

# Revisiting South Africa's reporting obligations under human rights treaties and peer review mechanisms: Baby strides grinding to a halt?<sup>1</sup>

## 1 Introduction

The end results of human rights treaties should be the enjoyment by individuals and groups of the rights stipulated in them.<sup>1</sup> Accordingly, states are required to implement the rights and obligations in treaties they have ratified. However, as Olivier has observed, states ratify treaties without the political will or ability to implement them fully.<sup>2</sup> Watt has also stated that 'while states have been willing to agree [to] human rights treaties, they have not been as enthusiastic about the monitoring of their own compliance with such agreements'.<sup>3</sup> Monitoring the implementation of human rights treaties and compliance with human rights obligations thus becomes relevant in ensuring enjoyment of rights. State reporting is one of the mechanisms through which the implementation of human rights treaties can be monitored in order to avoid

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<sup>1</sup>This article is based on extensive research presented at a seminar on 'Promoting constitutional rights through international human rights law: The state of South Africa's state reporting' in 2010. The article not only summarises the research, but has been updated and revised to include more recent information.

<sup>1</sup>Dimitrijevic 'State reports' in Alfredsson, Grimheden, Ramcharan and De Zayas (eds) *International human rights monitoring mechanisms* (2001) at 185 200, 185.

<sup>2</sup>Olivier 'Compliance with reporting obligations under international law: Where does South Africa stand?' (2006) 31 *SAYIL* at 179 195, 179.

<sup>3</sup>Watt 'Monitoring human rights treaties' (2004) *Verification Yearbook* at 213 232, 213.

any deficiencies resulting from the laxity of state parties in complying with their obligations.<sup>4</sup>

State reporting, therefore, lies at the core of the promotion of human rights, and particularly the supervision of the domestic implementation of treaty obligations. It is a common feature of major international human rights treaties. The mechanism is a continuous activity designed to promote and enhance respect for human rights by providing feedback on the implementation process and problems experienced. It is based on the obligation of states to submit periodic reports on the measures they have undertaken and the progress they have made in implementing the specific treaty. It should be noted that while the obligation to submit regular reports is entrusted to states, the treaty bodies that are responsible for monitoring the implementation of the relevant treaties, have no power to enforce the obligation placed on states to submit regular reports. This contributes to delays in submitting reports or even in non-submission in certain instances. Compliance with the reporting obligation thus depends largely on political will. However, a state will be in violation of its reporting obligations if it fails to submit reports as required.

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

In a 2006 article, Olivier considered South Africa's compliance with its reporting obligations under international law.<sup>5</sup> The article also highlights the government's suggested strategy to deal with the reporting backlog that South Africa was experiencing at the time.<sup>6</sup> One would therefore assume that some six years down the line, there should have been some improvement. However, as will be shown in this article, instead of significant strides in addressing the reporting backlog, the government seems to be taking baby strides that might in fact be coming to a halt if measures are not taken to improve compliance with reporting obligations and time frames. In other words, there appears to have been little or no improvement. The aim of this article is to outline South Africa's reporting obligations and provide an update of its

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<sup>4</sup>Dimitrijevic n 4 above at 188.

<sup>5</sup>See generally Olivier n 2 above.

<sup>6</sup>*Id* at 192.

reporting status.<sup>7</sup> My aim is not to restate what Olivier has already addressed in her article but to provide more recent update on South Africa's compliance status, and consider treaties, mechanisms and other relevant aspects that Olivier does not consider or does so only superficially.

## **2 Reporting under human rights treaties<sup>8</sup>**

### *2.1 The state reporting process at a glance*

Generally, the government of the reporting state bears the responsibility of drafting the state report (also referred to as national report in the context of the UPR). However, the involvement of other state and non-state institutions and stakeholders has been seen as vital in ensuring a complete and objective process. This is not, however, to the exclusion of parliament, as there are opportunities within its mandate for parliament to participate in the reporting processes.<sup>9</sup> Following the submission of a report, in the case of treaty bodies, for instance, the report is analysed and discussed in public sessions, in the presence of state representatives. While many of the treaty bodies allow for CSOs to be present during the examination of the state report, they are not always allowed to participate or make oral submissions during the actual examination process. Subsequent to the receipt of state reports, and prior to their consideration, the treaty bodies, on the basis of the information before them, issue what is called a 'list of issues', to which the state is required respond in writing and come prepared to address. The practice of issuing 'list of issues' by most treaty bodies should be distinguished from that of the UN Committee against Torture, explained later.

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<sup>7</sup>Some of the data used in this article were obtained from both desktop research and telephonic interviews with government officials, state institutions and CSOs that have been or are involved in the reporting process. The author would like to thank Berber Hettinga and Tina Lorizzo for their assistance in collecting the relevant data during the initial research.

<sup>8</sup>At the UN level, the treaties considered in this article are: International Covenant on Civil and Political Rights 1966 (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination 1966 (CERD), the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT), the Convention on the Rights of the Child 1989 (CRC), and the Convention on the Rights of Persons with Disabilities 2006 (CRPD). The International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 (CRMW) are also mentioned, even though South Africa is not a party to these treaties. At an African regional level, the following treaties are considered: the African Charter on Human and Peoples' Rights 1981 (African Charter), the African Charter on the Rights and Welfare of the Child 1990 (African Children's Charter), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 (African Women's Protocol). The protocols to the above treaties that South Africa has ratified are also considered where relevant.

<sup>9</sup>For an elaboration of these opportunities, see Chenwi 'Using international law to promote constitutional rights: The (potential) role of the South African parliament' (2011) 15 *Law, Democracy and Development* at 311 338, 327 332.

The consideration of reports takes the form of constructive dialogue with state representatives. Even with reporting under other mechanisms such as the UPR and APRM, constructive dialogue is fundamental to the review process. Thus, the state reporting process is not to be seen as a confrontational, as treaty bodies play a supportive role in fostering effective national implementation of international human rights instruments. This notwithstanding, treaty bodies (or peers) may still pose critical questions and remarks to the states. After the examination of a state report, the treaty body concerned issues a report which includes recommendations. Most treaty bodies refer to these reports as ‘concluding observations’. Under the UPR, it is referred to as the ‘outcome report’. The APRM employs the terminology, country self-assessment report and country review report.

