



**KEY HIGHLIGHTS
OF THE
INTERNATIONAL AND
REGIONAL HUMAN
RIGHTS MECHANISMS
DURING 2022**





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International and Regional
Human Rights Mechanisms
During 2022

Research Brief 2022

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1. Introduction



Within its constitutional and statutory mandate, the South African Human Rights Commission (SAHRC) monitors the developments at the international and regional levels to further enhance its mandate to promote and protect human rights and remain abreast of international developments and emerging issues. This research brief is one of the avenues of the SAHRC to highlight key developments emanating from the supranational structures at the international and regional level.

The research brief focuses on select international and regional human rights developments for the year 2022 from the supranational structures of the United Nations (UN) human rights system and the African human rights system. These are intended as a summary / succinct overview of key developments which may be of interest to the human rights landscape of South Africa and the SAHRC.¹



¹ The report is categorised by developments at the treaty body level, Human Rights Council and ACHPR and is sourced largely from desktop research and institutional engagements with relevant mechanisms. It should be noted that at the report covers the calendar year of 2022 and that some information / finalised UN and ACHPR reports related to the year in review, will only be released in early 2023.

2. Key developments at the international level



2.1 Overview

During 2022, and within the normal course of their work, both the UN Human Rights Council (HRC / Council) and the treaty bodies adhered to its planned scheduling, with activities and meetings largely hosted in a physical form. The Council held its 49th, 50th and 51st sessions where, *inter alia*, several resolutions were adopted. The Council also conducted its fourth cycle of the Universal Periodic Review (UPR) with the South African government. The treaty bodies continued to review States in terms of the periodic reporting cycle.² Notably, the treaty bodies respectively issued, two general comments, one general recommendation and one guideline. These are addressed in further detail below.³

2.1.1 General comment No.8 (2022) on the rights of persons with disabilities to work and employment

On 8 September 2022, the Committee on the Rights of Persons with Disabilities (CRPD), released its General Comment No.8 (General Comment) on the rights of persons with disabilities to work and employment.⁴ According to the CRPD, the General Comment aims to provide a comprehensive overview of the obligations of States parties under article 27 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which relate to the interdependence of the measures on the right to work. Furthermore, to clarify the interrelationship of the right to work and employment with the provisions of other articles of the Convention, such as those on general obligations (art. 4), equality and non-discrimination (art. 5), women with disabilities (art. 6), accessibility (art. 9), equal recognition before the law (art. 12), access to justice (art. 13), freedom from exploitation, violence and abuse (art. 16), living independently (art. 19), education (art. 24), habilitation and rehabilitation (art. 26) and an adequate standard of living and social protection (art. 28).⁵

Through the General Comment, the CRPD recognises that persons with disabilities face barriers in gaining access to, and exercising their right to work and employment in the open labour market on an equal basis with others.⁶ Further, that ‘persons with disabilities experience high unemployment rates, lower wages, instability, lower standards in hiring conditions, lack of accessibility of the work environment, and are also less likely than other persons to be appointed in managerial positions when they are formally employed’.⁷

The General Comment is divided into 13 sections and addresses, *inter alia*, i) the right to work on an equal basis with others, including the right to gain a living by work freely chosen or accepted in an open, inclusive and accessible workplace; ii) the prohibition of discrimination on the basis of disability; iii) the right to just and favourable conditions of work on an equal basis with others; and iv) provision of reasonable accommodation in the workplace, (including examples in this regard).⁸

2 The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State Party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. See, <https://www.ohchr.org/en/treaty-bodies>

3 Note that while several resolutions were adopted across the sessions, many relate to the extension of thematic mandate holders or speak to the establishment of a future panel discussion / report. The list provided in this brief is merely a snapshot of select resolutions.

4 CRPD/C/GC/8: General comment No. 8 (2022) on the right of persons with disabilities to work and employment.

5 Ibid, para 6.

6 Ibid para 4.

7 Ibid.

8 CRPD/C/GC/8: General comment No. 8 (2022) on the right of persons with disabilities to work and employment, para 19 and para 44.

2.1.2 Guidelines on deinstitutionalisation, including in emergencies (2022)

On 9 September 2022, the UNCRPD released its Guidelines on deinstitutionalisation, including in emergencies.⁹

The guidelines complement the Committee's General Comment No. 5 (2017) and its guidelines on the right to liberty and security of persons with disabilities (art. 14).¹⁰ The guidelines are intended to guide and support States Parties, in their efforts to realise the right of persons with disabilities to live independently and be included in the community, and to be the basis for planning deinstitutionalisation processes and prevention of institutionalisation.¹¹

The guidelines draw on the experiences of persons with disabilities before and during the coronavirus (COVID-19) pandemic, which uncovered widespread institutionalisation, highlighting the harmful impact of institutionalisation on the rights and lives of persons with disabilities, and the violence, neglect, abuse, ill-treatment and torture, including chemical, mechanical and physical restraints, that they experience in institutions.¹²

Through the guidelines, the CRPD notes that 'despite obligations under international law, persons with disabilities continue to be placed in institutions under life-threatening care'.¹³ It further regards institutionalisation as a discriminatory practice against persons with disabilities which contradicts the rights to live independently and be included in the community.¹⁴

The guidelines call on States parties to abolish all forms of institutionalisation, end new placements in institutions, and refrain from investing in institutions. It further asserts that 'institutions must never be considered as a form of protection for persons with disabilities, or a 'choice'.¹⁵ According to the CRPD, 'there is no justification to perpetuate institutionalisation' and States Parties should not use lack of support and services in the community, poverty or stigmas to justify the ongoing maintenance of institutions, or delays to their closure.¹⁶

