

RESEARCH BRIEF

The Status of Human Rights Defenders in South Africa



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SUMMARY AND KEY RECOMMENDATIONS

A human rights defender (HRD) can be defined to include anyone, who individually or in association with others, seeks to promote and to strive for the protection and realisation of human rights and fundamental freedoms. However, due to a lack of domestic legal definition as to who constitutes an HRD, there is a considerable dearth in government information on the status of HRDs in South Africa. Moreover, the South African government has been inconsistent in its approach on matters pertaining to HRDs at an international level, thus creating uncertainty about its approach to human rights broadly. This research brief seeks to highlight the current landscape and environment for human rights activism in South Africa, and the importance of ensuring that the work of HRDs receives the necessary promotion and protection from both State and non-State actors in ultimately achieving the goals enshrined in the Constitution.

Unsustainable levels of poverty and inequality, compounded by widespread unemployment and inadequate access to basic services for many poor communities, continue to violate people's rights, resulting in persistent political, economic and social unrest. The perpetual exclusion of poor communities has resulted in the inability of the majority of the country's population to access political and economic institutions, and influence social change that prioritises human rights. HRDs seek the promotion and protection of civil and political rights, and the promotion, protection and realisation of economic, social and cultural rights. HRDs are active in support of the rights to access food, water, health care, adequate housing, education, a clean environment, land and the equitable distribution of resources.

Despite the rights and protections afforded in the South African Constitution, such as freedom of assembly, association, and the ability to actively participate in decision-making processes that shape their lives and promote good governance – all of which comprise the right to freedom of expression, and are fundamental for the full realisation of socio-economic rights – HRDs frequently experience multiple violations of these rights. The disruption of peaceful human rights assemblies and excessive use of force by the police

under the pretext of maintaining public order has become a frequent occurrence in South Africa. Reports have emerged of threats and intimidation by political party actors and State authorities toward a number of human rights civil society organisations (CSOs) and those critical of the government in South Africa. Despite the establishment of various legal mechanisms that aim to facilitate community participation in public affairs, poor communities in particular are frequently excluded from decision-making processes that directly affect their daily lived experience, and subsequently confront repressive actions from both State and non-State actors, including the private sector. Moreover, when advocating for the promotion and protection of rights, HRDs experience difficulty in accessing relevant public information to which they are entitled, or face threats to their freedom of expression when highlighting violations.

The obligation of the State to provide HRDs (and those whose rights they aim to promote and protect) with an effective remedy in instances where their rights have been violated requires a prompt and impartial investigation into the alleged violations, and the prosecution of the perpetrators regardless of their status. This includes appropriate compensation to victims, and the enforcement of decisions or judgments. The failure to adequately protect HRDs further violates their rights. However, access to justice remains slow and inefficient.

Women HRDs are more at risk of suffering certain forms of violence, prejudice, exclusion and repudiation, not experienced by their male counterparts. This is often because women HRDs are perceived as challenging accepted socio-cultural norms, traditions, perception and stereotypes about their femininity, sexual orientation, and the role and status of women in society. Children are frequently involved in various forms of political and social resistance, either as political agents aiming to advance their human rights or as members of affected communities confronting human rights violations. However, as a result of their activism, children have also been victims of excessive use of force by State police when claiming human rights. Children have been shot at with rubber bullets and tear gas when demanding access to education and the closure of schools.

Noting the crucial role that HRDs play in ensuring the advancement and entrenchment of South Africa's nascent democracy, this brief reiterates the following key recommendations made by the SAHRC, regional and international human rights bodies to ensure that their rights are adequately promoted and protected.

Key recommendations

- The Minister of Police and the South African Police Service (SAPS) must ensure that the excessive and disproportionate use of force by law enforcement officials in the context of public protests in South Africa is halted through strengthening front line supervision and officer accountability mechanisms, so that public ordering policing is improved. As a matter of urgency, the Minister of Police must implement the recommendations of the National Development Plan and the White Paper on the Police aimed at achieving the vision of a professional, ethical and accountable SAPS.
- Political parties and executive structures, including Ministers involved in State security agencies, should ensure that none of their structures, members or supporters attempt to intimidate or prevent any organisation or group from exercising their rights of freedom of expression and association.
- Communities should be consulted with by both State and non-State actors in all aspects concerning their living arrangements and living experiences, in a meaningful way, prior to the conclusion of development plans and agreements, in order to enhance transparency and accountability and to ensure that programmes and processes accommodate the needs of communities in a sustainable manner. Community representatives must reflect the demographics of the community concerned, with particular attention given to ensure that marginalised groups such as women, people with disabilities and young people are represented.
- The government, including the Department of Communications, should publicly condemn any instances that appear to attack freedom of the press and instances that encourage censorship through acts of violence and intimidation by members of the public.

- The DOJ&CD, together with the Office of the Public Protector and other Chapter 9 bodies, should investigate the establishment of a specialised unit tasked with protecting the rights of whistle blowers. These institutions should also engage in an active campaign to promote the work of whistle blowers to ensure that they feel protected by their communities.
- The Department of Correctional Services (DCS) needs to urgently address the issue of overcrowding in correctional centres across the country and increase its efforts to ensure that detainees are treated with humanity and dignity. All detainees must be able to access adequate food, health care and ventilation, and be housed in structures that are sanitary while awaiting trial.
- The SAPS should improve its data collection mechanisms to provide sufficient detail on the complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment. The SAPS should strengthen its public complaints and internal disciplinary systems to reduce the levels of ill-treatment and brutality against the civilian population.
- The South African government should prioritise the ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and establish the establishment of a National Preventive Mechanism (NPM) to monitor places of deprivation of liberty, supported by the necessary resources to ensure its effectiveness.
- All HRD-related killings must be thoroughly investigated, and perpetrators must be prosecuted and held accountable for the killings.
- The Department of Justice and Constitutional Development (DOJ&CD), together with the Department of Women (DOW) should take political, administrative and legislative measures to ensure that the environment in which women HRDs operate is enabling to the protection of their rights, including a response to religious and cultural norms that subjugate women in general and women HRDs in particular. When children are involved in protest action, the Ministry of Police and SAPS must ensure that the excessive and disproportionate use of force by law enforcement officials is halted.

INTRODUCTION

“September [2017] marks for us the 40 year anniversary of the death of struggle icon, Steve Biko, who died in police custody on September 12, 1977 - a horrendous litany of human rights violations that included enforced disappearance, arbitrary detention, torture and state sanctioned murder, that were all too common in Apartheid South Africa.

He paid the ultimate price - his life - in the struggle to ensure that all South African can be free. The best way to honour his legacy is to ensure human rights for all.” - Deputy Minister of Justice and Constitutional Development, Hon. John Jeffery.¹

Contextual background

In 2017, the South African Human Rights Commission (SAHRC) released its inaugural report on the state of civil and political rights in South Africa.² The report highlighted numerous human rights violations by the State, particularly as they relate to issues of personal privacy and surveillance, political violence, excessive use of force during protests, freedom of association, access to justice, just administrative action and freedom of expression. These cross-cutting issues are being experienced by individuals and organisations working to advance civil, political, social, economic and cultural rights in South Africa, and contribute to the closing of political space.²

The SAHRC's annual regional and international report for the same period further highlights international concern expressed by human rights bodies regarding racism, xenophobia and associated violence, the treatment of prisoners and conditions of detention, the rights of migrants and the rights of indigenous communities in South Africa. Gender-based violence remains rife, with sparse information available on the prevalence and forms of domestic violence, inadequate national statistics, and a lack of accountability for victims of violence. Children and people with disabilities continue to bear the brunt of extreme forms of violence, and are unable to access a host of socio-economic rights.³

Human rights defenders (HRDs), individually or with others, aim to promote and protect civil, political, economic, social and cultural rights. They are universally recognised as fundamental for the establishment of a society rooted in peace, stability and security. Through activism, they contribute toward the development of new ideas, deepening the human rights framework and making human rights a lived reality.³ In terms of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), the State has a duty to protect, promote and implement all human rights and fundamental freedoms, and ensure that all persons under its jurisdiction are able to enjoy those rights and freedoms in practice.⁴ This obligation is derived from the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW), and the African Charter on Human and People's Rights, 1981 (African Charter).

The State has a duty to ensure the creation of an environment that enables HRDs to carry out their activities toward the advancement of all human rights. In doing their work, HRDs have the right to be protected, the right to freedom of assembly, the right to freedom of association, the right to freedom of opinion and expression, the right to protest, the right to develop and discuss new human rights ideas, the right to an effective remedy, the right to access funding and the right to access and communicate with international bodies.⁵ While many of these rights are enshrined in the Constitution of the Republic of South Africa, 1996 (Constitution), HRDs still confront increasing danger in their attempts to promote the realisation of constitutionally guaranteed rights. This is evidenced by the numerous complaints received by the SAHRC and domestic, regional and international recommendations and observations by human rights bodies that remain unaddressed by the South African government. It is therefore clear that there is a need for clear domestic policy and legislation on the protection of HRDs in South Africa.

