

## **UPR of South Africa: questioned on sexual orientation and gender identity based violence**

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On 31 May South Africa returned for its second session under the Universal Periodic Review (UPR). Four years have elapsed since South Africa was last examined under the UPR, when the Working Group made 29 recommendations. Worryingly, South Africa failed to accept any of those recommendations. States and NGOs alike had expressed concern about South Africa's lack of commitment to the UPR.

On 31 May South Africa returned for its second session under the Universal Periodic Review (UPR). Four years have elapsed since South Africa was last examined under the UPR, when the Working Group made 29 recommendations. Worryingly, South Africa failed to accept any of those recommendations. States and NGOs alike had expressed concern about South Africa's lack of commitment to the UPR. However, Mr Andries Nel, the Deputy Minister for the Department of Justice and Constitutional Development, opened his speech at this second review by stating that the majority of the recommendations made had been fulfilled.

The Deputy Minister, who led the 20-member delegation, underscored South Africa's commitment by reciting a personal message from President Zuma, welcoming States and outlining his five national priorities. These included: education, health, decent work and sustainable livelihoods, rural development and food security, and clamping down on crime and corruption. Aside from the President's commitments, Mr Nel's opening speech focused on several human rights developments. The enrollment of 98 per cent of children in education, and the construction of 2.8 million houses since 1995 - representing one of the world's largest housing projects - were just two examples.

Throughout his speech the Minister contextualised South Africa's development against its debilitating legacy of apartheid rule. Respecting South Africa's circumstances, the 77 reviewing States unanimously congratulated the delegation for its perseverance and ongoing efforts. In particular, the universal provision of antiretroviral treatment for HIV/AIDS patients stood out. At present, it is estimated that one in five South Africans has HIV/AIDS making it one of the worst afflicted countries on earth in this regard. Despite these advances four major issues emerged, including: xenophobia, violence against women, freedom of speech, and discrimination against lesbian, gay, bisexual, and transgender individuals (LGBTs). In the light of South Africa's leadership on sexual orientation and gender identity at the international level,[\[1\]](#) and its progressive constitution in this regard, this latter issue was followed with particular interest.

Below are some of the recommendations made to the South African delegation:

- Combat racism, racial discrimination, and xenophobia
- Investigate all crimes against individuals on the ground of their sexual orientation or gender identity and prosecute accordingly
- Raise awareness of discrimination based on sexual orientation, especially within law enforcement agencies
- Maintain efforts to eliminate HIV/AIDS-related discrimination
- Maintain HIV/AIDS prevention and treatment programmes, whilst reducing the physical and cost barriers to accessing care in rural areas
- Ratify the Convention on Economic, Social and Cultural Rights (CESCR) and its Optional Protocols, the ILO Convention 189 on decent work for domestic workers, and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)
- Guarantee universal access to clean drinking water and sanitation
- Ensure that the Protection of State Information Bill complies with international human rights law
- Strengthen and solidify freedom of expression and freedom of the press
- Investigate all allegations of sexual exploitation and abuse by South African peacekeepers
- Establish a framework of redress for victims of rape
- Eliminate barriers to birth registration, especially for migrant and refugee born children

The delegation, in response to the dialogue, succinctly answered the States' questions and recommendations. One major concern was freedom of expression and censorship of the media. Countering concerns from States and NGOs that the Protection of State Information Bill threatens South Africans' freedom of speech, the delegation argued that the bill is an amendment to legislation that dates back to the apartheid era. The delegation told States that 90 per cent of the bill has been approved by South Africa's Parliament, and claimed that this was a reflection of its popularity. Mr Nel added that even if the bill did encroach on human rights, the constitutional court would prevent such legislation passing into law.

The extreme violence perpetrated against LGBT communities, including the recent 'corrective-rape' and murder of two lesbian rights activists, provoked many more questions. According to information provided by the NGO Human Rights Watch, contained within the stakeholders' report, ten lesbians a week are 'correctively-raped' or gang raped in Cape Town. A National Intervention Strategy (NIS), headed by the Minister of Justice, is currently exploring ways to end violence against LGBT communities. So far a National Task Team, which aims to engage and consult civil society, and a public awareness campaign have been identified.

Low bail and high levels of repeat offences, however, seem to suggest that the NIS's resources are being poorly allocated. In response to questions about crime and corruption, the delegation was proud to announce that the 2010 Crime Prevention Programme had reduced overall crime by 6.9 per cent. The National Strategy Plan for HIV/AIDS also produced some remarkable data. In 2005 one in three babies were born with HIV/AIDS which had been transmitted to them by their mothers. In 2010 the number of children born with the disease had been reduced to 3.5 per cent, due to the proliferation of treatments by the Government.

The Working Group's report was adopted on 4 June. 151 recommendations were made to South Africa, however, the delegation chose not to take a position on any of the recommendations immediately. The deadline for either accepting or rejecting these recommendations has been set for September this year, which marks the start of the 21st session of the Human Rights Council.

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[1] South Africa sponsored resolution A/HRC/RES/17/19 on Human Rights, Sexual Orientation and Gender Identity, at the 17th session of the Human Rights Council