2.1.3 General Recommendation No. 39 (2022) on the Rights of Indigenous Women and Girls

On 26 October 2022, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), issued General Recommendation No. 39 (General Recommendation) on the Rights of Indigenous Women and Girls.¹⁷ The General Recommendation provides guidance to States Parties on legislative, policy, and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous Women and Girls under the Convention on the Elimination of Discrimination Against Women (CEDAW).¹⁸

The CEDAW Committee asserts that it has consistently identified patterns of discrimination faced by Indigenous Women and Girls in the exercise of their human rights, and the factors that continue exacerbating discrimination against Indigenous Women and Girls.¹⁹ According to the Committee, such discrimination is often intersectional and based on factors such as sex; gender; indigenous origin, status, or identity; race; ethnicity; disability; age; language; socio-economic status, living with HIV/AIDS etc.²⁰

9 CRPD/C/5: Guidelines on deinstitutionalisation, including in emergencies (2022).

10 Ibid para 1.

11 Ibid.

12 Ibid, para 2.

13 Ibid, para 4.

14 Ibid para 6 and 7.

15 Ibid para 7.

16 Ibid para 9.

17 CEDAW/C/GC/39 General recommendation No. 39 (2022) on the rights of Indigenous Women and Girls.

18 Ibid para 1.

19 Ibid para 2.

20 Ibid.

The General Recommendation addresses several themes, including i) the prevention and protection from gender-based violence against Indigenous Women and Girls; ii) the right to effective participation in political and public life; and iii) respectively, the rights to education; work; health; culture; land territories and natural resources; food, water and seeds; and a clean healthy and sustainable environment.²¹

In implementing the General Recommendation, the CEDAW Committee calls on States Parties to, *inter alia*, take into consideration the challenging context in which Indigenous Women and Girls exercise and defend their human rights and how they are impacted by existential threats connected to climate change, environmental degradation, the loss of biodiversity, and barriers to access food and water security.²² The CEDAW Committee further asserts that States Parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarisation, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous Women and Girls and their communities.²³

2.1.4 General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights

On 22 December 2022, the Committee on Economic Social and Cultural Rights (CESCR) released General Comment No. 26 on Land and Economic, Social and Cultural Rights.²⁴ The General Comment is based on the Committee's experience in its review of States Parties' reports, its general comments and its views on communications. It aims to clarify States' obligations related to the impact of access to, use of, and control of land on the enjoyment of Covenant rights, especially concerning the most disadvantaged and marginalised individuals and groups.²⁵

Through the General Comment, the CESCR notes that land plays an essential role for the realisation of a range of rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR/Covenant).²⁶ Furthermore, that secure and equitable access to, use of, and control over land for individuals and communities can play an essential role in eradicating hunger and poverty and guaranteeing the right to an adequate standard of living. It also asserts that the sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights.²⁷

The CESCR however notes that the current use and management of land are not conducive to the realisation of the rights in the Covenant and lists several factors in this regard. These include, *inter alia*, i) the increased competition for access to, and control over land; ii) the financialisation of housing markets has led to competition between different groups for access to, and control over land in urban areas; iii) competition for arable land due to demographic growth, urbanisation, large-scale development projects and tourism in rural areas; iv) measures to mitigate climate change; and v) weak, mismanaged, corrupt or non-existent legal frameworks for the governance of land tenure.²⁸

The General Comment also addresses specific issues of relevance to the implementation of the rights under ICESCR within land-related contexts. It provides insight on internal armed conflicts and post-conflict situations; corruption; human rights defenders; and climate change.

21 Ibid, sections A to I.

22 Ibid para 7.

23 Ibid.

24 E/C.12/GC/26: General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights.

25 Ibid, para 4.

26 Ibid, para 1.

27 Ibid.

28 Ibid, para 2.

Through the General Comment, the CESCR advises States to, *inter alia*, ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related Covenant rights. Furthermore, that States regularly monitor the implementation of tenure systems and all policies, laws and measures, which affect the realisation of ICESCR rights in land-related contexts.²⁹ It also recommends that States Parties ensure that they have administrative and judicial systems in place to effectively implement policy and legal frameworks relating to land, and that their administrative and judicial authorities act in accordance with the State's obligations under the ICESCR.³⁰ The CESCR further calls on States Parties to build the capacity of their administrative and judicial authorities to ensure access to timely, affordable and effective means of resolving disputes over tenure rights through impartial and competent judicial and administrative bodies, particularly in remote rural areas.³¹

2.2 Human Rights Council

2.2.1 Resolution on freedom of religion and belief

On 31 March 2022, the HRC adopted a resolution on freedom of religion and belief (resolution).³² Through the resolution, the Council stresses that 'everyone has the right to freedom of thought, conscience and religion or belief, which includes the freedom to have or not to have, or to adopt, a religion or belief of one's choice, and the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in teaching, practice, worship and observance, including the right to change one's religion or belief'.³³ The Council further emphasises that freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing, and stresses the role that these rights can play in the fight against all forms of intolerance and discrimination based on religion or belief.³⁴

The Council however expressed deep concern at 'emerging obstacles' to the enjoyment of the right to freedom of religion or belief, including religious intolerance, discrimination and violence. In this regard, the Council lists, *inter alia*, the increase in the number of acts of violence against individuals from religious minorities; the rise of religious extremism; hatred, discrimination, intolerance and violence, which may be manifested by derogatory stereotyping, negative profiling and stigma.³⁵ It also lists the failure of constitutional and legislative systems which do not provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all, without distinction.³⁶

Through the resolution, the Council condemns all forms of violence, intolerance and discrimination based on, or in the name of religion or belief, and violations of the freedom of thought conscience religion or belief, as well as any advocacy of religious hatred that constitutes incitement to discrimination hostility or violence.³⁷ The Council accordingly called on States to exercise due diligence to prevent, investigate and punish acts of violence against persons belonging to religious minorities and strongly encourages government representatives and leaders to speak out against acts in this regard.³⁸ It further urged States to step up their efforts to promote and protect freedom of thought, conscience and religion or belief, and provided several examples to assist in this regard.