## *2.2 State reporting objectives and guidelines*

State reporting serves to achieve a variety of objectives as outlined in the ‘United Nations Manual on State Reporting’.<sup>10</sup> Reporting should be seen as an ‘opportunity’ rather than a ‘formality’. It is an opportunity to reaffirm a government’s commitment to respect the human rights of its own citizens, to take stock of its achievements and failures, adopt measures to remedy any shortcomings that have been identified, and to assert to the international community that the government is serious about its international commitments.<sup>11</sup> Furthermore, various treaty bodies have acknowledged the importance of the reporting procedure in facilitating their monitoring role. For example, the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has observed that the reporting obligation provides a basis on which it can discharge its responsibilities for monitoring compliance of state parties with their obligations, and for facilitating the realisation of the socio-economic rights in the ICESCR.<sup>12</sup>

In order to facilitate the preparation of reports, and to ensure that reports are comprehensive and presented in a uniform manner by state parties, treaty bodies have adopted reporting guidelines that provide direction as to the form and content of state reports.<sup>13</sup> Some of the guidelines are common to all treaties. Furthermore, in order to prevent duplication of reporting requirements

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<sup>10</sup>See United Nations Office of the High Commissioner for Human Rights, United Nations Institute for Training and Research and United Nations Staff College Project ‘Manual on human rights reporting under six major international human rights instruments’ (1997).

<sup>11</sup>*Id.* at 21-23.

<sup>12</sup>Committee on Economic, Social and Cultural Rights, General Comment 1 ‘Reporting by states parties’ UN Doc E/1989/22, 24 February 1989 par 1.

<sup>13</sup>The guidelines regarding the form and content of reports to be submitted by states parties under core human rights treaties have been compiled in a single document, which is regularly updated. See United Nations ‘Compilation of guidelines on the form and content of reports to be submitted by states parties to the international human rights treaties’ UN Doc HRI/GEN/2/Rev 6, 3 June 2009.

among treaty bodies, harmonised guidelines on reporting under international human rights treaties have been adopted.<sup>14</sup> The harmonised guidelines aim at providing guidance to state parties in fulfilling their reporting obligations under core human rights treaties.<sup>15</sup> The harmonised guidelines are supplementary to the treaty-specific guidelines.

There are two forms of state reports under core international human rights treaties considered in this article. An ‘initial’ report, submitted subsequent to the ratification of a treaty and within a specified time frame following the entry into force of the treaty for the state concerned. The initial report generally provides a background to the country and its laws, and serves as the foundation for future dialogue with the treaty body. Subsequently, periodic reports are submitted, which contain information on developments in the country. The treaties or treaty bodies provide specific time frames for the submission of periodic reports.

States have, however, more often than not, failed to meet the reporting timelines. Failure to report is a clear case of non-compliance. The failure of states to submit reports has in fact been seen to reach ‘chronic proportions’, as states either do not report at all, or report long after the due date.<sup>16</sup> To remedy this general ‘poor’ state of reporting, for states that fail to submit reports in time, the practice has been to allow them to submit combined reports. For example, for states that have never submitted a report under the ICESCR and whose reports are overdue, the ESCR Committee accepts a one-time submission of up to three reports consolidated in a single document, as a means of bringing states up to date with their reporting obligations.<sup>17</sup> Similarly, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) as well as the African Commission on Human and Peoples’ Rights (African Commission) have also requested the submission of consolidated reports where there has been considerable delay in submitting reports. Where a state’s report is very significantly overdue and the state has failed to respond to reminders in this regard, the ESCR Committee has resorted to proactive measures by proceeding to review the implementation of the ICESCR in respect of the state in the absence of a state report but based on

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<sup>14</sup>The harmonised guidelines do not apply to initial reports prepared by states under art 8 of the Optional Protocol to the CRC on the involvement of children in armed conflict 2000, and art 12 of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography 2000.

<sup>15</sup>United Nations UN Doc HRI/GEN/2/Rev 6 (2009) ch 1 par 1.

<sup>16</sup>United Nations Secretary General ‘Strengthening of the United Nations: An agenda for further change’ UN Doc A/57/387 9 September 2002 par 53; United Nations Secretary General ‘In larger freedom; Towards development, security and human rights for all’ UN Doc A/59/2005, 21 March 2005.

<sup>17</sup>Economic and Social Council Official Records, Supplement 2 ‘Committee on Economic, Social and Cultural Rights: Report on the fortieth and forty first session’ UN Doc E/2009/22 2009 par 41.

information it has received from other stakeholders or reliable sources.<sup>18</sup>

Guidelines on state reporting also require that reports be structured in two parts: the first part – the ‘*common core document*’;<sup>19</sup> and the second part – the ‘*treaty specific document*’.<sup>20</sup> With regard to the length and format, reports should normally not be of excessive length. The harmonised guidelines on reporting require that the ‘common core documents should not exceed 60-80 pages, initial treaty-specific documents should not exceed 60 pages, and subsequent periodic documents should be limited to 40 pages. Due to these limits, the reports have to be concise and structured, and relevant legislation and policies could be annexed. The harmonised guidelines go so far as to specify details in relation to the format of the pages – ‘A4-size paper, with 1.5 line spacing, and text in 12 point Times New Roman type’.<sup>21</sup> Both electronic format and printed paper copies are to be submitted. It should be noted that not all treaty specific guidelines go into the formatting detail as the harmonised guidelines do.

Another key requirement for various treaties is the need to provide disaggregated statistical data that show comparison over time. Reports should contain information on both the *de jure* and *de facto* situations with regard to the implementation of the rights and obligations.<sup>22</sup> Linked to this requirement is the need to establish appropriate institutional frameworks for the collection of data and the preparation of reports. In addition, states can seek technical assistance from the UN Office of the High Commissioner for Human Rights (OHCHR) in collaboration with the Division for the Advancement of Women, and from other relevant UN agencies.<sup>23</sup> States are also required to coordinate the preparation of their reports with the relevant treaty body,<sup>24</sup> to ensure that the required information is submitted.

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<sup>18</sup>*Id* pars 40 and 45.

<sup>19</sup>The core document must contain: First, general information about the reporting state, including demographic, economic, social and cultural characteristics of the state and constitutional, political and legal structure. Second, information on the general framework for the protection and promotion of rights, including the status of main international human rights treaties as well as other international norms related to human rights (ratification, domestication, reservations, derogations, restrictions and limitations); the legal framework for the protection of rights at the national level; framework within which rights are promoted (efforts made and actions by government, legislatures, national human rights institutions, among others); and the process by which both parts of the reports are prepared, including participation of civil society and the existence of national coordinating structures. Third, information on non discrimination and equality and effective remedies.