In addition to domestic, regional and international obligations, the Sustainable Development Goals (SDGs), specifically SDG 16, calls for the promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all and the establishment of effective, accountable and inclusive institutions at all levels.⁶

It is in this context that this research brief seeks to highlight the current landscape and environment for human rights activism in South Africa, and the importance of ensuring that the work of HRDs receives the necessary promotion and protection from both State and non-State actors in ultimately achieving the goals enshrined in the Constitution.

Defining the term ‘Human Rights Defender’

The term ‘human rights defender’ is increasingly gaining traction at a national, regional and international level. The term is construed in very broad terms to acknowledge and recognise the work of several individuals and organisations who in a personal or professional context are increasingly standing up and acting in support of, or who themselves are, victims of human rights violations.

Although the UN Declaration on Human Rights Defenders does not explicitly provide a definition of who constitutes an HRD, the Office of the High Commission on Human Rights (OHCHR) uses the term human rights defender to describe people who, individually or with others, act to promote or protect human rights.⁷ According to the OHCHR, HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights.

The UN Special Rapporteur on the situation of human rights defenders adopts a similar approach and states that ‘the term human rights defenders is used to describe people who, individually or with others, act to promote and protect human rights. Human rights defenders can set up actions to spread awareness of human rights, implement human rights and ensure their respect.’⁸ Crucially, the UN Rapporteur argues that anyone who acts at any moment for any human rights can be an HRD.

Amnesty International views HRDs as ‘people who champion and fight for human rights of other people. They challenge brutality, oppression and injustice in every part of the world, often risking their lives to expose abuses and hold powerful people to account, while supporting the survivors of human rights abuses.’⁹

Many HRDs work to secure access to justice, remedies, protection and accountability for victims of human rights violations and promote the adherence to human rights legal standards. There is no exhaustive list of the work and activities of HRDs. The work of HRDs include monitoring the violation of human rights, collecting and disseminating information on violations, supporting victims, demanding accountability for State and private actors, lobbying for new laws, regulations and policies, organising awareness campaigns, whistleblowing, human rights education and training, litigation, peaceful action and protests, community organising, investigations and reporting among several others.

In the South African context, the listed categories of work and activities of HRDs are applicable and require protection. Journalists, NGOs and their employees, whistleblowers, public interest lawyers, community activists, student leaders, trade union leaders and

several others who are critical of the government and State machinery are all becoming vulnerable groups that need increased protection as HRDs. This research brief thus investigates regulatory gaps in protecting and promoting the rights that HRDs require to perform their work.

Purpose and objectives

In line with the framework of the UN Declaration on Human Rights Defenders, the purpose of this research brief is to document the nuanced nature and multiple forms of human rights violations that HRDs confront in their quest to advance human rights. In its 2016 concluding observations to South Africa's Second Periodic Report, the African Commission on Human and People's Rights (ACHPR) expressed concern regarding the lack of information from the government on the promotion of the rights of HRDs.¹⁰ This research brief aims to fill this gap, and raise awareness of HRDs facing heightened risk in South Africa. Through its domestic, regional and international reporting obligations, the SAHRC will continue to monitor and evaluate measures undertaken by the State that aim to address the violation of the rights of HRDs, including the material, emotional and psychological costs for HRDs when pursuing the advancement of human rights. We hope that through this documentation, we can identify gaps in protection, the legal and moral failings of our society and bring into the spotlight, the roles and responsibilities of various actors in defending the defenders.

The core objectives of the research brief are to:

- Provide a snapshot of the contemporary challenges confronted by HRDs and their ability to advance human rights in South Africa;
- Highlight issues and areas of concern that require further intervention by both State and non-State actors to promote and protect HRDs in the country;
- Promote the domestic implementation and harmonisation with regional and international human rights norms and standards as they relate to HRDs;¹¹ and
- Reiterate existing recommendations made to the South African government by the SAHRC, regional and international bodies calling for the promotion and protection of HRDs in South Africa.

Scope and limitations

The content of the research brief is informed by the SAHRC's mandate as provided for in Section 184 of the Constitution, which requires the SAHRC, amongst others, to promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in the country. The powers of the SAHRC are supplemented by the South African Human Rights Commission Act, 2013. The brief is further informed by the strategic focus areas of the SAHRC, namely: Access to Justice; Human Rights, Law Enforcement and the Prevention of Torture; Equality; Migration; Disability and Older Persons; Children's Rights and Basic Education; Health Care, Housing and Basic Services; and Environment, Rural Development and Natural Resources.

In the absence of a clear legal definition of who constitutes an HRD in South Africa, the brief adopts the following definition in its assessment of the status of HRDs in accordance with the UN Declaration on Human Rights Defenders:

Everyone has the right, individually or in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.¹²

The brief further draws on the Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa (Cotonou Declaration), which expresses concern about the various forms of serious human rights violations to which HRDs on the continent generally fall victim. The Cotonou Declaration further highlights the severity of human rights violations targeting specific groups of human rights defenders, including women human rights defenders, and activists working on issues related to land and health, amongst others. The Cotonou Declaration also calls on National Human Rights Institutions (NHRIs) to give special attention to HRDs facing increased risk, and to effectively use its promotion and protection mandates to hold States accountable for violations committed against HRDs.¹³

The brief is limited to key domestic issues of concern, specifically as they relate to the work of HRDs and that of the SAHRC.

Methodology

The research brief is qualitative in nature. The documentary information gathered for this brief took the form of interviews with activists, researchers, academics and lawyers working with HRDs or are themselves HRDs in the areas of: freedom of assembly and association; access to justice; access to information; freedom of expression; arrested, detained and accused persons; water and sanitation; education, housing, environment and natural resources; migration; and women HRDs and gender justice. The purpose of the interviews was to provide further contextual insight of the experiences of HRDs and inform the main points illustrated in the brief. No direct quotes from interviews are referenced.

The brief also draws on desktop research, referencing country reports and SAHRC reports submitted to international and regional bodies, including concluding observations; reports and documents available from government departments; reports and research conducted by civil society organisations (CSOs), networks and campaigns; and media reports.

The SAHRC submitted requests for information pertaining to specific recommendations issued by the United Nations Human Rights Committee and the ACHPR as they apply to HRDs from relevant government departments in August 2017. The SAHRC is yet to receive a response to its request for information from the government at the time of drafting. As the SAHRC embarks on further monitoring the rights of HRDs, it will continue to pursue responses from the South African government.

Structure

The research brief begins by providing a **legal framework** of the key civil and political rights, human rights standards and obligations emanating from the domestic, regional and international human rights framework that seek to promote and protect the rights of HRDs. It then examines South Africa's **position** regarding HRDs in regional and international fora. Thereafter, it unpacks **inequality** in South Africa, and points to the fact that gross inequality causes social instability, increased protest action and, ultimately, creates threats to the rights of HRDs. The following section considers the right of HRDs to **access information**, addressing freedom of the press, censorship and responsible journalism; privacy and surveillance; and gaps in legal protections for whistle blowers. The section thereafter highlights the necessity of protecting the rights of HRDs in - and through - the **justice system**, with a particular focus on the rights of arrested, detained and accused persons and access to justice. The last section considers the experiences of **vulnerable HRDs**, including HRDs who are women or children.

Each sub-section concludes with a set of advisory recommendations to State and non-State actors, emanating from the SAHRC, and regional and international human rights bodies.

2

Legal framework to protect and promote the rights of HRDs in South Africa

Outlined below is a brief overview of the key civil and political rights, human rights standards and obligations emanating from the domestic, regional and international human rights framework that seek to promote and protect the rights of HRDs, and which inform the content of this research brief.

The Constitution

Section 9 of the Constitution recognises that 'everyone is equal before the law and has the right to equal protection and benefit of the law'. It prohibits unfair discrimination on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Section 10 recognises everyone's inherent dignity and the right to have their dignity respected and protected. Section 11 guarantees the right to life while section 12 recognises the right to freedom and security of the person including the absence of arbitrary detention and torture. Section 14 recognises the right to privacy while section 16 guarantees the right to freedom of expression. In addition, section 17 recognises, in effect, a right to protest and section 18 complements this right with the right to freedom of association. Political rights are recognised in section 19 including the freedom to make political choices.

The rights of children in terms of socio-economic rights and certain civil and political rights are protected under section 28.

Section 32 recognises the right of access to information held by the state and another person that is required for the exercise or protection of any rights. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair under section 33 and section 34 provides for the right of everyone to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Regional human rights framework

The African Charter guarantees the right to non-discrimination, by stating that ‘every individual should be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind’. In addition, the African Charter guarantees equal protection before the law and the respect for the life and integrity of every human being (Articles 3 and 4); the right to liberty and security of every person (Article 6); the right of every person to receive information, express and disseminate opinions (Article 9); and the rights to freedom of association and assembly (Articles 10 and 11).

International human rights framework

Article 1 of the UDHR states that ‘all human beings are born free and equal in dignity and rights’ and are entitled to the enjoyment of all of the rights enshrined in the UDHR without distinction of any kind. These rights include the right to life (Article 3), equality before the law (Article 6 and 7), privacy (Article 12), freedom of opinion and expression (Article 19), freedom of association and assembly (Article 20) and participation in public affairs (Article 21). The ICCPR and ICESCR further affirm equal rights. In terms of the CEDAW, member States are required to take all appropriate measures to eliminate discrimination against women who participate in the political and public life of the country.