29 Ibid, para 59.

30 Ibid, para 60.

31 Ibid, para 61.

32 A/HRC/RES/49/5, Resolution on freedom of religion and belief.

33 Ibid, para 1.

34 Ibid, para 2.

35 Ibid, para 3(a) to (c).

36 Ibid, para 3(e).

37 Ibid, para 4.

38 Ibid, para 7 and 8.

2.2.2 Resolution on human rights and climate change

On 7 July 2022, the HRC adopted a resolution on human rights and climate change.³⁹ Through the resolution, the Council, *inter alia*, stresses that human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change. It further emphasises that the adverse effects of climate change have a range of implications, both direct and indirect, that can increase with greater global warming, for the effective enjoyment of human rights, including, *inter alia*, the right to life, the right to adequate food, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development.⁴⁰

The Council urged States that had not yet ratified the Paris Agreement to do so, and called upon States to adopt a comprehensive, integrated, gender-responsive, age-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies. The Council recognised that the adverse impacts of climate change negatively affected the realisation of the right to food and requested the Secretary-General and the High Commissioner to prepare reports on the issue, followed by a panel discussion and interactive dialogues on the topic.⁴¹ It further requested that the Special Rapporteur on the promotion and protection of human rights in the context of climate change to highlight the adverse impacts of climate change on the full realisation of the right to food in his work and reports.⁴²

2.2.3 Resolution on national human rights institutions

On 7 October 2022, the HRC adopted a resolution on national human rights institutions (NHRIs).⁴³ Through the resolution, the Council reaffirms the importance of independent and pluralistic NHRIs and their continued role in promoting and protecting human rights and fundamental freedoms.⁴⁴ The Council also recognises the important role that NHRIs play in preventing and addressing acts of intimidation and cases of reprisal, and the integral role they play in supporting cooperation between States and the UN in the promotion of human rights.⁴⁵

The Council recognised that climate change and its impact are among the greatest challenges, directly and indirectly affecting the full enjoyment of human rights. It asserts that States should, when taking action to address climate change, respect, promote and consider their respective obligations with regard to human rights to ensure more sustainable and effective climate action.⁴⁶ In this regard, the Council recognised the important role of national human rights institutions in monitoring, reporting to, and advising government bodies and other stakeholders in relation to climate mitigation and adaptation, in accordance with their respective mandates and in line with human rights obligations and the principles of non-discrimination, participation, access to justice and accountability.⁴⁷ It further acknowledged the contribution that many NHRIs have made, and continue to make, in promoting and protecting human rights in the context of climate action.

The Council accordingly asserted, *inter alia*, i) that States should establish or strengthen NHRIs to enable effective fulfilment of their mandates; ii) the importance of financial and administrative independence and the stability of NHRIs; iii) that NHRIs and their respective members and staff should not face any form of reprisal or intimidation, including political pressure physical intimidation harassments or unjustified or budgetary limitations as a result of activities undertaken in accordance with their respective mandates.⁴⁸ The Council acknowledged the contributions of NHRIs and provided a detailed list of examples to enhance their work in the promotion and protection of human rights.⁴⁹

39 A/HRC/RES/50/9

40 *Ibid.*, p.2

41 <https://www.ohchr.org/en/press-releases/2022/07/human-rights-council-adopts-nine-resolutions-extends-mandates-eritrea>

42 <https://www.ohchr.org/en/press-releases/2022/07/human-rights-council-concludes-fiftieth-regular-session-after-adopting-23>

43 A/HRC/RES/51/31

44 *Ibid.*, p.2.

45 *Ibid.*

46 *Ibid.*, p.3.

47 *Ibid.*

48 *Ibid.*, paras 1 to 3.

49 *Ibid.*, paras 8(a) to (j) and paras 9(a) to (g).

By virtue of the resolution, the Council requested, *inter alia*, that the Office of the High Commissioner for Human Rights continue to strengthen its work with NHRIs including through technical cooperation, capacity-building activities and advice.⁵⁰

2.2.4 Emerging themes

It should be noted that during the 51st session of the Council, three resolutions focusing on technology and human rights were adopted. These included, i) a resolution on the human rights implications of new and emerging technologies in the military domain;⁵¹ ii) a resolution on neurotechnology and human rights;⁵² and iii) a resolution on countering cyberbullying.⁵³ While each of these resolutions addresses important issues, there is the perception that the growing number of Council initiatives on new technologies suggests that government delegations should consider a more holistic approach to new technologies and human rights – an approach based on an understanding that irrespective of the type of technology in question, the relevant human rights principles remain the same.⁵⁴

2.3 Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of the UN Member States. Through the mechanism, States spell out steps they have taken to implement recommendations posed during their previous reviews which they committed to follow-up on, as well as highlight recent human rights developments in the country.⁵⁵

It should be noted that the reviews are based and informed by several reports including: i) a national report which contains information provided by the State under review; ii) information contained in the reports of independent human rights experts and groups, (e.g. the Special Procedures, human rights treaty bodies, and other UN entities); and iii) information provided by other stakeholders including national human rights institutions, regional organisations and civil society groups.⁵⁶