<sup>20</sup>The treaty specific document must include information relating to implementation of each specific right and issue under the relevant treaty; information requested by the relevant treaty body in the treaty specific guidelines; information on steps taken to address issues raised by the treaty body on the state’s previous report.

<sup>21</sup>United Nations UN Doc HRI/GEN/2/Rev 6, ch 1 par 19.

<sup>22</sup>*Id* pars 25 and 26.

<sup>23</sup>*Id* par 15.

<sup>24</sup>*Id* par 15.

### 2.3 *South Africa's reporting status*

South Africa has ratified the core international human rights treaties mentioned earlier, with the exception of the ICESCR<sup>25</sup> and CRMW. South Africa has submitted its core document to the UN.<sup>26</sup> As regards treaty-specific reports, the status is bleak. In 2012, South Africa's reporting obligation came under the spotlight during its second review under the UPR. The delays in reporting under various treaties were noted in a report by the UN OHCHR.<sup>27</sup> This concern was also raised by a number of stakeholders that made submissions.<sup>28</sup>

Olivier has considered the status of South Africa's reporting in relation to the CRC and its two optional protocols, CERD, CEDAW, CAT, ICCPR, African Charter and African Children's Charter.<sup>29</sup> She has also explained what these treaties are about. Consequently, to avoid repetition, I will not go into an explanation of what the treaties are about where she has already done so. I focus, rather, on the progress made since 2006 in relation to the treaties she considers. Olivier, however, did not consider the CRPD and African Women's Protocol, to which South Africa is a party; and her consideration of the African Charter is somewhat superficial. These are considered in this article. Though, at the time of writing, South Africa had not ratified the ICESCR and the CRMW, it is important to note when its report will be due once it has ratified these treaties. Once South Africa ratifies the ICESCR, it will have to submit its initial report within two years after the Convention's entry into force for South Africa,<sup>30</sup> and thereafter every five years. As regards the CRMW, it will have to submit a report within one year after its entry into force for South Africa,<sup>31</sup> and thereafter, every five years, as well as when the Committee on Migrant Workers requests a report.

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<sup>25</sup>It should be noted that Cabinet has approved South Africa's ratification of the ICESCR. The next step is to table it before Parliament in line with s 231(2) of the South African Constitution. In approving its ratification, Cabinet noted that the ICESCR is a 'key international treaty which seeks to encourage State Parties to address challenges of inequality, unemployment and poverty, which are critical to the strategic goals of governments'. See 'Statement on Cabinet meeting of 10 October 2012' at [http://www.gcis.gov.za/content/newsroom/media\\_releases/cabstatements/111ct2012](http://www.gcis.gov.za/content/newsroom/media_releases/cabstatements/111ct2012).

<sup>26</sup>Dated 4 December 1997. See United Nations 'Core document forming part of the reports of states parties: South Africa' UN Doc HRI/CORE/1/Add 92, 23 September 1998.

<sup>27</sup>See 'Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa' UN Doc A/HRC/WG 6/13/ZAF/2, 23 March 2012.

<sup>28</sup>See 'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa' UN Doc A/HRC/WG 6/13/ZAF/3, 12 March 2012.

<sup>29</sup>Olivier n 2 above at 183-192.

<sup>30</sup>The ICESCR will enter into force three months after the date of the deposit of South Africa's instrument of ratification or instrument of accession (see art 27(2) of the ICESCR).

<sup>31</sup>The CRMW will enter into force on the first day of the month following a period of three months after the date of the deposit of South Africa's instrument of ratification or accession (see art 87(2) of the CRMW).

### 2.3.1 International Covenant on Civil and Political Rights

As per article 49 of the ICCPR, the Covenant entered into force for South Africa three months after the deposited of its instrument of ratification. Following this, as per article 40(1), South Africa had to submit its initial report within a year, and thereafter, submit periodic reports as specified by the Human Rights Committee. Since South Africa ratified the ICCPR on 10 December 1998, its initial report was due on 9 March 2000, its second periodic report on 9 March 2005, and its third periodic report on 9 March 2010.<sup>32</sup> Olivier noted South Africa's failure to comply with its reporting obligation under the ICCPR, having failed to submit any report since its ratification.<sup>33</sup> She also noted the responsible department's indication that the 'matter is currently receiving attention'.<sup>34</sup> But what has been the progress since then?

The report under the ICCPR is among the state reports that the government is currently preparing; in fact, has been preparing for some years now. The Department of Justice and Constitutional Development has been working with the Centre for Human Rights<sup>35</sup> to draft the report (in fact, the latter had to prepare a draft report). At the time of writing, the draft report had been submitted to the department some months back, yet the report has still not been submitted to the relevant treaty body. Parliament has subsequently questioned the Department on reporting under the ICCPR, specifically whether South African has complied with its reporting obligation and if not, the reasons for non-compliance, as well as questions around public participation in the reporting process.<sup>36</sup> The Department responded as follows:

I wish to inform the Honourable Member that, in 2012 our Government made a commitment to deal with the human rights reports backlog. The initial report on the International Covenant on Civil and Political Rights (ICCPR) has been prepared by the Department of Justice and Constitutional Development in consultation with the relevant Government Departments, National Human Rights Institutions and Civil Society Organisations. The report is being revised as recommended by the Cabinet Committee on Justice, Crime Prevention and Security; thereafter it will, as soon as possible, be submitted to Cabinet for approval.<sup>37</sup>

There are, therefore, no clear/specific timeframes relating to when the report will be finalised and submitted to the Human Rights Committee. It should be

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<sup>32</sup>'Reporting history: ICCPR South Africa' available at [http://www.bayefsky.com/pdf/southafrica\\_t3\\_ccpr.pdf](http://www.bayefsky.com/pdf/southafrica_t3_ccpr.pdf).

<sup>33</sup>Olivier n 2 above at 190-191.

<sup>34</sup>*Id* at 190.

<sup>35</sup>The Centre for Human Rights is 'both an academic department and a non governmental organisation' based at the Faculty of Law, University of Pretoria (see <http://www.chr.up.ac.za>).

<sup>36</sup>Parliamentary question 925 available at <http://www.pmg.org.za/node/36639>.