Importantly, Article 2 of the UN Declaration of Human Rights Defenders calls on States to protect, promote and implement all human rights and fundamental freedoms, and create the necessary conditions in the social, economic, political and other fields, including necessary legal protections, to ensure that all persons individually and in association with others, are able to enjoy all human rights and freedoms in practice.

3

Monitoring South Africa's international and regional obligations regarding HRDs

The SAHRC is obligated to monitor not only the attainment of human rights towards their full realisation in South Africa, but also the government's duty to adhere to its regional and international obligations in the protection of human rights. Noting the role that HRDs play in advocating for the realisation of human rights of those most vulnerable in our societies, it is with great concern that the SAHRC notes the inconsistent approach of the South African government on matters pertaining to HRDs. This is more so noting that the Constitution expressly provides for the rights to assembly, association, freedom of expression and access to justice, directly reflecting the UN Declaration on Human Right Defenders.¹⁴

In November 2015 at the General Assembly's Third Committee meeting, the South African government voted against the Resolution on HRDs in the context of the UN Declaration on Human Rights Defenders.¹⁵ The Resolution, amongst others, stresses the importance of the work of HRDs and calls upon States to take all measures necessary to ensure the rights and safety of HRDs who exercise the rights of freedom of opinion, peaceful assembly, and association. It further condemns the violence against and the targeting, criminalisation, torture, disappearance of individuals and HRDs, for reporting and seeking information on human rights violations and abuses.¹⁶ However, during the December 2015 session of the General Assembly, the South African government voted in favour of the Resolution.¹⁷

In March 2016, the South African government voted in favour of the UN Human Rights Council's (HRC) Resolution on Protecting Human Rights Defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights. In addition to calling on States to take all necessary measures to ensure the safety of HRDs working towards the

advancement of economic, social and cultural rights, this Resolution also calls on States to combat impunity by investigating and pursuing accountability for all attacks and threats by both State and non-State actors against any individual, group or organ of society that is defending human rights.¹⁸

Despite the government's votes in favour of the aforementioned Resolutions and the protections afforded in the Constitution, in its 2016 concluding observations on the initial report of South Africa concerning progress made with respect to the ICCPR, the UN Human Rights Committee noted with concern reports of threats, intimidation, harassment, and excessive use of force by private individuals and police forces against HRDs. The UN Human Rights Committee raised further concern about the lack of due diligence of law enforcement officers in protecting HRDs, including registering and investigating allegations of human rights violations and securing accountability for these violations.¹⁹

Regionally, while commending the government in advancing human rights in South Africa, the ACHPR has also raised concern on the status of HRDs, and has recommended that the government provide specific information on the status of HRDs in its next Periodic Report, due in 2018. The ACHPR has also recommended that the government take the necessary measures to ensure the promotion and protection of rights as per the UN Declaration, the African Charter, the Kigali Declaration, 2003, and other human rights instruments that guarantee the right to freedom of association and assembly.²⁰

The significance of the Cotonou Declaration adopted in Johannesburg at the 2nd International Symposium on Human Rights Defenders in Africa, suggests that South Africa is recognised as a crucial role-player in advocating for the promotion and protection of the rights of HRDs not only domestically, but also on the continent. It is therefore an imperative that the rights of HRDs, or violations thereof, are systematically and comprehensively monitored in South Africa, to ensure that the human rights values upon which the country's democracy was founded remain intact.

4

(In)Equality in South Africa

The transformative goals of the Constitution are to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights'.²¹ However, unsustainable levels of poverty and inequality, compounded by widespread unemployment and inadequate access to basic services for many poor communities, continue to thwart the expeditious achievement of the constitutional goals. As at 2015, it was estimated that over 30.4 million South Africans, or 55.5 per cent of the country's population, live in poverty, 13.8 per cent of whom were considered extremely poor. Poverty disproportionately affects women, who constituted 52.7 per cent of people who are poor, while men constituted 47.3 per cent. Children between the ages of 0 - 17 years accounted for the largest proportion of poor individuals at 66.8 per cent. People who are poor in South Africa either had no education (8.2 per cent) or some primary education (15.6 per cent), 18.6 per cent had a matric certificate, while only 2.1 per cent had a higher education certificate.²² Abiding poverty and inequality have become the binary which is central to the violation of basic rights, frequently manifesting in widespread pockets of unrest.

The country's inequality rates are devastating; South Africa is the most unequal country in the world, with a Gini coefficient of 0.68²³, where the poorest 20 per cent of South Africans consume less than 3 per cent of the country's total expenditure, while the wealthiest 20 per cent consume 65 per cent.²⁴ South Africa finds itself located in a broader global social, political and economic order, confronting global financial crises, conflicts, gender-based and other forms of violence, food insecurity and climate change.²⁵

Poverty and inequality perpetuate exclusion and the inability of the majority of the country's population to access political and economic institutions while influencing social change that prioritises human rights. Although the obligation to realise human rights rests with the State, addressing these multidimensional factors in a manner that advances human rights for those who require its protections the most, is dependent upon the actions of both State and non-State actors. In South Africa the protection of fundamental rights was historically under the charge of HRDs, with the role now being diversified to include organs of State such as the SAHRC, government and civil society organisations.

The aforementioned statistics demonstrate that the work of HRDs in South Africa across a range of issues remains crucial in highlighting the realities of human rights violations experienced by the country's majority. These levels of instability also expose HRDs to more risk in their ability to do their work as they shed light on the inefficiencies of the government in fulfilling its human rights obligations and demand that the government adheres to its domestic, regional and international responsibilities.

5

Protecting the rights of HRDs

Noting the universal, indivisible, interdependent and interrelated nature of human rights, HRDs seek the promotion and protection of civil and political rights, and the promotion, protection and realisation of economic, social and cultural rights. HRDs are active in support of the rights to access food, water, health care, adequate housing, education, a clean environment, land and the equitable distribution of resources. Freedom of assembly, association, and the ability to actively participate in decision-making processes that shape their lives and promote good governance – all of which comprise the right to freedom of expression – are fundamental for HRDs to effectively perform their work.²⁶ Restrictions and violations of these and other rights, such as the right to freedom and security of the person,²⁷ thus impede the work of HRDs and thereby further jeopardise the enjoyment of the rights that HRDs seek to protect and promote.

HRDs and Freedom of Assembly

The right of everyone to freedom of assembly includes the right to assemble, demonstrate, picket and present petitions, peacefully and unarmed.²⁸ The State has a duty to actively protect assemblies that are lawful and peaceful, including protecting participants when threatened with violence.²⁹ Despite international condemnation the South African government received as a result of the Marikana massacre,³⁰ the disruption of peaceful human rights assemblies by the police under the pretext of maintaining public order is a frequent occurrence in South Africa.

CSOs have highlighted the criminalisation of protest action by citizens seeking to advance human rights and hold the government accountable to delivering on its obligations. Protestors demanding the delivery of housing, education, and basic services such as water, sanitation and electricity, are shot at by the police with water cannons, tear gas, stun grenades, and rubber

bullets.³¹ Between 2004 and 2014, media reports estimate that at least 43 protestors were killed by police, excluding the miners that were killed at Marikana.³²

Protests are often couched in the rhetoric of intentional damage to property, advocating for the rights of some at the expense of others, and at times, violence against the person. This rhetoric implicitly removes protest from the realm of protected expression. In 2016, students expressing their dissatisfaction at university campuses were not only met with police aggression – some being shot in the back with rubber bullets³³ – but also served with interdicts obtained by universities with a purpose of restraining student protests. State requests to the courts to issue interdicts directed at individual student leaders and ill-defined classes of protestors, have also created the impression that interdicts have been utilised as a crowd-management mechanism, or to enlist police support in an effort to repress gatherings on university campuses,³⁴ which have traditionally been sites of political activism and free expression.

The State has increasingly relied on paramilitary units set up within the police to deal with serious crime such as cash-in-transit heists, terrorism and hijackings, to regulate public demonstrations, including those on university campuses.³⁵ These policing units are trained to address medium to high-risk life threatening situations and are therefore orientated towards using maximum force, not minimum force required to constrain potentially harmful protest action. The UN Human Rights Committee has expressed concern about the numerous reports received of excessive and disproportionate use of force by law enforcement officials in the context of public protests that has resulted in the loss of lives, and has recommended that the State take all measures necessary, particularly in terms of training and equipment, to prevent law enforcement and security forces from using excessive force or lethal weapons in situations that do not warrant recourse to such force.³⁶

Public demonstrations in South Africa are regulated by the Regulations of Gathering Act, 1993 (RGA),³⁷ applicable to gatherings of 16 or more people in public spaces that express any form of contestation or is critical toward any person, company or government body. Legitimate use of force by the police against protestors is only applicable in instances where it is necessary to prevent injury or death to a person or destruction of property, and when negotiation and all other measures have failed. Protestors must have a reasonable time to disperse, and only minimal use of force is permissible.³⁸ Flowing from the country's apartheid past, the RGA was drafted with the intention of recognising public demonstrations as essential forms of democratic expression, requiring the State to facilitate rather than repress gatherings, and to be handled with tolerance and empathy to avoid provoking confrontation that may result in violence.³⁹

Yet, rather than facilitating the right to freely assemble, many local government authorities apply the provisions of the RGA in a manner that restricts its intended implementation. For instance, the RGA requires the convenor of a gathering to provide local authorities with notification of the intention to gather, in addition to details of the leadership, purpose, proposed route and time to ensure that gatherings receive adequate protection. However, contrary to international best practice,⁴⁰ the notification process has been interpreted by government authorities as a permission-seeking exercise,⁴¹ resulting in high numbers of protests being denied and therefore deemed 'illegal', including those that are peaceful.