2.3.1 South Africa's fourth review

On 16 November 2022, the South African government appeared for its fourth cycle of the UPR.⁵⁷ The delegation and presentation was led by the Deputy Minister of Justice and Constitutional Development (Mr. John Jeffery).⁵⁸

In his introduction, the Deputy Minister highlighted South Africa's human rights-based constitution, the legacy of colonialism and apartheid, and the impact of the COVID-19 pandemic. The Deputy Minister further reported that South Africa had made significant progress since its last review in 2018 and provided an overview of the key developments in this regard. While States commended the efforts of the South African government since its last review, several recommendations were proffered relating to, *inter alia*, racism, xenophobia and racial discrimination; children; people with disabilities; GBV; the fight against corruption; and the protection of human rights defenders and whistleblowers.⁵⁹

50 Ibid, para 12.

51 A/HRC/RES/51/22

52 A/HRC/RES/51/3

53 A/HRC/RES/51/10

54 <https://www.universal-rights.org/urg-human-rights-council-reports/report-on-the-51st-session-of-the-human-rights-council/>

55 <https://www.ohchr.org/en/press-releases/2022/11/south-africas-human-rights-record-be-examined-universal-periodic-review>

56 Ibid.

57 South Africa's first, second and third UPR reviews took place in April 2008, May 2012 and May 2017, respectively.

58 <https://media.un.org/en/asset/k11/k117bz89jc>

59 Item 6, Draft report of the Working Group on the Universal Periodic Review- South Africa, 18 November 2022

The SAHRC also submitted a NHRI-UPR report prior to South Africa's review and in line with its mandate, conducted several capacity-building initiatives to strengthen stakeholder and civil society engagement in South Africa's UPR process. It should be noted that during South Africa's review, several States recommended that the State allocate sufficient resources to the SAHRC to enable it to discharge its mandate effectively.

On 18 November 2022, the Working Group released a draft report on South Africa's review process which included a total of 293 recommendations. The South African government must respond to these recommendations by the 52nd session of the HRC, scheduled for February to March 2023.

South Africa's sponsorship of a resolution on the UPR

It should be noted that in September 2022, the HRC held a general debate on the UPR. While several States recognised the importance of the review mechanism, it agreed that the UPR process requires a whole-of-society approach, which includes the meaningful and unhindered participation of all stakeholders, including governments, parliaments, National Human Rights Institutions, and civil society.⁶⁰

South Africa sponsored⁶¹ and presented a resolution on strengthening the voluntary funds for the UPR mechanism of the HRC, which was adopted on 7 October 2022 per consensus.⁶² It noted the significant and impactful support provided by the funds to States despite various challenges, including that posed by the coronavirus disease (COVID-19) pandemic. The Resolution encouraged all States to consider contributing to the Voluntary Fund for Participation in the UPR and the Voluntary Fund for Financial and Technical Assistance in the implementation of the mechanism.⁶³

60 <https://www.universal-rights.org/urg-human-rights-council-reports/report-on-the-51st-session-of-the-human-rights-council/>

61 Together with Argentina, Armenia, Fiji, Norway, Pakistan.

62 <https://www.upr-info.org/en/news/51st-hrc-session-highlights-general-debate-item-6>

63 Ibid.

3. UN experts condemn xenophobic violence in South Africa



On 15 July 2022, several UN experts⁶⁴ condemned the reports of escalating violence against foreign nationals in South Africa and called for accountability against xenophobia, racism and hate speech.⁶⁵ The experts raised concern regarding ‘Operation Dudula’ and warned that the ongoing xenophobic mobilization was broader and deeper, and had become the central campaign strategy for some political parties in the country. The UN experts observed that discrimination against foreign nationals in South Africa has been institutionalised both in government policy and broader South African society and that this had led to violations of the right to life and physical integrity, and rights to an adequate standard of living and to the highest attainable standard of health, as well as elevated risks of arbitrary detention, torture and refoulement.⁶⁶

The experts also expressed concern over reports of widespread corruption in South Africa’s asylum and migration system and that the State was failing to meet its obligations to protect human rights while preventing racial and xenophobic discrimination.⁶⁷ The experts confirmed that they have been in official communication with the South African Government in this regard.



64 These include, Ms E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Felipe González Morales, Special Rapporteur on the human rights of migrants.

65 <https://www.ohchr.org/en/press-releases/2022/07/south-africa-un-experts-condemn-xenophobic-violence-and-racial>

66 Ibid.

67 Ibid.

4. Key developments at the regional level



4.1 African Commission on Human and Peoples' Rights

The year 2022 marked the 35th anniversary of the African Commission on Human and Peoples' Rights (ACHPR) which was established under the African Charter on Human and Peoples' Rights (African Charter). The African Charter is a legally binding instrument which provides a normative human rights framework which is intended to promote and protect human rights and basic freedoms on the African continent. The African Charter addresses civil, political, economic, social and cultural rights, as well as the rights of peoples.⁶⁸

The ACHPR is an autonomous body of the African Union and meets regularly. It is mandated to, *inter alia*, promote, protect and interpret the human and peoples' rights as espoused under the African Charter. In accordance with Article 62 of the African Charter, States Parties are required to submit a report to the ACHPR every two years regarding the legislative or other measures taken to give effect to the provisions of the Charter. The ACHPR can also accept and investigate complaints (communications) submitted by individuals, NGOs and States Parties, concerning alleged violations of the African Charter.

Three ordinary sessions of the ACHPR took place during 2022.⁶⁹ Select activities and key developments of the ACHPR, are discussed below.