<sup>37</sup>*Ibid*.



noted that South Africa's report would also have to include information on the implementation of any decisions made against it by the Human Rights Committee, where it has not done so within the prescribed 180 days time frame from the date on which the decision was issued.<sup>38</sup>

### 2.3.2 International Convention on the Elimination of All Forms of Racial Discrimination

The CERD entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, as per article 19 of the CERD. South Africa then had to submit, in accordance with article 9(1) of the CERD, its initial report within one year, and thereafter every two years or whenever the CERD Committee so requests. South Africa ratified the CERD on 10 December 1998, meaning that its initial report was due on 9 January 2000, and its second and third periodic reports due on 9 January 2002 and 9 January 2004, respectively.<sup>39</sup> South Africa delayed in meeting this reporting obligation (a delay of approximately five years), but submitted a consolidated report dated 2 December 2004,<sup>40</sup> containing its initial to third periodic reports.<sup>41</sup> Olivier has considered the relevant aspects of the report, the submissions by other stakeholders, and the recommendations made, amongst others.<sup>42</sup> She further noted the CERD Committee's request that South Africa submit its fourth periodic report jointly with its fifth and sixth periodic reports in a single report by 9 January 2010, and that this consolidated report should address all points raised in the concluding observations to the consolidated initial to third report.<sup>43</sup> Sadly though, the fourth to sixth periodic reports are yet to be submitted. As is the case with the ICCPR, the Centre for Human Rights is working with the Department of Justice and Constitutional Development in preparing this report, the draft of which has been submitted to the Department. The CERD Committee had further requested that, in preparing its next periodic report, South Africa consult with CSOs working in the area of combating racial discrimination, and the South African Human Rights Commission (SAHRC). The extent to which this has been done effectively is currently unclear. South Africa was also required to provide the CERD Committee with information on the implementation of its recommendations, within one year (that is, by 16 August 2007). This additional information has unfortunately not been submitted. In 2011, the CERD Committee also requested information on

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<sup>38</sup>For example, South Africa must report on measures to give effect to the Committee's decision in *McCallum v South Africa* Communication 1818/2008, UN Doc CCPR/C/100/D/1818/2008, 2 November 2010.

<sup>39</sup>'Reporting history: CERD South Africa' available at [http://www.bayefsky.com/pdf/southafrica\\_t3\\_cerd.pdf](http://www.bayefsky.com/pdf/southafrica_t3_cerd.pdf).

<sup>40</sup>This is the date the report was received.

<sup>41</sup>Committee on the Elimination of Racial Discrimination 'Initial to third periodic reports of South Africa' UN Doc CERD/C/461/Add 3, 19 May 2005.

<sup>42</sup>Olivier n 2 above at 185-187.

<sup>43</sup>*Id* at 187.

'measures taken or envisaged to combat xenophobic attitudes and to stop ongoing racist violence against non-citizens', among other related issues.<sup>44</sup> South Africa would need to include such information in its report.

### 2.3.3 Convention on the Elimination of All Forms of Discrimination against Women

The CEDAW entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, based on article 27 of the CEDAW. Following this, as per article 18(1) of the CEDAW, South Africa had to report within one year, and thereafter, every four years, as well as when the CEDAW Committee so requests. Ratification occurred on 15 December 1995, implying that South Africa's initial report was due on 14 January 1997, its second, third and fourth periodic reports were due on 14 January 2001, 14 January 2005, and 14 January 2009, respectively.<sup>45</sup>

South Africa failed to meet these reporting time frames, as its initial report<sup>46</sup> was only received on 5 February 1998, following a year's delay. Olivier considers this report in her article, and notes that the second and third reports 'have not yet been submitted'.<sup>47</sup> The question, therefore, is whether there has been any progress since 2006.

There was considerable delay with regard to the submission of the second and third periodic reports, and a comparatively minimal delay in relation to the fourth periodic report. These reports were received on 2 July 2009 in consolidated format.<sup>48</sup> The report was drafted by the Office on the Status of Women (OSW), which is now integrated into the Department of Women, Children and Persons with Disabilities (DWCPD). The OSW contracted an independent consultant to draft this report. The 173-page report acknowledged the importance of the CEDAW reporting process in giving South Africa the opportunity to critically analyse the situation of women in the country. The report outlined progress, achievements and challenges since the initial report, and also briefly touched on the concluding observations of the CEDAW Committee with regard to the initial report. The report seemed to indicate that there had been broader consultation, but without providing further details. The CEDAW Committee thus raised a question in this regard.

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<sup>44</sup>Action letter dated 11 March 2011, Reference: GH/cbr available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ZAF/INT\\_CERD\\_ALE\\_ZAF\\_5542\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ZAF/INT_CERD_ALE_ZAF_5542_E.pdf).

<sup>45</sup>'Reporting history: CEDAW South Africa' available at [http://www.bayefsky.com/pdf/southafrica\\_t3\\_cedaw.pdf](http://www.bayefsky.com/pdf/southafrica_t3_cedaw.pdf).

<sup>46</sup>Committee on the Elimination of Discrimination against Women 'Initial report of South Africa' UN Doc CEDAW/C/ZAF/1, 25 February 1998.

<sup>47</sup>Olivier n 2 above at 187-188.

<sup>48</sup>Committee on the Elimination of Discrimination against Women 'Consolidated second, third and fourth periodic reports of South Africa' UN Doc CEDAW/C/ZAF/2 4, 24 March 2010.

Before its consideration of the report, the Committee issued its list of issues to which South Africa was required to respond. A key issue raised by the CEDAW Committee related to ‘the extent of consultation and participation of non-governmental organizations and whether the report was submitted to Parliament’.<sup>49</sup> It should be noted that an opportunity for parliament to engage in the drafting of state reports presented itself when the OSW presented the state report to the Joint Monitoring Committee on ‘Improvement of Quality of Life and Status of Women’ at a meeting held on 16 May 2008, prior to submission of the report to the CEDAW Committee. However, the Joint Committee did not adequately engage with the report. The consultant responsible for drafting the report briefed the Joint Committee on the preparation of the report. The Joint Committee then made comments on some of the issues. The chairperson of the Joint Committee, for instance, stated that ‘there should be a shift of focus from administrative issues to more practical issues that dealt with women’s interests’.<sup>50</sup> In response to the list of issues, South Africa outlined a comprehensive list of the consultation processes that were held.<sup>51</sup>

In the ‘list of issues’, the CEDAW Committee also requested, among other things, that South Africa:

- Clarifies the status of CEDAW in the national legal system;
- States whether it is considering specific Gender Equality Act containing a definition of discrimination against women in line with article 1 of the CEDAW;
- Provides information on the measures taken to increase visibility of the Optional Protocol to the CEDAW;
- Elaborates on the legal status of the Southern African Development Community (SADC) Protocol on Gender and Development;
- Provides information on the policies to eliminate gender-based violence in the context of schools;
- Explains the measures and programmes that have been initiated to address the identified challenge of increasing women’s access to adequate and efficient health services, especially for girls.<sup>52</sup>

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<sup>49</sup>Committee on the Elimination of Discrimination against Women ‘List of issues and questions with regard to the consideration of periodic reports’ UN Doc CEDAW/C/ZAF/Q/4, 6 August 2010 par 1.