These bureaucratic obstacles and misinterpretations of the RGA have led to an increasing number of unauthorised and unregulated gatherings taking place. Such gatherings are left to an inadequately trained and equipped police agency to deal with, and police agencies tend to respond to protestors with hostility, either too quickly or with excessive force.⁴² The failure to allow protected demonstrations and the breakdown in police community relations has had devastating consequences, including the destruction of both private and public property, such as schools,⁴³ libraries and hospitals, and increasingly more loss of lives.

The manner in which the South African Police Service (SAPS) records protest action has also been found to be problematic. The SAPS refers to public order incidents as 'crowd-related events', which includes recreational, religious, cultural or sports events. These incidents are classified as either 'peaceful' (where no police intervention was necessary) or 'unrest-related' (where police may have intervened, for example, by making arrests or clearing a blocked road). Researchers have raised concern over the quality, credibility, and reliability of the data released by the SAPS, which does not adhere to systematic recording of protocols, definitions and categorisations. Part of the problem is that there is also no clear understanding of what may be deemed as 'violent' protests. The burning of tyres, for example, could be understood as merely 'disruptive' protest action rather than an incident of violence aimed at a particular target.⁴⁴ The referencing of some protests by mainstream media as 'service delivery' related is also problematic, as no clarity is provided as to what aspect of service delivery communities take issue with.⁴⁵ Consequently, it becomes difficult to establish the exact number of public violence incidents and the triggers that lead to violence, the appropriate use of force to protect protestors from harm, the root causes that gave rise to the protest, and the interventions necessary to address citizens' dissatisfaction.⁴⁶

REGULATORY GAPS IN PROTECTING HRDS

- The misinterpretation of the RGA and the enforcement of bureaucratic obstacles by local government authorities has in many instances led to protests being declared 'illegal', consequently violating the right of HRDs to freely assemble and resulting in unwarranted violent encounters with the SAPS.

RECOMMENDATIONS

- The Minister of Cooperative Governance and Traditional Affairs should engage the relevant local governments throughout the country to include RGA training for their officials in order to ensure that the RGA is understood in the context of facilitating the right to freedom of assembly, as opposed to restricting its intended implementation, and to ensure that communities are not unjustly denied the right to voice their concerns through protest action.
- The Minister of Police and SAPS must ensure that the excessive and disproportionate use of force by law enforcement officials in the context of public protests in South Africa is halted through strengthening front line supervision and officer accountability mechanisms, so that public ordering policing is improved.
- The Minister of Police must as a matter of urgency implement the recommendations of the National Development Plan and the White Paper on the Police aimed at achieving the vision of a professional, ethical and accountable SAPS.
- The SAPS should engage with various organisations that work with statistics and recording systems to identify ways to improve the recording of data relating to protest action in a manner that adequately reflects the nature and cause of protest action, in addition to developing and agreeing on an adequate definition as to what constitutes 'violent' protests that require the use of force for order to be restored.
- During protest action, all parties concerned should commit to avoid engaging in criminal activities that result in destroying and/or damaging public infrastructure, prevent where possible people from doing so and to distance themselves from any persons or groups or communities involved in such activities.

HRDs and Freedom of Association

The right to freedom of association⁴⁷ involves the right of individuals to interact and organise among themselves to collectively express, promote, pursue and defend common interests. The protective scope is broad, and includes political parties, human rights organisations, trade unions, business associations, religious societies, and social recreation clubs.⁴⁸ States cannot interfere or prohibit the founding of legal associations or their activities, and people should be able to freely exercise their freedom of association without fear of violence or intimidation.⁴⁹

In recent years, reports have emerged of threats and intimidation by political party actors and State authorities levelled at a number of human rights CSOs and those critical of the government in South Africa. In 2015, the youth and women's leagues of the African National Congress (ANC), amongst other organisations, called for the de-registration of the Treatment Action Campaign (TAC), a CSO that has been instrumental in the country's fight against HIV/AIDS and tuberculosis (TB). The organisations alleged that the TAC was operating as a 'political party' and not a non-governmental organisation (NGO), presumably as a result of the work the TAC was doing in highlighting corruption in the health sector.⁵⁰ In 2016, former State Security Minister David Mahlobo stated that he had evidence of NGOs involved with State and non-State actors that have allegedly tried to 'destabilise the country' and influence political affairs.⁵¹ To date, no evidence to substantiate this claim has been made publicly available nor have any NGOs had any legal action taken against them by the State security agencies in response to the allegations made by the former Minister. Freedom of association further entails the right to solicit, receive and utilise resources (including international resources) for the express purpose of promoting and protecting human rights.⁵² States are therefore obliged to adopt legislative and other measures to facilitate, and not hinder, the ability for human rights organisations to access funding required to perform their activities.⁵³ While it is recognised that non-profit organisations (NPOs) should be held publicly accountable in terms of its governance structures, CSOs have cautioned that the legislation regulating the non-profit sector in South Africa may become a tool used by the government to restrict community activism and prevent the formation of legally established NPOs.⁵⁴

The Non-Profit Organisation Act, 1997⁵⁵ (NPO Act) provides that every organ of State must determine and coordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of NPOs to perform their functions. However, noting the constrained resource environment and bureaucratic challenges in accessing funding from the Department of Social Development (DSD) responsible for implementation of the NPO Act (such as NPO registration processes and required compliance mechanisms),⁵⁶ NPOs have also had to depend on external sources of funding to do their work. Many NPOs therefore compete with accepted priority agendas for funding with many established organisations facing closure for want of funding. The budget allocations – although consonant with a compressed fiscal environment – do not assess the needs and value of NP's in South Africa at a macro level against resource-intensive items like defence. In this sense, middle income countries such as South Africa, which are relatively stable, lose an important opportunity to accelerate the realisation of fundamental rights by investing in structures like civil society organisations and NPOs that work in the heart of communities. In addition to monitoring the advancement of

human rights, NPOs play a crucial role assisting the State in the provision of services to communities, particularly in the care sector and to vulnerable groups.⁵⁷ With the provision of special needs housing, for example, the challenges in accessing State-assisted housing for persons with special needs are largely due to a lack of provision of capital funding for special needs housing in the national housing policy. The result is that those most vulnerable in society are left destitute and unable to access their right to adequate housing.⁵⁸

The work of civil society has been crucial in highlighting these bureaucratic and funding challenges. The proposed monitoring by State security agencies of international funding sources and the alleged potential of financing terrorist activities, have thus been viewed by many in the NPO sector as a means of closing the space of civil society agency.⁵⁹

Civil society has long played a role in shaping the trajectory of South Africa's democracy, providing significant insight and technical expertise to policy-makers on adequately addressing the needs of the country's majority. However, in recent years the relationship between government and civil society has become strained, as some in government are of the view that civil society activities interfere with the ability of the State to govern effectively.⁶⁰ The ACHPR has recommended in its 2016 concluding observations that proposed amendments to the NPO Act be accelerated to strengthen the regulatory framework and the working relationship between government and CSOs.⁶¹

REGULATORY GAPS IN PROTECTING HRDS

- Despite the implementation of the NPO Act, NPOs have experienced bureaucratic obstacles in acquiring State funding required for HRDs to perform their work, thus limiting the right to freedom of association.

RECOMMENDATIONS

- The DSD must address the bureaucratic challenges encountered by NPOs in accessing funding, and especially for NPOs that assist the State in delivering on its constitutional obligations by providing services to vulnerable groups.
- The NPO Act must be amended to better facilitate access to funding for NPOs from the State and ensure an improved working relationship between the government and civil society.
- Political parties and executive structures should ensure that none of their structures, members or supporters attempt to intimidate or prevent any organisation or group from exercising their rights of freedom of expression and association.
- The Ministers involved in State security agencies must refrain from making unsubstantiated allegations against NGOs that result in a distrust of CSOs in general. Where evidence of wrong-doing exists against specific individuals or NGOs, the State must exercise its legal responsibilities to hold such individuals or organisations accountable in a transparent manner.

Public participation and Free, Prior and Informed Consent

In mining-affected areas, communities continue to be excluded from reform initiatives in the extractives sector despite bearing the greatest social costs of mining activities, which irrevocably changes the physical landscape and social fabric of rural communities. Although limited options for community participation in the mining sector has been introduced, in practice under the current regime, mining companies are entitled to extract minerals without an associated benefit to the local community, despite this being part of the conditions on which many mining licences are granted.⁶² As a result, mining-affected communities are increasingly organising in order to act as HRDs for various economic and social rights, including the right to the environment. In order to effectively perform their work, community HRDs must be allowed to participate in matters that affect or violate their and others' constitutional rights.