4.1.1 Resolution on the Right to Food and Building Resilience in Nutrition across Africa

On 9 March 2022, the ACHPR adopted a Resolution on the Right to Food and Building Resilience in Nutrition across Africa.⁷⁰ Through the resolution, the ACHPR recognises that food insecurity is an overarching result of protracted crises, natural disasters, climate-related shocks, and conflicts. In many African countries, land and water grabbing and the privatisation of natural resources result in forced evictions, mass displacement, food insecurity, and human rights abuses.⁷¹

The ACHPR expressed concern that malnutrition in all its forms hampers the development of individuals, communities and nations across Africa and that undernutrition is the main underlying cause of nearly half of all child deaths. Furthermore, that the global health crisis of the COVID-19 pandemic has greatly exposed the economic vulnerability of African countries as well as the weakness of the health and food systems.⁷²

The ACHPR accordingly called on States to, *inter alia*, i) strengthen continental commitment and build resilience in nutrition to end malnutrition in all its forms; ii) integrate nutrition into all relevant sectors and plans by taking appropriate policy, institutional and legislative measures to ensure the full enjoyment of the right to food; and iii) strengthen health systems and scale up high-impacted nutrition interventions in food and nutrition programming, policies, initiatives and advocacy, and monitor its implementation.⁷³ The ACPHR also called on States to ensure that sanitation and drinking water supply systems, social protection systems and education are part of a broader multi-sectoral approach in resolving malnutrition in all its forms and to adopt an inclusive approach in tackling malnutrition and ensure good health and nutrition for pregnant and breastfeeding women, children, adolescents, and prisoners.⁷⁴

68 <https://www.achpr.org/legalinstruments/detail?id=49#:~:text=The%20African%20Charter%20on%20Human, freedoms%20in%20the%20African%20continent.>

69 Two sessions were held virtually and one physically.

70 Resolution on the Right to Food and Building Resilience in Nutrition across Africa - ACHPR/Rés.514(LXX)

71 Ibid.

72 Ibid.

73 Ibid.

74 Ibid.

4.1.2 Resolution on the adoption of the Rules for the Establishment and Functioning of the Alert and Reporting Mechanism to the ACHPR on Situations of Torture & Other Cruel Inhuman or Degrading Treatment or Punishment (The Abidjan Rules)

On 2 August 2022, the ACHPR adopted a Resolution on the Adoption of the Rules for the Establishment and Functioning of the Alert and Reporting Mechanism to the African Commission on Human and Peoples' Rights on Situations of Torture & Other Cruel Inhuman or Degrading Treatment or Punishment (The Abidjan Rules).⁷⁵ While the resolution formally adopts the Abidjan Rules, it calls on relevant stakeholders to provide the necessary support for its promotion, operationalisation and effective implementation

The Abidjan Rules serves as the 'Standard Operating Procedures of the Alert and Reporting Mechanism to the ACHPR on Situations of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.⁷⁶ In essence, the Abidjan Rules outlines the documents and forms to be completed in order to bring a case before the Committee for the Prevention of Torture in Africa (CPTA).⁷⁷ It is envisaged that the Abidjan Rules serve as a tool to enable users, members of associations, organisations, and any individual wishing to work for the prevention of torture to quickly alert and bring the matter before the CPTA and the ACHPR Secretariat for prompt action.⁷⁸ According to the Abidjan Rules, 'Victims, their families, witnesses, whistleblowers, associations, lawyers, regional and subregional human rights networks and any person wishing to alert the Commission now have an exhaustive and effective tool at their disposal'.⁷⁹

4.1.3 Resolution on the Protection of Women against Digital Violence in Africa

During its 72nd Ordinary Session (19 July to 2 August 2022), the ACHPR adopted a Resolution on the Protection of Women against Digital Violence in Africa.⁸⁰ Through the resolution, the ACHPR expressed concern that women who access the internet are constantly at the risk of violence and that the majority of women who access the internet have been subjected to some form of harassment while States continue to have gaps in their legal framework to protect women against digital violence.⁸¹ Further, that online violence manifests in different ways to include cyberstalking, unsolicited, sexually explicit content, doxing (sharing of personal information online), cyber-bullying and the non-consensual sharing of intimate images.⁸²

The ACHPR recognised that the rights protected offline through existing human rights instruments, are similarly protected online and that there is an obligation on the African Commission to develop the requisite normative standards on the protection of women including in the digital environment. The ACHPR called on States to, *inter alia*, i) review / adopt legislation that aims at combating all forms of digital violence, and expanding the definition of gender-based violence to include digital violence against women; ii) Undertake research on digital violence against women and awareness-raising programmes which target boys and men, as well as campaigns involving all relevant stakeholders; and iii) facilitate women's access to education in digital technology domains to remove the digital gender gap, and ensure gender diversity in the tech sector.⁸³ The ACHPR further called on States to implement victim-friendly and gender-sensitive policies when handling cases of digital violence against women⁸⁴ and to undertake mandatory and continuous training for practitioners and professionals dealing with victims of digital violence, including law enforcement authorities, social and child healthcare staff, criminal justice actors and members of the judiciary.⁸⁵

75 Resolution on the Adoption of the Rules for the Establishment and Functioning of the Alert and Reporting Mechanism to the African Commission on Human and Peoples' Rights on Situations of Torture & Other Cruel (The Abidjan Rules) - ACHPR/Res. 520 (LXXII).

76 Rules on the establishment and operation of the alert and reporting mechanism to the African Commission on Human and Peoples rights and situations of torture and other cruel inhuman or degrading treatment of punishment.