<sup>50</sup>Parliamentary Monitoring Group ‘Convention on the Elimination of Discrimination against Women: Implementation report by Office on Status of Women’ (2009) available at <http://www.pmg.org.za/print/11925>.

<sup>51</sup>Committee on the Elimination of Discrimination against Women ‘Responses to the list of issues and questions with regard to the consideration of the combined second, third and fourth periodic reports: South Africa’ UN Doc CEDAW/C/ZAF/Q/4/Add1, 10 January 2011 pars 9 16.

<sup>52</sup>Committee on the Elimination of Discrimination against Women UN Doc CEDAW/C/ZAF/Q/4 pars 2 5, 19 and 23.

The CEDAW Committee further requested information on certain of the recommendations made in its concluding observations relating to South Africa's initial report. First, the progress made to enact a uniform family code with the aim of abolishing unequal inheritance rights, land rights and polygamy, as recommended in the concluding observations to the initial report; and secondly, the progress made in providing adequate financial and human resources for the national machinery and the Commission on Gender Equality.<sup>53</sup>

The government responded to the above questions.<sup>54</sup> However, one can deduce from the concluding observations of the CEDAW Committee that the government's efforts in relation to the issues raised in the question are inadequate. The CEDAW Committee considered the consolidated report at its forty-eighth session in February 2011. The Committee found that the report was 'well structured and, in general, followed the Committee's guidelines for the preparation of reports, although it lacked references to the Committee's general recommendations, and to some specific sex disaggregated data, and was long overdue'.<sup>55</sup> The Committee found the dialogue with South Africa to be frank and constructive;<sup>56</sup> and noted the participatory process – 'involving Government institutions, Parliament and national civil society organizations, including women organizations' – in which the report was prepared.<sup>57</sup>

While noting various positive aspects<sup>58</sup> that South Africa has taken to promote gender equality and to eliminate discrimination against women in various spheres, the Committee raised a number of concerns, including:<sup>59</sup>

- The lack of awareness of the CEDAW and its Optional Protocol among law enforcement officials; as well as the lack of awareness among women, of their rights, and the procedures by which to claim, them provided for in the CEDAW;
- The weak institutional capacity of the DWCPD as a result of inadequate human, financial and technical resources;
- Persistent 'patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities', which perpetuate subordination within families and society;

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<sup>53</sup>*Id* pars 6 and 7.

<sup>54</sup>See generally, Committee on the Elimination of Discrimination against Women UN Doc CEDAW/C/ZAF/Q/4/Add 1.

<sup>55</sup>Committee on the Elimination of Discrimination against Women 'Concluding observations on the combined second, third and fourth periodic report of South Africa' UN Doc CEDAW/C/ZAF/CO/4, 5 April 2012 par 2.

<sup>56</sup>*Id* par 3.

<sup>57</sup>*Id* par 4.

<sup>58</sup>*Id* pars 5-9.

<sup>59</sup>*Id* pars 10-47.

- Increasing practice of virginity testing of girls, which does not respect their physical and mental integrity, and exposes them to the risk of sexual violence;
- High levels of sexual violence against women and girls, as well as widespread domestic violence, exacerbated by the low levels of prosecution and conviction;
- Absence of information on trafficking in women, despite the fact that South Africa, as acknowledged by the government in its report, is ‘a country of origin, transit and destination of victims of trafficking’;
- The lack of a provision for remunerated maternity leave in domestic law;
- Unacceptable levels of maternal mortality rates and the fact that women and girls are disproportionately affected by HIV and AIDS;
- The continuing disadvantaged position of women in rural and remote areas;
- The need to integrate of gender perspectives into efforts to achieve the Millennium Development Goals.

The Committee requested South Africa to provide written information, within two years (that is, by 28 February 2013) on the steps taken to implement its recommendations.<sup>60</sup> At the time of writing, South Africa was yet to submit this information. South Africa was also requested to ensure wide participation in the preparation of its fifth periodic report, to be submitted in February 2015.<sup>61</sup>

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

In May 2007, the CAT Committee adopted a new optional reporting procedure, through which it will prepare and adopt lists of issues to be transmitted to state parties *prior* to the submission of their respective periodic report.<sup>62</sup> The procedure relates only to periodic reports and states have a choice as to whether they wish to use this procedure. The list of issues is transmitted at least one year in advance of the due date of the report. The reply of the states to the list of issues would then constitute the state’s report under article 19 of the CAT. The adoption of this new procedure was based on the CAT Committee’s belief that it could assist states in preparing focused reports, and that this would strengthen their capacity to fulfil their reporting obligations in a timely and effective manner.<sup>63</sup> This procedure should be distinguished from

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<sup>60</sup>*Id* par 48.

<sup>61</sup>*Id* pars 49-50.

<sup>62</sup>See UN Doc A/62/44 pars 23 and 24; see also Office of the High Commissioner for Human Rights ‘New optional reporting procedure adopted by the Committee against Torture’ available at [http://www2.ohchr.org/english/bodies/cat/reporting\\_procedure.htm](http://www2.ohchr.org/english/bodies/cat/reporting_procedure.htm).

<sup>63</sup>Stated in UN Doc A/62/44 (2007) pars 23, 24 and 27; see also, Office of the High Commissioner for Human Rights, ‘New optional reporting procedure adopted by the Committee

that of other treaty bodies, for instance under CEDAW, where the list of issues is provided after the submission of a state report.

The CAT entered into force for South Africa on the thirtieth day after the date of the deposit of its instrument of ratification, in accordance with article 27 of the CAT. As per article 19(1), South Africa then had to submit a report within one year, and thereafter every four years, on any new measures taken, as well as to submit other reports when the CAT Committee so requests. As South Africa ratified the CAT on 10 December 1998, its initial report was due on 8 January 2000.<sup>64</sup> South Africa failed to comply with this obligation in a timely manner as its initial report was received on 28 June 2005, following several years of delay.<sup>65</sup> Olivier has considered the content of the report in her article<sup>66</sup> but not its consideration by the CAT Committee.

