

Overview of cross cutting issues raised in five Alternate Reports to the Initial Report by South Africa under the International Covenant on Civil and Political Rights

Geneva, March 2016

This overview of cross cutting issues emanates from five alternate thematic reports submitted by civil society organisations (the Alternate Reports) in response to the Initial Report by South Africa (the State Report), to be reviewed by the UN Human Rights Committee during its 116th session. The Alternate Reports which provided the basis for this overview are:

- Recognition of Civil and Political Rights: A continued struggle for Transgender and Intersex Persons in South Africa
- Shadow Report on Participatory Democracy to South Africa's State Report and their Responses to the List Of Issues On The International Covenant On Civil And Political Rights (ICCPR)
- Thematic Report on Criminal Justice and Human Rights in South Africa
- Thematic Report on the Rights of Migrants and Asylum Seekers in South Africa
- Thematic Report on Violence Against Women and LGBTI Persons in South Africa

The organisations endorsing this overview of cross-cutting issues are:

- African Gender Institute, University of Cape Town
- Centre for Constitutional Rights
- Civil Society Prison Reform Initiative, Dullah Omar Institute
- Gay and Lesbian Memory in Action
- Gender Dynamix
- Gender, Health and Justice Research Unit, University of Cape Town
- IRANTI
- Just Detention International – South Africa
- Lawyers for Human Rights
- Lesbian, Gay, Bisexual Organisation (Northern Cape)
- Limpopo LGBTI Proudly Out
- NICRO
- Scalabrini Centre of Cape Town
- Sex Worker Education and Advocacy Task Force
- Sonke Gender Justice
- Triangle Project
- Wits City Institute, University of the Witwatersrand
- Women and Democracy Initiative, Dullah Omar Institute
- Women's Health Research Unit, University of Cape Town

Introduction

Although the specific issues highlighted in the different thematic reports are particularly relevant to that sector, there are a number of cross-cutting issues shaping the overall state of human rights in the State party. The fact that many state interventions face similar broad challenges, regardless of

the government department responsible for the said intervention, points to a certain manner in which the South African State currently operates, with particular reference to the last ten years. This executive summary therefore reflects on how rights recognised under the ICCPR are effectively limited in South Africa.

1. Functional implementation and efficiency of laws and policies

The State Report focuses extensively on the legislation and, where relevant, on the policies in place in order to fulfil South Africa's obligations under the International Covenant for Civil and Political Rights (ICCPR). South Africa must be commended for having adopted an extensive corpus of legislation and policies to uphold international human rights standards since 1994.

However, the State Report is more scant in identifying legislation and policies that remain to be adopted and, possibly more importantly, on challenges in implementing existing legislation and policies. The Alternate Reports, on the other hand, focus extensively on legislative and policy lacunae or on inadequate implementation of legislation and policy. Without effective and/or adequate implementation, laws and policies are meaningless to the majority of South Africans.

There are numerous reasons for ineffective implementation. One reason is certainly the lack of sufficient funding, but it is not the only reason. A lack of political will, poor inter-sectoral collaboration within government, deliberate under-funding of certain institutions of State to impair their ability to fulfil their mandate, an inefficient administration, corruption, inefficient institutions supporting democracy and political interference in some independent State institutions also explain ineffective implementation of laws and policies. Some of these issues are addressed below.

The Alternate reports point out that it is poor and marginalised groups who bear the brunt of inadequate or non-existent implementation of protective laws and policies. These include arrestees and detainees, socio-economically marginalised persons and communities, migrants and asylum seekers, as well as transgender persons and those whose sexual orientation does not correspond to a certain social norm.

In particular, the Alternate Reports highlight that numerous vulnerable groups, or those to which a social stigma are attached, appear to be regularly subject to arbitrary or unlawful arrest and detention. This blatant abuse of arrest and use of force powers by the police remain largely unpunished, and is seldom publicly condemned by the political leadership.

2. Transparency and oversight over government action

The legislative framework establishing independent institutions supporting democracy and/or overseeing the executive have, with one exception (the Judicial Inspectorate for Correctional Services), excellent mandates and powers in law.

However, independent oversight over government action is at best slow, and at worst absent. Failure to ensure adequate checks and balances over the executive exercise of State power or effective accountability of individual State officials and senior government management have created a general malaise with State performance. When oversight institutions do demonstrate independence and a willingness to hold officials accountable, they have come under severe political pressure especially when exercising their mandate in a way that appears to threaten vested

interests. There are also increasing signs of inappropriate political interference in the appointment of the Heads of some of these institutions. This criticism extends to the manner in which Parliament oversees the Executive. Other institutions that must be mentioned include the Public Protector, the Independent Electoral Commission, the Independent Police Investigative Directorate, and the Judicial Inspectorate for Correctional Services. The National Prosecuting Authority has suffered from similar undue political influence.

In addition, some government departments are increasingly reluctant to share information relevant to the portfolio they manage, some of which could be used by civil society to hold government accountable. Several Alternate Reports bemoan the lack of access to reliable data in their sectors.

The first ten years of democracy saw a far more open and transparent State as well as an inclusive space for democratic and robust dialogue between State and civil society. However, in the subsequent ten years, there has undoubtedly been a regression in how the State responds to external stakeholders, especially when critiqued. Both the lack of effective oversight over government action and a lack of transparency from government departments creates an unhealthy climate of suspicion, in particular between State institutions and civil society organisations, which is most regrettable. At societal level, ineffective institutions create mounting frustration which in turn creates a climate of mistrust between citizens and the State.

3. Discrimination

South Africa's apartheid history has left a painful scar on South African society, which remains felt by many today. Dismantling entrenched racial discrimination and institutionalised racism is a colossal task which the government has attempted to address through numerous policies and initiatives, and although much work remains to be done, it should be commended for these.

However, several Alternate Reports point to other forms of racism and discrimination which remain entrenched in South African society, and towards which the South African government appears to struggle to find adequate responses. Xenophobia, for example, has resulted in violence towards foreigners, and an Alternate Report criticises the government's general response to this social ill. Another Alternate Report outlines the institutionalised discrimination which LGBTQ+ people experience in their daily lives, including in their encounters with State officials. Many women in South African society, especially the poor living in rural parts of the country, still experience discrimination in many areas of their lives. More generally, one's race and socio-economic status continue, in many cases, to determine the level of services one will receive from the State. The State's responses in its State Report to these serious social issues appear inadequate considering the daily challenges faced by those experiencing such discrimination.

Conclusion

We trust that the above overview of cross-cutting concerns will assist the UN Human Rights Committee in understanding the broader societal background in which the various issues highlighted in the Alternate Reports are situated.