The principle of Free, Prior and Informed Consent (FPIC) is internationally recognised as key for the legitimacy and effectiveness of development projects, particularly as they relate to land and resources of indigenous peoples.⁶³ In line with the 2009 ACHPR decision of *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*,⁶⁴ in 2012, the ACHPR Working Group on Extractive Industries, Human Rights and the Environment adopted a resolution calling on States to take all measures to 'ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources and governments'.⁶⁵ The resolution notes the disproportionate impact of human rights violations as a consequence of ill-planned development on rural communities of Africa in terms of accessing food, clean water and sanitation, in addition to asserting their customary rights of access to and control of resources including land, minerals, forestry and fishing.⁶⁶

The notion of public participation in decision-making processes of governance and development is well-established in the South African domestic legal framework, particularly because of the country's apartheid past which denied this right to the majority of South Africans. However, despite the establishment of various legal mechanisms that aim to facilitate community participation in public affairs, poor communities in particular are frequently excluded from decision-making processes that directly affect their daily lived experience. The lack of effective community participation in urban housing development projects, or the delivery of basic services such as water and sanitation, for example, continues to be one of the primary causes of community dissatisfaction and frustration, causing many to embark on protest action as an alternative means of having their voices heard. Community HRDs who demand to be heard through protest action are subsequently met with hostility from the State.⁶⁷

Moreover, the legal framework governing public participation in projects that aim to advance economic development is flawed. For example, the 30 day public participation timeframe provided in South Africa's impact assessment regulations is too short to allow for meaningful consultation with affected communities, and traditional knowledge residing in rural communities appears not to be valued by mining authorities. Social and Labour Plans (SLPs) required by mining companies to benefit communities and mineworkers in order to obtain the necessary mining approvals from the State, rarely reflect the needs and

perspectives of the affected communities. This is largely due to the inadequacy of South Africa's laws and regulations providing the necessary guidelines for effective community participation in the SLP design process or for ensuring that inevitable imbalance of power is mediated.⁶⁸

It is noted that in its concluding observations on South Africa's Second Periodic Report, the ACHPR has recommended that the government report on the extent to which affected communities have made use of their privileges for participating in mining prospects and ventures provided in the Mineral and Petroleum Resources Development Act, 2002.⁶⁹

REGULATORY GAPS IN PROTECTING HRDS

- Despite the establishment of various legal mechanisms that aim to facilitate community participation in public affairs, the lack of a regulatory framework that details best practice based on human rights norms and standards to ensure meaningful community participation, has resulted in regular violations of the principle of free, prior and informed consent.

RECOMMENDATIONS

- Communities should be consulted with by both State and non-State actors in all aspects concerning their living arrangements and living experiences, in a meaningful way, prior to the conclusion of development plans and agreements, in order to enhance transparency and accountability and to ensure that programmes and processes accommodate the needs of communities in a sustainable manner.
- Communities are entitled to reject State proposals concerning their development and provide alternatives that respond to their daily realities; instances where such alternatives provided by affected communities are not reasonably practicable, the State should engage with communities with a view of identifying mutually agreeable solutions.
- Community representatives must reflect the demographics of the community concerned, with particular attention given to ensure that marginalised groups such as women, people with disabilities and young people are represented.

Role of non-State actors

Non-State actors have the duty to respect human rights, including the rights of communities to freedom of assembly and association.⁷⁰ Mining-affected communities continue to face systemic and complex challenges, such as non-compliance by holders of prospecting, mining, exploration or production rights with the legal framework, including regulatory requirements and corporate social obligations; failures in compliance monitoring and enforcement; insufficient consultation with interested and affected parties, lack of transparency and limited access to information; limited cooperation and/or collaboration between mining companies, traditional authorities, local government and communities; the creation of tension and division within communities as a result of mining operations; and limited development and social upliftment of communities affected by mining.⁷¹

However, HRDs seeking the promotion of human rights and holding non-State actors and private entities accountable for human rights violations, particularly with respect to environmental rights, are increasingly being met with threats and intimidation in various forms by private actors, including strategic litigation against public participation (SLAPP suits).

In 2016 and 2017, human rights attorneys employed at the Centre for Environmental Rights and environmental activists were sued by Mineral Commodities Limited, an Australian mining company for highlighting the potential environmentally destructive implications of mining activities. Human rights activists claim that these suits are an attempt to censor, intimidate and silence critics and communities resistant of mining activities or highlighting legal non-compliance by mining companies, by burdening them with the cost of a legal defence until they abandon their criticism.⁷²

Zeid Raad Al Hussein, High Commissioner of the UN Office of the High Commission for Human Rights (OHCHR) has stated:

*Responsible business relies on stability – sound institutions, the smooth functioning of justice, sustainable development and public confidence in their personal safety... human rights lie at the core of such long-term stability.*⁷³

In 2011, the UN released the UN Guiding Principles on Business and Human Rights, which seeks to provide guidance to States' existing obligations to respect, protect and promote human rights, and encourage businesses to comply with all applicable domestic legal frameworks and respect human rights.⁷⁴ In 2016, the UN Human Rights Committee recommended that the government should review the compliance of companies with their responsibilities under all relevant legal standards for operations in the mining sector.⁷⁵

REGULATORY GAPS IN PROTECTING HRDS

- Despite the development of the UN Guiding Principles on Business and Human Rights, the State has yet to adopt a National Action Plan to mainstream the implementation of the principles in South Africa.

RECOMMENDATIONS

- State actors, such as the Department of Mineral Resources (DMR) and voluntary oversight mechanisms, such as Business Leadership of South Africa (BLSA) and Business Unity of South Africa (BUSA) should provide annual reports on the compliance of its members with the UN Guiding Principles on Business and Human Rights, and the measures undertaken to hold its members accountable for human rights violations.
- Voluntary oversight mechanisms, such as BUSA and BLSA, should consider the establishment of voluntary trust funds for HRDs to access in the event that they are confronted by SLAPP suits.
- BLSA and BUSA should encourage businesses to contribute to the funding of sector-specific HRD formations and structures. The model of Social Labour Plans should be used as an opportunity to include the funding of HRDs.
- Organisations such as BLSA and BUSA should encourage their members to mainstream community representation at board level to ensure that affected community interests are adequately considered and incorporated into business operations.

Information rights of HRDs

Information rights including the rights of access to information, freedom of expression, and privacy all constitute crucial enabling and protective mechanisms for HRDs to perform their work. However, HRDs face various challenges in exercising these rights.

Access to Information

Access to information (ATI), central to the right to freedom of expression, entails the right to know, seek, receive and hold information about all human rights. In addition to the right to access information, everyone has the right to freely publish, impart or disseminate to others their views, information and knowledge on all human rights, and draw public attention to these matters. The right to access relevant information as it pertains to human rights is required for citizens to make informed decisions when claiming rights toward the advancement of a democratic society.⁷⁶

In 2013, the ACHPR adopted a Model Law on Access to Information in Africa. If properly implemented, ATI laws hold the promise of fostering good governance by improving information management, and enhancing transparency, accountability and greater participation of ordinary citizens in public affairs. As highlighted by the ACHPR, effective

ATI laws can expose corruption, maladministration and the mismanagement of resources. Increased transparency and accountability are likely to improve the management of public resources, advance the enjoyment of socio-economic rights and contribute toward the eradication of under-development on the continent.⁷⁷

Numerous challenges have been identified with South Africa's existing access to information laws, including that information from public and private bodies is only available on request as opposed to proactive release. The legislative challenges inherent to the Promotion of Access to Information Act, 2000 (PAIA) have hindered the implementation and utilisation of the right to access information. Shortcomings include the fact that the formalised nature of the process has limited the ability of communities to utilise the right independently without assistance from lawyers; the inconsistency and uncertainty of grounds of refusals of disclosure of information; and the lack of an independent, swift and inexpensive appeal mechanism given the delay in the full operationalisation of the Information Regulator.⁷⁸ Furthermore, many HRDs lack access to the internet in order to thereby access relevant online information, despite this right being increasingly recognised in international law as central to both the rights of access to information and freedom of expression.⁷⁹

Consequently, not only is information to which HRDs are entitled denied as a result of bureaucratic failures, but the uncertainty surrounding reasons for the lack of disclosure presents fertile ground for secrecy, leading to individuals and groups taking risks at great personal cost to ensure that the South African public is able to make an informed assessment of the current status of South Africa's democracy.