The CAT Committee considered the initial report on 14 November 2006. In its concluding observation,<sup>67</sup> the Committee noted its disappointment at the considerable delay in the submission of the report, that the report further did not fully conform to the guidelines for preparation of initial reports, and that it limited itself mainly to statutory provisions rather than analysing the implementation of the provisions of the CAT.<sup>68</sup> The Committee made a number of recommendations, including requests that, in the next periodic report, South Africa provide, amongst others:

- Detailed information on all cases of extradition, return, or removal that are subject to receipt of assurances or guarantees and that have occurred since the CAT entered into force, what the minimum contents for such assurances or guarantees are, and what measures of subsequent monitoring South Africa has undertaken in such cases;
- Detailed disaggregated statistical data on complaints related to acts of torture, or cruel, inhuman or degrading treatment committed by law enforcement officials, and of the investigations, prosecutions and convictions relating to such acts, including information on the abuses reportedly committed by South African peacekeepers;
- Detailed information on compensation and rehabilitation provided to the victims;
- Detailed information on the bills criminalizing torture, on child justice,

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against Torture' available at [http://www2.ohchr.org/english/bodies/cat/reporting\\_procedure.htm](http://www2.ohchr.org/english/bodies/cat/reporting_procedure.htm).

<sup>64</sup>'Reporting history: CAT South Africa' available at [http://www.bayefsky.com/pdf/south\\_africa\\_t3\\_cat.pdf](http://www.bayefsky.com/pdf/south_africa_t3_cat.pdf).

<sup>65</sup>Committee against Torture 'Initial report of South Africa' UN Doc CAT/C/52/Add 3, 25 August 2005.

<sup>66</sup>Olivier n 2 above at 188-190.

<sup>67</sup>Committee against Torture 'Concluding observations on the initial report of South Africa' UN Doc CAT/C/ZAF/CO/1, 7 December 2006 par 4.

<sup>68</sup>*Id* par 3.

and on any other bills or laws relating to the implementation of the CAT;

- Information on existing training programmes for law enforcement officials and on monitoring mechanisms in mental health and other welfare institutions, and on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.<sup>69</sup>

The CAT Committee requested that South Africa submit, within one year, information on its responses to the recommendations made in paragraphs 15, 16, 21, 27 and 28 of its concluding observations above. The due date for the submission of this information was thus November 2007.<sup>70</sup> The Committee further set a new date for the submission of the periodic report, which was 31 December 2009.<sup>71</sup> The Committee, in terms of its new procedure, has provided a list of issues to which South Africa must respond in its second periodic report.<sup>72</sup> This list of issues contains questions relating to the implementation of articles 1 to 16 of the CAT as well as previous recommendations; and the national human rights situation in the country including new measures and developments that relate to the implementation of the CAT. South Africa is yet to comply. The Centre for Human Rights was also working with the Department of Justice and Constitutional Development in preparing the second periodic report to CAT, the draft of which has been submitted to the Department. It should be noted that when ratifying the CAT, South Africa made a declaration under article 22 recognising the competence of the CAT Committee to receive and consider individual complaints. It, therefore, must also report on the implementation of any decisions made against it under this procedure.

### 2.3.5 Convention on the Rights of the Child and its Optional Protocols

The CRC entered into force for South Africa on the thirtieth day after the deposit of its instrument of ratification, as per article 49(2). Article 44(1) requires South Africa to report within two years, and thereafter, every five years. The CRC Committee may also request further information from states.<sup>73</sup> South Africa ratified the CRC on 16 June 1995, and therefore had to submit its initial report on 15 July 1997.<sup>74</sup> There was a few months delay in the

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<sup>69</sup>*Id* pars 15 and 27-28.

<sup>70</sup>*Id* par 29.

<sup>71</sup>*Id* par 31.

<sup>72</sup>Committee against Torture 'List of issues prior to the submission of the second periodic report of South Africa' UN Doc CAT/C/ZAF/Q/2, 25 February 2009.

<sup>73</sup>Article 44(4) of the CRC.

<sup>74</sup>'Reporting history: CRC - South Africa' available at [http://www.bayefsky.com/pdf/south\\_africa\\_t3\\_crc.pdf](http://www.bayefsky.com/pdf/south_africa_t3_crc.pdf).

submission of this report, which was received on 4 December 1997.<sup>75</sup> Olivier considers this report and notes the delay in the submission of the second report.<sup>76</sup>

South Africa's second periodic report was due on 15 July 2002 and its third periodic report on 15 July 2007.<sup>77</sup> Considering the five-year reporting period, the fourth periodic report was due on 15 July 2012. The DWCPD indicated in 2010 that the draft report under the CRC had been finalised and submitted to cabinet for final approval.<sup>78</sup> Though this draft report was submitted for approval some time back, cabinet only released the report to parliament, and for public comment, in December 2012.<sup>79</sup> The draft report comprises South Africa's combined second, third, and fourth periodic reports. Cabinet stated that in preparing the draft report, countrywide consultation processes were held; and the report will be submitted to the CRC Committee by July 2013.<sup>80</sup> The draft report was subsequently considered and adopted by the parliamentary Portfolio Committee on Women, Children and Persons with Disabilities.<sup>81</sup> The parliamentary committee noted that the report covers the period 1998 to September 2012.<sup>82</sup> As reported to Parliament, the draft report deals with achievements and challenges, focussing on issues such as education, health, disability, family and alternative care, cultural issues, welfare and special measures of protection.<sup>83</sup> Concerns relating to the draft report included omission of information relating to 'unaccompanied foreign children seeking asylum and refugee status', 'grants for children' and the fact that the Child Protection Register was not up to date.<sup>84</sup> At the time of writing, the report is yet to be submitted to the CRC Committee.

With regard to the CRC's optional protocols, South Africa acceded to the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC-OP-SC) on 30 June 2003. The Protocol entered into

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<sup>75</sup>Committee on the Rights of the Child 'Initial report of South Africa' UN Doc CRC/C/51/Add 2, 22 May 1999.

<sup>76</sup>Olivier n 2 above at 183-185.