77 Ibid, p.6.

78 Ibid, p.5.

79 Ibid, p.6.

80 Resolution on the Protection of Women Against Digital Violence in Africa - ACHPR/Res. 522 (LXXII) 2022.

81 Ibid.

82 Ibid.

83 Ibid, paras 1 to 4.

84 Ibid, para 7.

85 Ibid, para 5.

4.2 African Committee of Experts on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC / Committee) was established in July 2001, following the entry into force of the African Charter on the Rights and Welfare of the Child (Children's Charter) in November 1999. The Children's Charter contains a comprehensive set of rights and obligations for the advancement of children's rights in Africa and incorporates the principles of non-discrimination; the best interest of the child; life survival and development; and participation. The ACERWC is established in accordance with Article 32 of the Children's Charter and is mandated to monitor its implementation as well as promote and protect children's rights in Africa.⁸⁶

During the year 2022, the ACERWC held two ordinary sessions⁸⁷ and adopted four resolutions relating to children's rights.⁸⁸ These are addressed in further detail below.

4.2.1 Resolution No. 16/2022 of ACERWC Working Group on the Implementation of Decisions and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child

During its 35th Ordinary Session in 2020, the Committee established a Working Group on the Implementation of Decisions and Recommendations of the ACERWC.⁸⁹ One of the core mandates of the Committee is to provide recommendations and decisions to Member States which require implementation at domestic level.⁹⁰ On 1 April 2022, the Committee further endorsed the role of the Working Group and adopted 'Resolution No. 16/2022 of the ACERWC Working Group on Implementation of Decisions and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child' (resolution). Through the resolution, the ACERWC notes the increasing number of decisions, recommendation and resolutions issued in relation to State Party reports and the follow-up mechanisms in place to enable fact-finding missions, country visits, etc. The ACERWC however expressed 'deep concern' at, *inter alia*, the lack of compliance and slow implementation of its recommendations by State Parties; the non-responsiveness to urgent letters of appeal; and the failure to provide periodic reports.⁹¹ However, the ACERWC acknowledged the challenges in this regard and highlighted factors including, inadequate national legislative frameworks; lack of coordination; lack of political commitment; and insufficient budgetary allocation.

Through the resolution, the ACERWC calls on State Parties to, *inter alia*, translate, disseminate, and raise awareness on all the decisions and recommendations of the Committee; and to fast-track the implementation of decisions and recommendations issued by the Committee and abide by the deadlines set for the relevant follow-up procedures.⁹² Furthermore, to establish a comprehensive national reporting and monitoring mechanism for the implementation and compliance with the Committee's decisions and recommendations as well as reporting on the status of implementation of decision to the Committee.⁹³ The Committee also calls on State Parties to develop a roadmap on the implementation of the decisions of the Committee in consultation with relevant ministries, government organs, NHRIs, children, UN Agencies, CSOs etc. and to ensure that the decisions and recommendations of the Committee are taken into consideration in determining priority areas, allocating budgets, developing laws and policies, making decisions, and any other administrative and judicial measures.⁹⁴

⁸⁶ <https://www.acerwc.africa/en/page/african-committee-experts-rights-and-welfare-child>

⁸⁷ 39th session from 21 March to 1 April 2022 and 40th session from 23 November to 2 December 2022.

⁸⁸ These resolutions were adopted during the 39th session.

⁸⁹ Resolution No. 16/2022 Of the ACERWC Working Group on Implementation Of Decisions And Recommendations of the African Committee of Experts on the Rights And Welfare of the Child, preamble.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*, para i and ii.

⁹³ *Ibid.*, para iii.

⁹⁴ *Ibid.*, para iv and v.

The resolution also addresses the role of CSOs and NHRIs and calls on these bodies to undertake regular review and inquiries related to the status of implementation and compliance of State Parties in relation to the Committee's decisions and recommendations and to promote harmonisation of national legislation with the Children's Charter and the decisions of the Committee.⁹⁵ Furthermore, to conduct awareness-raising and sensitisation campaigns which highlight the importance of the timely implementation of decisions and recommendations issued. The resolution also calls on CSOs and NHRIs to submit reports to the Committee on the status of implementation of its decisions within a respective country.⁹⁶

4.2.2 Resolution No. 17/2022 of the ACERWC Working Group on Children's Rights and Business on the Protection and Promotion of Children's Rights in the Digital Sphere in Africa

During its 35th Ordinary Session in 2020, the Committee established a Working Group on Children's Rights and Business (Working Group). On 1 April 2022, during its 39th session, the Committee adopted 'Resolution No. 17/2022 of the ACERWC Working Group on Children's Rights and Business on the Protection and Promotion of Children's Rights in the Digital Sphere in Africa' (resolution).⁹⁷ The resolution reaffirms the goal of the Working Group to promote the integration of a child rights based approach to business practices with a view to addressing business-related rights in Africa.⁹⁸

Through the resolution, the ACERWC recognises the increase in digital and mobile penetration rates in Africa and 'the potential of the Fourth Industrial Revolution in advancing emerging technological innovations to promote children's rights'.⁹⁹ Furthermore, it recognises the impact and growing need to utilise digital technology to ensure continuity of education / learning and children's overall development. The Committee notes that globalisation, technological innovations and industrial growth have resulted in increased connectivity among different groups, across regions and countries, which contributes to children's increased access to information. However, the Committee also recognises that this may expose children to predatory exploiters and abusers.¹⁰⁰ While the Committee acknowledges the efforts made by African States to improve information, communication and technology (ICT) infrastructure, it noted the slow pace by State Parties to enact and implement cybersecurity and legislative policy frameworks which do not endanger the rights and wellbeing of children. The Committee also expressed its 'deep concern' with the inadequate attention given to the role played by private sectors and businesses in respecting children's rights in relation to the digital environment.¹⁰¹

