/ZAF/3.

¹⁹ A/HRC/8/32

²⁰ 25th Ordinary Session

²¹ Jointly submitted by the Centre for Human Rights, Socio-economic Rights Project of the Community Law Centre, Human Rights Institute of South Africa, Lawyers for Human Rights, Central and Gauteng Mental Health Society, Gauteng Children's Rights Committee, and the Community Law and Rural Development Centre.

²² 38th Ordinary Session

²³ This date is based on the fact that South Africa acceded to the APRM in 2004 and the first review had to be done within 18 months.