<sup>77</sup>'Reporting history: CRC South Africa' available at [http://www.bayefsky.com/pdf/south africa t3 crc.pdf](http://www.bayefsky.com/pdf/south%20africa%20t3%20crc.pdf).

<sup>78</sup>Based on discussion in 2010 with an official from the department.

<sup>79</sup>South African Government Information Service 'Cabinet releases periodic report on children to Parliament and the public for comment' 7 December 2012 available at [http://www.info.gov .za/speech/DynamicAction?pageid=461&sid=33139&tid=93949](http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=33139&tid=93949).

<sup>80</sup>*Ibid.*

<sup>81</sup>Parliamentary Monitoring Group, Committee Report on South Africa's Second, Third, and Fourth Periodic State Party Report to the United Nations Committee on the Rights of the Child: Adoption, available at [http://www.pmg.org.za/report/20130314\\_committee\\_report\\_south\\_africas second third and fourth periodic state](http://www.pmg.org.za/report/20130314_committee_report_south_africas_second_third_and_fourth_periodic_state).

<sup>82</sup>*Ibid.*

<sup>83</sup>*Ibid.*

<sup>84</sup>*Ibid.*



force for South Africa one month after the date of the deposit of its instrument of ratification, as per article 14(2). Following this, South Africa was obliged, under article 12(1) of the CRC-OP-SC, to submit, within two years, a report to the CRC Committee providing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, it is required under article 12(2) to include in its reports under the CRC, any further information with respect to the implementation of the Protocol. Since it acceded to the Protocol on 30 June 2003, South Africa's initial report was due on 30 July 2005.<sup>85</sup> It is yet to submit this report. It was reported to parliament in 2012, that while some departments have provided the information needed to compile the report other departments have not; hence the delay in reporting.<sup>86</sup> On the Optional Protocol to the CRC on the involvement of children in armed conflict (CRC-OP-CA), as per article 10(2) of the Protocol, it entered into force for South Africa one month after the date of the deposit of its instrument of ratification. Under article 8(1), South Africa then had to report, within two years, providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment. Thereafter, article 8(1) requires it to include in its reports under the CRC, any further information with respect to the implementation of the Protocol. As it ratified the Protocol on 24 September 2009, South Africa's initial report under the CRC-OP-CA was due on 24 October 2011.<sup>87</sup> It is also yet to submit this report. It is indicated in the draft combined second, third and fourth periodic report to the CRC Committee, that the reports under the protocols are still being prepared.

### 2.3.6 Convention on the Rights of Persons with Disabilities

The CRPD deals with the rights of persons with disabilities and the corresponding obligations on state parties.<sup>88</sup> The CRPD entered into force for South Africa, as per article 45(2), on the thirtieth day after the deposit of its instrument of ratification. Thereafter, South Africa had to submit its initial report within two years, as per article 35(1)); and thereafter submit periodic reports every four years and also whenever the CRPD Committee so requests, as per article 35(2). Since South Africa ratified the CRPD on 30 November

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<sup>85</sup> 'Reporting history: Optional Protocol (Sale of Children/Prostitution/Pornography): South Africa' available at [http://www.bayefsky.com/pdf/southafrica\\_t3\\_crc\\_sc.pdf](http://www.bayefsky.com/pdf/southafrica_t3_crc_sc.pdf).

<sup>86</sup> Parliamentary Monitoring Group 'Country Reports for Conventions on Rights of Child and Rights of People with Disabilities: Deputy Minister update' 30 May 2012 available at [http://www.pmg.org.za/report/20120530\\_dwcpd\\_united\\_nations\\_country\\_report\\_convection\\_rights\\_child\\_2nd\\_and\\_3](http://www.pmg.org.za/report/20120530_dwcpd_united_nations_country_report_convection_rights_child_2nd_and_3).

<sup>87</sup> 'Reporting history: Optional Protocol (Armed conflict): South Africa'.available at [http://www.bayefsky.com/pdf/southafrica\\_t3\\_crc\\_ac.pdf](http://www.bayefsky.com/pdf/southafrica_t3_crc_ac.pdf).

<sup>88</sup> I begin by explaining what this treaty deals with as the treaty is not considered in Olivier n 2 above.

2007, its initial report was due on 3 May 2010.<sup>89</sup> This report has not yet been submitted. In August 2012, government indicated to parliament that the process of compiling the report is slow as a result of limited resources (ie '[t]here were only two people in the Department to do the work of compiling the report, and no resources to employ additional people'), and lack of or slow response to requests to submit information, among other challenges.<sup>90</sup>

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

The African Charter is the main human rights treaty at the African regional level. It guarantees civil, political, economic, social and cultural rights. The African Women's Protocol guarantees women's rights, including rights not recognised in the African Charter – such as reproductive health rights. The African Commission is responsible for overseeing the implementation of both treaties.

Unlike with the UN treaties considered above, reporting to the African Commission is guided by 'a confusing array of guidelines'.<sup>91</sup> In 1989, the African Commission made a first attempt to provide guidelines for national periodic reports.<sup>92</sup> The guidelines suggest that states begin with an initial general report, to be followed by detailed periodic reports. Though elaborate, the 1989 Guidelines have been criticised as very lengthy, complicated and not readily accessible, making compliance with the reporting obligation impossible.<sup>93</sup> This has resulted in the development of simplified guidelines, which have, however, not been formally adopted by the African Commission although they have been considered by states when reporting.<sup>94</sup> They are an improvement on the 1989 Guidelines. Recently, the Working Group on Economic, Social and Cultural Rights in Africa established by the African Commission, drafted guidelines on reporting in relation to economic, social and cultural rights, which set out the information to be provided under specific

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<sup>89</sup>'Reporting history: CRPD South Africa' available at [http://www.bayefsky.com/pdf/south\\_africa\\_t3\\_crp.pdf](http://www.bayefsky.com/pdf/south_africa_t3_crp.pdf).

<sup>90</sup>Parliamentary Monitoring Group 'UN Convention on Rights of People with Disabilities Country Report and Fifth Conference: Deputy Minister briefing' 1 August 2012 available at [http://www.pmg.org.za/report/20120801\\_department\\_women\\_children\\_and\\_people\\_disabilities\\_preparation\\_pertain](http://www.pmg.org.za/report/20120801_department_women_children_and_people_disabilities_preparation_pertain).

<sup>91</sup>Viljoen *International human rights law in Africa* (2007) at 371.