Through the resolution, the Committee calls on State Parties to, *inter alia*, report on the extent to which a State is placing the necessary measures to protect children in the digital sphere and to implement Concluding Observations and Recommendations issued by the ACERWC in relation to the protection of children from sexual exploitation, including online child sexual exploitation.¹⁰² Furthermore, to enact cybersecurity and data protection legislation and set up digital regulatory bodies, digital industry codes, and terms of service that place responsibilities on the private sector for protection of children in corporate advertising and marketing practices of its products and services.¹⁰³ The Committee also calls on State Parties to place a legal obligation on digital service providers (DSPs) to report child sexual abuse material (CSAM) to authorities for investigation and hold them accountable for blocking and removing graphic content of children in the digital space.¹⁰⁴

95 Ibid, epilogue para i and ii.

96 Ibid para v.

97 Resolution No. 17/2022 of the ACERWC Working Group on Children's Rights and Business on the protection and promotion of children's rights in the digital sphere in Africa.

98 Ibid, preamble.

99 Ibid.

100 Ibid.

101 Ibid.

102 Ibid para i and ii.

103 Ibid, para iv.

104 Ibid, para v.

The resolution further addresses the private sector and businesses, calling on these actors to, *inter alia*, i) assist the Committee's efforts in actions to prevent, monitor, investigate and remediate child rights abuses by businesses in the digital sphere; ii) raise public awareness, and strengthen digital literacy by promoting the safe use of digital technology; and iii) undertake 'Safety-by-Design (SbD)' due diligence practices to put user safety, especially children's safety, at the forefront of the design, development and release of online products and services.¹⁰⁵

In addition, the Committee also calls on NGOs and civil society partners to design educational, awareness-raising and parenting programs that assist parents and caregivers to provide guidance to their children about digital literacy, children's safety and responsible use of digital technology and to cooperate and engage in dialogue with the private sector, NHRIs, relevant governmental institutions and academia, to devise joint strategies towards the implementation of child-focused approaches to digital safety.¹⁰⁶

4.2.3 Resolution No. 18/2022 of the ACERWC Working Group on Children's Rights and Climate Change to integrate a child rights-based approach into climate change action

During its 35th Ordinary Session,¹⁰⁷ the ACERWC adopted a resolution on the establishment of a Working Group on Children's Rights and Climate Change (Working Group).¹⁰⁸ On 1 April 2022, the Committee further adopted 'Resolution No. 18/2022 of the ACERWC Working Group on Children's Rights and Climate Change to integrate a child rights-based approach into climate change action'. It took cognisance of the key role that the Working Group plays in promoting a child rights-based approach to climate change action in Africa and ensuring that children's rights and welfare are protected from the impacts of climate change.¹⁰⁹

Through the resolution, the ACERWC recognises the phenomenon of climate change as, 'one of the most pressing existential threats to human beings, and its devastating consequences ranging from toxic air pollution and chemicals to unprecedented global biodiversity loss, environmental exposures posing grave and systemic threats to collective and individual human rights including the rights and welfare of the child'.¹¹⁰ The ACERWC expressed concern at the impact of climate change on the least developed and developing countries and noted its disproportionate consequences on the enjoyment and realisation of children's rights and interests. The Committee further noted that climate-related impacts affect children's most basic rights and 'directly undermine a broad spectrum of their rights including the right to life, survival, development, participation, access to clean water and nutritious food, to enjoy the best attainable standard of health, and their right to education'.¹¹¹

The resolution calls on Member States¹¹² to, *inter alia*, incorporate a child rights-based approach to climate change by ensuring that the specific risks faced by children are taken into account in the development and implementation of climate policies and programmes. In this regard, the Committee recommends particular attention on the needs of children who are 'most vulnerable to the effects of climate change, such as girls, indigenous groups and children with disabilities'.¹¹³ The ACERWC further calls on Member States to ensure that actions taken to counteract the impacts of climate change uphold the rights of the child and is 'anchored' in the Children's Charter and to undertake 'all the necessary legislative, policy, administrative, and institutional measures to address the effects of climate change on children's rights, particularly in critical sectors such as

105 Ibid, epilogue.

106 Ibid.

107 From 31 August to 8 September 2020.

108 Preamble, Resolution No. 18/2022 of the ACERWC Working Group on Children's Rights and Climate Change to integrate a child rights-based approach into climate change action.

109 Ibid.

110 Ibid.

111 Ibid.

112 It should be noted that the ACERWC refers to the terms Member States and State Parties interchangeably in its resolutions.