Freedom of the press, censorship and responsible journalism

As noted above, journalists constitute HRDs in terms of accepted international definitions. During 2016, the South African Broadcasting Corporation (SABC), the country's public broadcaster tasked with providing a platform to all in the country to participate in the country's democracy, came under scrutiny amidst claims of political interference. In September 2016, the Supreme Court of Appeal found that the use of a 'signal jammer' by the State Security Agency to prevent journalists from screening scenes of disorder in Parliament, to be unconstitutional and unlawful, amounting to censorship.⁸⁰

In July 2017, the SAHRC expressed its grave concern regarding the targeting and intimidation of journalists by the Black First Land First group and threats by the group to protest at the homes and places of worship of members of the media. The SAHRC emphasised that a 'free press is a cornerstone of our constitutional democracy. Any attempt to threaten or intimidate the media is an attack on our democracy and is a violation of our Constitution.'⁸¹

The media has also been used as a tool to advance political agendas and sow division in South African society. In 2017, it was revealed that British public relations firm Bell Pottinger was driving a secret campaign in South Africa to divide South Africa along racial lines. The company allegedly orchestrated the creation of fake Twitter accounts to target prominent business people in South Africa.⁸² The controversy caused the firm's Chief Executive Officer to resign and led the British Public Relations and Communications Association to ban the firm from its membership for at least five years, on the basis that it had brought the industry into disrepute.⁸³

However, while freedom of the press is essential to ensure a transparent and accountable democracy, the media also has an educational role to play in highlighting to the public the plight and vulnerability of other HRDs seeking to advance human rights, even in instances where protest action may turn violent. An inability to do so effectively can reinforce the negative stereotypes often associated to HRDs in the mainstream media. Moreover, cognisance must be given to language and discourse used by political leaders and other authoritative members of society that may lead to the perpetuation of violations meted out towards HRDs and other vulnerable groups.⁸⁴

RECOMMENDATIONS

- The government, including the Department of Communications, should publicly condemn any instances that appear to attack freedom of the press and instances that encourage censorship through acts of violence and intimidation by members of the public.
- The media, through bodies such as the South African National Editors Forum, should engage in human rights training to further understand how language and discourse can inhibit the advancement of human rights of vulnerable groups.

Privacy and surveillance

Increasingly, both at domestic and international levels, concern has been expressed at South Africa's problematic communication surveillance practices. In 2016, the UN Human Rights Committee raised its concern around the Regulation and Interception of Communications and Provision of Communication-related Information Act, 2002 (RICA), which allows law enforcement, intelligence agencies and the military to intercept communications with permission from a judge. Activists, union leaders and community leaders in South Africa have subsequently been monitored.⁸⁵

Activists have also raised concern regarding the requirement by RICA for cellular telephone companies to retain data of cellular telephone users' information on who they communicated with, when, where and for how long. While RICA requires police and intelligence agencies to obtain permission from a judge to listen to the content of the communication, the Criminal Procedure Act allows law enforcement officials to bypass RICA and approach a magistrate for a warrant to access the data logs. Consequently, surveillance operations are taking place outside of the oversight of RICA, and thus information that users may want to keep private is being provided to the State without their knowledge, thereby violating their right to privacy.⁸⁶

In 2016, the Inspector-General of Intelligence, responsible for the civilian oversight of the intelligence services in South Africa, was appointed. The Office of the Inspector-General of Intelligence (OIGI) is tasked with ensuring that all activities conducted by intelligence services are in accordance with the Constitution and the law. However, the OIGI is yet to be

operationalised. In addition to investigating highly politically sensitive complaints, the OIGI will also be tasked to monitor and review the use of intrusive techniques that may infringe human rights.⁸⁷

RECOMMENDATIONS

- The OIGI needs to be adequately funded and become operational as a matter of urgency in order to fulfil its oversight and monitoring role.
- Once properly established, the OIGI should ensure that the gaps in RICA are addressed in a manner that requires law enforcement agencies to obtain the requisite permission from a judge to intercept communications.

Whistle blower protections

HRDs have been instrumental in highlighting the increasing levels of public sector corruption taking hold of the South African State, where public funds have been diverted towards private interests. In its 2016 concluding observations on South Africa's country report, the UN Human Rights Committee noted with concern the various challenges faced by some of South Africa's oversight bodies including budget limitations, lack of independence from supervised government departments, and limited mandates and powers. The UN Human Rights Committee has thus recommended that the government should ensure that all oversight bodies are institutionally independent, adequately funded and equipped with the powers and functions necessary to conduct effective and efficient investigations, and hold authorities accountable.⁸⁸

According to the Plateform de Protection des Lanceurs d'Alerte en Afrique (PPLAAF), a platform to protect whistle-blowers in Africa, only seven of 54 countries on the African continent have whistle-blower laws.⁸⁹ In South Africa, the Protected Disclosures Act, 2000 (PDA) encourages individuals to report corruption, malpractice and other crimes. Despite the PDA, corruption remains endemic in the country. It has been found that the progress around protected disclosures or whistleblowing has been met with hostility in South Africa,⁹⁰ resulting in whistle-blowers being threatened, killed, or unable to find subsequent employment.

According to research conducted by the Open Democracy Advice Centre (ODAC), it is estimated that during the 2011/2012 financial year, South Africa lost R930 million to financial misconduct by workers in national and provincial government departments, which was almost three times the losses reported in the 2009/2010 fiscal year. Traditional methods of good governance should address these problems but existing legislation does not appear to be effective.⁹¹ The ODAC has developed a Code of Good Practice to provide guidance to private and public bodies on interpretation of the law, implementation of whistleblowing policies, and alternative mechanisms for preventing corruption.⁹²

However, there still exists a need for better advice and support, and awareness-raising on the importance of whistleblowing to protect whistle blowers and their families. If not,

the number of whistle blowers in South Africa will continue to drop because the law, and society, does not adequately protect them. The cost of doing the right thing may cease to be worth it.

RECOMMENDATIONS

- The DOJ&CD, together with the Office of the Public Protector and other Chapter 9 bodies, should investigate the establishment of a specialised unit tasked with protecting the rights of whistle blowers. These institutions should also engage in an active campaign to promote the work of whistle blowers to ensure that they feel protected by their communities.

6

Protecting the rights of HRDs in and through the justice system

The obligation of the State to provide HRDs (and those whose rights they aim to promote and protect) with an effective remedy in instances where their rights have been violated requires a prompt and impartial investigation into the alleged violations, the prosecution of the perpetrators regardless of their status, including appropriate compensation to victims, and the enforcement of decisions or judgments. The failure to adequately protect HRDs further violates their rights and the rights of those they defend.⁹³ In the absence of a clearly defined legal definition of who constitutes an HRD in South Africa, it is of paramount importance that the rights articulated below are adequately protected for all persons.

The rights of arrested, detained and accused persons

While the rights of arrested, detained and accused persons can be limited through the legitimate deprivation of their freedom,⁹⁴ everyone has a right to freedom and security of the person.⁹⁵ This includes the right to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated in a cruel, inhuman or degrading way.⁹⁶ A recent assessment of the state of South Africa's correctional system notes that although there have been improvements over the past decade, serious and persistent challenges remain, resulting in impunity for human rights violations and a lack of action taken by the Department of Correctional Services (DCS) in this regard.⁹⁷

For the 2015/16 financial year, the South African Police Service (SAPS) recorded a total of 3 542 'unrest-related' incidents, which includes labour disputes, community dissatisfaction with service delivery by local municipalities and demarcation of municipality borders, and incidents in the transport and education sectors. A total number of 3 603 arrests were made

during these 'unrest related' incidents. The SAPS has also reported that it successfully stabilised each of these incidents.⁹⁸ However, these arrests made during events are dependent not only on the behaviour of the crowd, but also the discretion of the police.⁹⁹ Noting the concerns highlighted earlier regarding the excessive use of force by the SAPS in addressing community uprisings and protest action, many of those arrested in 'unrest-related' incidents are those seeking to ensure that the State delivers on its human rights obligations.

Once arrested, HRDs have to endure poor conditions in prisons and correctional centres, which are overcrowded with dilapidated infrastructure and unsanitary conditions, with inadequate food, poor ventilation and limited access to health care services. HRDs advocating for the advancement of human rights are likely detained alongside violent criminals, as the DCS does not provide disaggregated data on what sentences people are in prison for or the type of crime committed. Moreover, prisoners awaiting trial, or remand detainees, are held on remand stay for too long before being acquitted or evicted. It is estimated that in 2016, approximately one third of the 155 000 prisoners in South Africa were awaiting trial on any one day, totalling three months for many. Consequently, prisons are severely overcrowded.¹⁰⁰

Torture and ill-treatment appears to be endemic in South Africa's prisons and police cells. For the period of the 2015/2016 financial year, the Independent Police Investigative Directorate (IPID) reported 216 deaths in police custody, 154 cases of torture, including 51 cases of rape by police officers on duty, and a further 3 509 cases of assault by police. According to Amnesty International, legal proceedings to hold police accountable for the unlawful killings remains slow.¹⁰¹ Abuse in South Africa's prisons are not only meted out in State run facilities but also privately owned detention centres. In 2015, a group of 43 prisoners held in Mangaung Prison run by the British private security company G4S, claimed they were given electric shocks, forcibly injected with anti-psychotic drugs and held in isolation cells for up to three years.¹⁰² The DCS took over Mangaung Prison in 2013 after G4S had lost control of the prison amid a spate of stabbings and a hostage incident, shortly after a protected strike and subsequent dismissals of approximately two-thirds of the prison staff. However, despite these events, less than a year later DCS handed the prison back over to G4S.¹⁰³

The Judicial Inspectorate of Correctional Services (JICS), tasked with monitoring the country's correctional and detention centres, has been criticised for its apparent lack of independence from the DCS. A number of CSOs working on issues of prison reform, and the SAHRC, have called for JICS to have its own budget separate to that of the DCS, the power to institute legal proceedings in its own name and a clear mandate to refer cases to SAPS or the National Prosecuting Authority (NPA) in cases of criminal conduct by DCS officials.¹⁰⁴

HRDs in South Africa thus experience multiple human rights violations when advocating for constitutionally guaranteed rights, resulting in long-term psychological and emotional trauma, especially if detained in South Africa's prisons. The UN Human Rights Committee has expressed concern about the number of reported cases of violence, including sexual violence, excessive use of force, torture and other forms of ill-treatment against detainees,

including deaths of detainees resulting from actions of police and prison officials. Further, concern has been expressed regarding the absence for civil claims in the Prevention and Combating of Torture of Persons Act, 2013, and has recommended amendments with a view to including specific provisions relating to the right of civil redress and remedy for victims of torture.¹⁰⁵ Moreover, the ACHPR has raised its concern regarding lack of statistical data detailing complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment.¹⁰⁶

RECOMMENDATIONS

- The DCS needs to urgently address the issue of overcrowding in correctional centres across the country and increase its efforts to ensure that detainees are treated with humanity and dignity. All detainees must be able to access adequate food, health care and ventilation, and be housed in structures that are sanitary while awaiting trial.
- The government, and the DCS, NPA and SAPS in particular, must ensure that all police officials, including those managing privately run detention centres, are held accountable for the unlawful killings of detainees, and instances of all forms of violence, while in police custody.
- The SAPS should improve its data collection mechanisms to provide sufficient detail on the complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment.
- The SAPS should strengthen its public complaints and internal disciplinary systems to reduce the levels of ill-treatment and brutality against the civilian population.
- The operational independence of the JICS should be improved through enabling legislation, including the allocation of a budget separate from the DCS and the power for the JICS to institute legal proceedings in its own name. The JICS should also have a clear mandate to refer cases to SAPS or the NPA in cases of criminal conduct by DCS officials.
- The South African government should prioritise the ratification of the Optional Protocol to the Convention Against Torture (OPCAT) and establish a National Preventive Mechanism (NPM) to monitor places of deprivation of liberty, supported by the necessary resources to ensure its effectiveness.

Access to Justice

Obtaining justice for victims of human rights violations is dependent on the ability of victims, through HRDs, to access the courts (or independent tribunals where appropriate) and exercise the right to just administrative action and procedural fairness.¹⁰⁷ Despite these constitutional provisions, access to justice remains slow and inefficient.

As a result of a failure to implement existing legal norms and standards in a manner that advances human rights, HRDs are dependent on human rights lawyers (who are themselves HRDs)¹⁰⁸ to protect their rights. Access to legal resources has, however, become increasingly difficult. Donor-funded organisations have less funding and attorneys to assist in matters concerning individuals seeking redress for violations and *pro bono* services offered by corporate law firms is limited as many represent State respondents as clients in a variety of matters. Communities and lawyers representing them thus face significant barriers in accessing legal representation as a means of resolving human rights disputes and rectify avoidable situations, which is exacerbated in emergency situations such as arrests made during protest action.¹⁰⁹

Moreover, lawyers are spending more time developing case law informing State respondents of what *not* to do to avoid violating the right concerned, as opposed to assisting in the development of creative measures that could aid in progressively realising such rights. As such, in many instances, adversarial approaches have to be adopted to protect the rights of poor people, when such circumstances could have been avoided.¹¹⁰ The tension between human rights lawyers and State respondents is exacerbated when politicians make statements that undermine the work of human rights lawyers, and ultimately HRDs promoting human rights. In 2016, Johannesburg Mayor Herman Mashaba raised concern about 'so-called human rights lawyers' who have 'used the courts' to keep people in poor living conditions 'to benefit the slumlords'. Lawyers have reminded Mayor Mashaba that South African laws and policies, drafted in line with the Constitution and reaffirmed by the courts, are intended to protect the rights of poor people.¹¹¹

There has also, in some cases, been a lack of accountability for HRDs that have been killed as a result of their activism. In March 2016, land rights activist Sikhosipi Radebe, chairperson of a community-based organisation opposing mining activity on communal land, was shot dead at his home in the Eastern Cape Province by two men claiming to be police officers. A police officer charged with killing 17-year-old housing rights activist, Nqobile Nzuzwa, was found guilty and sentenced to ten years' imprisonment.¹¹² In May 2017, two councillors representing the ANC and a co-accused hitman were found guilty and sentenced to life imprisonment for murdering housing rights activist Thulisile Ndlovu in 2014.¹¹³

The misuse of State security agencies to silence human rights activism in South Africa, rather than address violent crime in an already under-resourced environment, has not only contributed to a deterioration of public safety as evidenced by the 20 per cent increase in the number of murders in South Africa between 2011/12 and 2015/16, but has arguably also contributed to many instances of vigilantism in various poor communities. Suspected

criminals accused of robbery, rape and murder have been attacked by community members who are subsequently investigated by the authorities, further exacerbating the existing challenges experienced in the criminal justice system.¹¹⁴ CSOs have argued for a more equitable allocation of resources to police responsible for protecting poor communities, which they argue receive less resources than wealthier neighbourhoods, affecting the safety and security of children, women and men.¹¹⁵

RECOMMENDATIONS

- The DOJ&CD, in partnership with other relevant departments should provide adequate resources to Legal Aid South Africa to ensure that *pro bono* legal services are available to all HRDs. In addition, alternative dispute resolution (ADR) mechanisms should be utilised to ensure the speedy resolution of avoidable disputes and relieve the burden of the criminal justice system.
- All HRD-related killings must be thoroughly investigated, and perpetrators must be prosecuted and held accountable for the killings.
- The recommendations of the National Development Plan relating to professionalising the police and promoting public safety must be implemented as a matter of urgency.

7

Protecting the rights of vulnerable HRDs

The following section emphasises the increased risk of human rights violations faced by HRDs from vulnerable groups. In particular, challenges faced by HRDs who are women or children, are highlighted.

Women HRDs are more at risk of suffering certain forms of violence, prejudice, exclusion and repudiation, not experienced by their male counterparts. This is often because women HRDs are perceived as challenging accepted socio-cultural norms, traditions, perception and stereotypes about their femininity, sexual orientation, and the role and status of women in society.¹¹⁶ In this context, the term women HRDs refers to women who, individually or in association with others, act to promote or protect human rights, including women's rights.¹¹⁷ The environment in which women HRDs operate in many countries, including South Africa, is characterised by arbitrary arrests and detention, threats, intimidation, torture and inhumane and degrading treatment because of their activities. Women HRDs work on a diverse range of issues such as the equitable distribution of resources and wealth, health and the environment.¹¹⁸

Women HRDs often bear the financial, emotional and psychological costs of the human rights violations endured by the men in their families. In the aftermath of the Marikana massacre, women activists organised to express the multiplicity of human rights abuses they face as mothers, wives and workers in the extractives sector. Although the Farlam Commission of Inquiry addressed limited aspects of the massacre, many affected women felt that they had little opportunity to speak out regarding their socio-economic realities and the impact the massacre had on them and their families, at the formal inquiry. The community continues to battle with poor service delivery, including access to water, sanitation and electricity, poverty and a lack of safety.¹¹⁹ In 2016 concluding observations to South Africa's country report, the UN Human Rights Committee expressed concern with the slow pace of the investigation into Marikana, and recommended that the government ensures

that prompt, thorough, effective, independent and impartial investigations are launched to prosecute and punish perpetrators of illegal killings. Importantly, the UN Human Rights Committee recommended that victims of violations are provided with effective remedies.¹²⁰ Five years after the Marikana massacre, and the closing of the Inquiry, the State has yet to start prosecuting any police officer responsible for the massacre nor has it reportedly settled more than 600 claims and families of victims are yet to be fully compensated for their loss.¹²¹

In terms of the Constitution, all children are holders of constitutional entitlements in their own right. Children are entitled to a host of civil, political, economic, social and cultural rights, including the rights to education, basic nutrition, shelter, basic health care services and social services, and the right to be protected from maltreatment, neglect, abuse, degradation and exploitative labour practices.¹²² Decisions that implicate the lives of children, and the physical and psychological impact thereof, are often made in the absence of consultation with them and without acquiring their free, prior and informed consent. Mining activities, for example, can impact on the ability of a child to attend school and pollute their living environment, and housing development projects result in forced relocations. Regarding education in particular, the UN Human Rights Committee has expressed concern over the 'persistence of wide disparities in access to quality education, according to economic status, race and geography'.

Consequently, children are frequently involved in various forms of political and social resistance, either as political agents aiming to advance their human rights or as members of affected communities confronting human rights violations. Children form part of movements that highlight the systemic and localised problems that limit their ability to access free quality education, and through active participation in legislative processes, have played a crucial role in advocating for necessary policy reforms to realise the right.¹²³ However, as a result of their activism, children have also been victims of excessive use of force by State police when claiming human rights. Children have been shot at with rubber bullets and tear gas when demanding access to education and protesting the closure of schools.¹²⁴ In community 'service delivery protests' children have been the direct victims of police aggression: in 2017, a 14-year-old boy was shot in the face with rubber bullets leaving a gaping hole in his mouth, while attempting to protect himself when violence erupted between the police and community protestors.¹²⁵

REGULATORY GAPS IN PROTECTING HRDS

- Notwithstanding the constitutional guarantees of gender equality and the rights of children, there is insufficient implementation of laws that seek to address the multiple vulnerabilities experienced by women and children HRDs in particular.