113 Ibid, para I.

food and nutrition, water, sanitation, education, and social protection'.¹¹⁴ Furthermore, that Member States should ensure and enhance children's meaningful participation in relevant decision-making processes relating to climate adaptation, mitigation policies and programmes.¹¹⁵ The Committee also calls on Member States to conduct systematic awareness-raising campaigns, producing appropriate material, (such as a child-friendly version on the issue of climate change) and to establish child-sensitive monitoring, evaluation and accountability mechanisms and to report on the progress made towards integrating child-sensitive approaches to their climate change actions.¹¹⁶

4.2.4 Resolution No. 19/2022 of the ACERWC Working Group on Children with Disabilities on the Situation of Children with Albinism in Africa

During its 35th Ordinary Session, the ACERWC adopted a resolution on the establishment of a Working Group on Children with Disabilities (Working Group).¹¹⁷ On 1 April 2022, the Committee further endorsed the Working Group by adopting 'Resolution No. 19/2022 of the ACERWC Working Group on Children with Disabilities on the Situation of Children with Albinism in Africa' (resolution).¹¹⁸

Through the resolution, the ACERWC recalled the goal of the Working Group which aims to promote 'the inclusion of children with disabilities in all spheres of life by using a child rights-based approach that ensures the protection of their rights and welfare as enshrined in the African Children's Charter and other regional and international human rights instruments'.¹¹⁹ The resolution specifically addresses the situation of children with albinism, acknowledging that they continue to experience violence and violations of their rights within Africa. The ACERWC further expressed their concern at the absence and/or insufficient measures to enhance the quality of life of children with albinism and were aggrieved by the violent nature and continued prevalence of acts targeting children with albinism.¹²⁰

While commending the measures taken by some State Parties to raise awareness on albinism, the ACERWC expressed concern that despite its recommendations, children with albinism continue to experience discrimination and violence. Through the resolution, the Committee calls on State Parties to, *inter alia*, enhance awareness aimed at dispelling the myths and harmful beliefs that propagate discrimination and violence against children with disabilities, including education on the scientific causes of albinism.¹²¹ It further calls on State Parties to identify the drivers and patterns of violent attacks and to adopt legal and policy frameworks 'to facilitate the provision of reasonable accommodations necessary to ensure that children with albinism benefit from rights and protections on an equal basis with other children in their countries'.¹²² The Committee also recommends that State Parties adopt measures to enhance the security of children with albinism and to provide temporary safe spaces for children with albinism who are at risk of violence.¹²³ It also calls on State Parties to amend or adopt national laws to criminalise discriminatory and harmful practices which target children with albinism and to ensure that these crimes are prosecuted as hate crimes.¹²⁴ Furthermore, that measures be put in place to ensure an accessible justice system for children with albinism, and the provision of psychosocial and medical support and victim / witness protection during the prosecution of a crime against children with albinism.¹²⁵ The resolution highlights that State Parties should provide information on the measures taken to address the plight of children with albinism during their periodic reports to the ACERWC.

114 Ibid para II and III.

115 Ibid, para VI.

116 Ibid, para VII and X.

117 Preamble, Resolution No 19/2022 of the ACERWC Working Group on Children with Disabilities on the situation of children with albinism in Africa

118 Ibid

119 Ibid.

120 Ibid.

121 Ibid para I.

122 Ibid para II and III.

123 Ibid para IV and VI.

124 Ibid para VII.

125 Ibid para VIII, IX and X.

It should be noted that the resolution is further addressed to civil society organisations with the Committee encouraging organisations to, *inter alia*, i) collaborate with the media to educate and raise awareness regarding children with albinism; ii) train legal personnel on how best to deal with access to justice for children with albinism; iii) provide psychosocial and counselling services; iv) collect data and share information on rights of children with albinism at the national and local levels; and v) assist the ACERWC and State Parties' effort to prevent, protect, monitor, investigate and remediate child rights abuses faced by children with albinism.¹²⁶

SAHRC Application for ACERWC Affiliate Status

Rule 84 of the Rules of the Procedures of the ACERWC provides that 'National Human Rights Institutions established by State Parties to the African Children's Charter and functioning according to internationally recognised norms and standards, may be granted affiliate status with the Committee'. In operationalising this provision, the ACERWC adopted 'Guidelines on Granting Affiliate / Associate Status to NHRIs before the ACERWC' (Guidelines) at its 32nd session in November 2018.

In terms of the Guidelines, the ACERWC may invite Affiliate NHRIs to make presentations or submit briefings on selected matters as it deems necessary. The ACERWC may also assign responsibilities to its Affiliates on its child rights' recommendations and decisions to ensure monitoring of their implementation and receive updates in this regard. Under the Guidelines, affiliate NHRIs should submit a report on the activities undertaken with respect to child rights matters and in relation to the mandate of the Committee every three years, starting from the date of assuming the status before the ACERWC. It should be noted that South Africa ratified the Children's Charter in 2000 and, as a State Party, has since submitted its initial and two subsequent periodic reports to the ACERWC.¹²⁷

In July 2022, the SAHRC applied for affiliate status before the ACERWC with the application considered during the Committee's 40th session. The outcome is to be announced at a later date.¹²⁸

126 Ibid, epilogue.

127 See South Africa tab at, <https://www.acerwc.africa/en/states-parties/reporting/overview>

128 At the time of writing, the outcome of the affiliate status was still pending.

5. Conclusion




This research brief provides highlights of the year 2022, focusing on select, key developments at the international and regional human rights level. While providing a succinct overview of developments, it is apparent that the supranational structures have fully resumed their working methods and activities, despite the impact of the COVID-19 pandemic on their operations in previous years.

The SAHRC notes the advances made by the South African Government in relation to its international / regional reporting, particularly, its participation in the fourth cycle of the Universal Periodic Review. These mechanisms highlight the critical role that the supranational bodies play in ensuring State accountability in the promotion and protection of human rights at the national level. The SAHRC actively monitors Government's performance and adherence to its international and regional human rights obligations. By virtue of its role as an A-status NHRI, the SAHRC will continue to engage at the international and regional level, with a view to ensure greater State accountability and compliance with international and regional reporting obligations and implementation of recommendations.





27 Stiemens Street,
Braamfontein, 2017

 +27 11 877 3600

 www.sahrc.org.za

 info@sahrc.org.za

 @SAHRCCommission

 SA Human Rights Commission