RECOMMENDATIONS

- The Department of Justice and Constitutional Development (DOJ&CD), together with the Department of Women (DOW) should take political, administrative and legislative measures to ensure that the environment in which women HRDs operate is enabling to the protection of their rights, including a response to religious and cultural norms that subjugate women in general and women HRDs in particular.
- The South African government, and the DOW in particular, should publicly affirm the legitimacy of the work of women HRDs, denounce attacks against women HRDs and affirm the commitment of the government to protect the work of women HRDs.
- The South African government, including the SAPS, the NPA and the DOJ&CD, should take all steps necessary to end all forms of violence suffered by women HRDs, end impunity and hold perpetrators of violations accountable. Moreover, the SAPS must continue to engage in ongoing sensitisation training of its officials to ensure that cases involving women HRDs are appropriately dealt with.
- Claims to the families of the victims of the Marikana massacre must be settled as a matter of urgency to ensure that families are fully compensated for their financial and economic loss.
- The NPA and DSD should allocate adequate funding to community-based programmes for children, and report on measures taken to ensure children in conflict with the law are placed separately from children in need of care.
- Children representatives should be included in all aspects of community participation with both State and non-State actors regarding any development activities that have a direct impact on their lives.
- When children are involved in protest action, the Ministry of Police and SAPS must ensure that the excessive and disproportionate use of force by law enforcement officials is halted.

8

Conclusion

This research brief has sought to provide an overview of the contemporary state of affairs for HRDs in South Africa. The promotion and protection of the rights to freedom of assembly; association; free, prior and informed consent and public participation, which are all components of the right to freedom of expression, are especially important for HRDs to expose human rights violations. Moreover, the protection of the rights of HRDs, and ensuring that they have access to the relevant information required to hold the State accountable to its human rights obligations, is essential for the burgeoning of South Africa's nascent democracy.

The SAHRC is concerned that despite the recognition and protection of rights afforded in the Constitution, due to the lack of a clear domestic legal definition as to who constitutes an HRD, there is a glaring lack of information on the status of HRDs in South Africa. This gives rise to difficulty in monitoring the State's obligation to promote and protect the rights of HRDs. Moreover, the SAHRC is concerned about the inconsistent approach adopted by the South African government in its position on issues pertaining to HRDs, particularly because HRDs play a crucial role in the advancement of substantive equality and the promotion of civil, political, and socio-economic rights required for those most vulnerable in our society to live a life with dignity as guaranteed in the Constitution.

The SAHRC is particularly concerned about the inappropriate use of force meted out to HRDs advocating for the advancement of all human rights; the perceived shutting down of civil society space; threats of political intimidation; the lack of consultation by State and non-State actors with communities on developmental plans that directly affect them, and the intimidation some communities experience when they resist such plans; the increasing threats in accessing the information required to promote the work of HRDs in highlighting human rights violations; the unsavoury conditions of places of detention and the inhumane treatment of arrested, detained and accused persons, in addition to the subsequent lack of accountability for prison authorities; the persistent challenges presented when HRDs, or those whose rights they aim to promote and respect, pursue access to justice; and the compounded violations experienced by HRDs who are members of vulnerable groups. It is envisioned that the recommendations contained herein will form the basis of the development of a mechanism for the SAHRC to monitor and evaluate the measures undertaken by the State to promote and protect the rights of all HRDs, toward the advancement of a society infused with the values of justice, fairness and equality.

ANNEXURE I: Civil and Political Rights Complaints received by the SAHRC

Table 1: Categories and number of civil and political rights violations complaints made to the SAHRC in 2015/2016

Category of civil and politics right violation	Number of complaints received (2015/2016)
Equality	749
Arrested, Detained and Accused Persons	409
Just Administrative Action	379
Human Dignity	244
Access to Information	150
Freedom of Expression	117
Freedom and Security of the Person	114
Privacy	49
Citizenship	41
Access to Courts, Independent Tribunals and Forums	33
Live	9
Assembly, Demonstration, Picket and Petition	6
Freedom of Association	5
Political Rights	2
Slavery, Servitude and Forced Labour	0

Endnotes

¹ *Opening Statement by the Deputy Minister of Justice and Constitutional Development of the Republic of South Africa, the Hon JH Jefferey, MP, on the occasion of the Republic of South Africa's Response on the Universal Periodic Review at the 36th session of the Human Rights Council's Universal Periodic Review (UPR) Working Group, held at the Palais des Nations, Geneva (2017).*

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³ UN Special Rapporteur on the situation of Human Rights Defenders *Commentary to the Declaration on the Right and on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Rights and Fundamental Freedoms (2011).*

⁴ A/RES/53/144, 8 March 1999, Article 2.

⁵ See note 4 above.

⁶ United Nations *Sustainable Development Goals: Goal 16* <<https://sustainabledevelopment.un.org/sdgs>>.

⁷ <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>>.

⁸ <<https://www.protecting-defenders.org/en/content/how-are-human-rights-defenders-defined>>.

⁹ <<https://www.protecting-defenders.org/en/content/how-are-human-rights-defenders-defined>>.

¹⁰ ACHPR *Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and People's Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa (2016).*

¹¹ As provided for in the Paris Principles Relating to the Status of National Human Rights Institutions (Paris Principles), adopted by the UN General Assembly through resolution 48/134 in 1993; a set of international standards which define the role, composition, status and function of NHRIs. More on the Paris Principles can be found at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>>.

¹² A/RES/53/144, Article 1.

¹³ ACHPR *Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa*, adopted at the 2nd International Symposium on Human Rights Defenders in South Africa (Johannesburg), 27 March - 1 April 2017.

¹⁴ In terms of the adoption of A/RES/53/144, the official minutes of the General Assembly's Third Committee state:

The Acting President: We turn now to draft resolution V, entitled, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms". Draft resolution V was adopted by the Third Committee without a vote. May I take it that the Assembly too wishes to adopt the draft resolution? Draft resolution V was adopted (resolution 53/144)

See <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/53/PV.85>.

¹⁵ A/RES/70/161.

¹⁶ Ibid.

¹⁷ See Note 3 above.

¹⁸ Ibid, see also: A/HRC/31/32.

¹⁹ UN Human Rights Committee *Concluding Observations on the Initial Report of South Africa (2016).*

²⁰ ACHPR *Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and People's Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa (2016).*

²¹ Ibid, Preamble.

²² Statistics South Africa *Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015 (2017).*

²³ The Gini coefficient measures inequality in society, ranging between 0 and 1, where 0 represents absolute equality.

²⁴ World Bank *Country Overview: South Africa (2017).*

²⁵ R Balakrishnan, J Heintz & D Elson 'What does inequality have to do with human rights?'(2016) *Rethinking Economic Policy for Social Justice* 30-51.

²⁶ United Nations *Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29.*

²⁷ S 12 of the Constitution.

²⁸ S 17 of the Constitution; See also UN Declaration on Human Rights Defenders, Articles 5 and 12.

²⁹ See Note 4 above.

³⁰ The recommendations emanating from the Marikana Commission of Inquiry have yet to be implemented, particularly the prosecution of police officers implicated in the killings and the settling of civil claims made by the families of those who were killed in August 2012. See SAHRC *Civil and Political Rights Report (2017).*

³¹ Right2Know Campaign R2K Statement: *We are concerned over the shrinking space for dissent in South Africa!* (2017); See also SAHRC *Civil and Political Rights Report (2017)* and SAHRC *Investigative Hearing Report: Access*

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⁴⁰ See Note 4 above.

⁴¹ See Note 37 above.

⁴² L Lancaster (Institute of Security Studies) *At the heart of discontent: Measuring public violence in South Africa* (2016).

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⁴⁵ SAHRC, Investigative Hearing Report: *Access to Housing, Local Governance and Service Delivery* (2015).

⁴⁶ See Note 40 above.

⁴⁷ S 18 of the Constitution.

⁴⁸ See Note 4 above.

⁴⁹ *Ibid*.

⁵⁰ Ndifuna Ukwazi 'No to Political Intimidation. No to Corruption. We call on Organisations Not to March Against TAC in Bloemfontein' (2015) *NGOPulse*.

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⁵² A/RES/53/144, Article 13.

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⁵⁴ D McKinley 'Corralling Civil Society: What's Up with Government's New Proposals to change the NPO Act?' (2013) *NGOPulse*.

⁵⁵ Act 71 of 1997.

⁵⁶ S Hobbs 'Towards a New NPO Act' (2016) *NGOPulse*.

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⁵⁹ C du Toit 'Reports and Rumours about a new NPO Act - What should Civil Society be doing?' (2016) *NGOPulse*.

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⁹³ See Note 4 above.

⁹⁴ S 35 of the Constitution.

⁹⁵ *Ibid*, section 12.

⁹⁶ *Ibid*, section 12(1).

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⁹⁹ See Note 40 above.

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¹⁰⁶ UN Human Rights Committee *Concluding Observations on the Initial Report of South Africa* (2016) para 37.

¹⁰⁷ Ss 33 and 34 of the Constitution.

¹⁰⁸ See UN OHCHR 'Who is a defender?' <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>> para 6.

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@SAHRCommission



SA Human Rights Commission



www.sahrc.org.za



+27(0)11 877 3600



+27(0)11 403 0684



info@sahrc.org.za

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