<sup>92</sup>African Commission on Human and Peoples' Rights 'Guidelines for national periodic reports under the African Charter, 1989' (1989 Guidelines) available at [http://www.chr.up.ac.za/images/files/documents/ahrdd/theme02/african\\_commission\\_resolution\\_13.pdf](http://www.chr.up.ac.za/images/files/documents/ahrdd/theme02/african_commission_resolution_13.pdf).

<sup>93</sup>Viljoen n 91 above at 371 372.

<sup>94</sup>'Simplified guidelines for state reporting under article 62 of the African Charter on Human and Peoples' Rights' considered in Viljoen 'State reporting under the African Charter on Human and Peoples' Rights: A boost from the South' (2000) 44/1 *Journal of African Law* at 110 118.

economic, social and cultural rights. The guidelines are to be used in conjunction with the 1989 Guidelines.

As per article 65 of the African Charter, the Charter entered into force for South Africa three months after the country deposited its instrument of ratification. South Africa then, as per article 62 of the African Charter, had to submit a report every two years. As South Africa ratified the Charter on 9 July 1996, its initial report was due on 9 October 1998. Its subsequent periodic reports were due on 9 October 2000, 9 October 2002, 9 October 2004, 9 October 2006, 9 October 2008, and 9 October 2010. The next periodic report after these is due on 9 October 2012.

South Africa complied with the reporting obligation in relation to the initial report – a 160-page document in which the actual report runs to 146 pages – which it submitted in October 1998.<sup>95</sup> In preparing the initial report, South Africa drew on its previous reports submitted to the CRC Committee and the CEDAW Committee.<sup>96</sup> The then Department of Justice coordinated the preparation of the report, together with the South African Human Rights Commission. Information was sourced from both government departments and NGOs. The report follows the requirements for reporting in the simplified guidelines: chapter 1 deals with the history of South Africa, chapter 2 is on its legal system, chapter 3 on general measures of protection, chapter 4 on measures taken to promote and ensure respect for human rights through teaching and education, chapter 5 explains how South Africa uses the African Charter in its relations with other states, and chapter 6 provides the conclusion to the report.

The report was scheduled to be discussed in October 1998 but no South African representative was present. Consequently, the report was only considered by the African Commission in May 1999. The factors that limited the report, as pointed out by the South African representative, were that the report largely depicted the national and not the provincial picture, and that data was unavailable and unreliable.<sup>97</sup> The African Commission posed a number of questions to South Africa, one of which related to the process of drafting the report – it wished to know how inclusive the drafting process had been. When the initial report was submitted, the African Commission had not adopted the practice of issuing concluding observations. Hence, there are no observations

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<sup>95</sup> African Charter on Human and Peoples' Rights 'Initial country report: South Africa' available at [http://www.achpr.org/files/sessions/25th/state reports/1st 1996 1998/staterep1 southafrica 1998 eng.pdf](http://www.achpr.org/files/sessions/25th/state%20reports/1st%201996%201998/staterep1_southafrica_1998_eng.pdf). State reports can be accessed at African Commission on Human and Peoples' Rights 'State reports and concluding observations' available at [http://www.achpr.org/states /reports and concluding observations](http://www.achpr.org/states/reports%20and%20concluding%20observations).

<sup>96</sup> Viljoen n 94 above at 114.

<sup>97</sup> *Id* at 114 115.

regarding the responses of the government to the questions posed.<sup>98</sup> The African Commission also does not adopt a ‘list of issues’, but poses questions to the reporting state that it can answer during the dialogue, or to which it can submit written responses after the dialogue process.

It was hoped that the initial report marked an emerging trend in taking reporting obligations seriously. That was unfortunately not the case, as South Africa’s next report was only submitted on 14 May 2005 and included the third and fourth periodic reports. The 136-page report aimed to provide basic information on the country, depict developments and difficulties since the presentation of the initial report, and identify areas for further action.<sup>99</sup> The report was divided into seven parts: the introduction (part I); the history of the country (part II); the legal system (part III); general measures of implementation (part IV); measures taken to promote and ensure the respect for rights through teaching, education and publication (part V); how South Africa uses the African Charter in its relation with other states (part VI); and the conclusion (part VII).

The African Commission considered the report in December 2005. It expressed its satisfaction with the high-ranking delegation, stating that it would allow for a fuller assessment of South Africa’s compliance with its obligations under the African Charter.<sup>100</sup> The Commission voiced its concern at the fact that ‘the report was submitted almost four years after it was prepared making most of the information and statistics it contained outdated during the time of examination of the report.’<sup>101</sup> Other concerns raised included:

- The provision of a general description of the provisions of the African Charter and the legislation or policies in place, without indicating how they have contributed in enhancing rights;
- The lack of detail on the measures taken by South Africa to eradicate the phenomenon of xenophobia directed towards African migrants in particular;
- The high incidence of sexual violence against women and children.<sup>102</sup>

South Africa undertook to submit additional information and updated statistics

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<sup>98</sup>*Id* at 116.

<sup>99</sup>‘Republic of South Africa: First Periodic Report on the African Charter on Human and Peoples’ Rights: 2001’ available at [http://www.achpr.org/files/sessions/38th/state reports/1st 1994 2001/staterep1 southafrica 2001 eng.pdf](http://www.achpr.org/files/sessions/38th/state%20reports/1st%201994%202001/staterep1_southafrica_2001_eng.pdf).

<sup>100</sup>African Commission on Human and Peoples’ Rights ‘Concluding observations and recommendations on the first periodic report of the Republic of South Africa (2005)’ pars 4 and 5 available at [http://www.chr.up.ac.za/images/files/documents/ahrdd/southafrica/southafrica concluding observations periodic report 2005.pdf](http://www.chr.up.ac.za/images/files/documents/ahrdd/southafrica/southafrica_concluding_observations_periodic_report_2005.pdf).

<sup>101</sup>*Id* par 16.

<sup>102</sup>*Id* pars 18 20.

on issues on which the African Commission sought further clarification, which included family matters, HIV and AIDS, sexual offences, and child justice, among others.<sup>103</sup> Recommendations made by the African Commission included directions that South Africa should:

- Intensify efforts to interact more with members of its CSOs;
- Make the declaration under article 34(6) of the Protocol to the African Charter on the establishment of the African Court on Human and Peoples' Rights;
- Consider lifting the reservation entered on article 6(d) of the African Women's Protocol;
- Take appropriate steps to present its next periodic report in conformity with article 62 of the African Charter.<sup>104</sup>

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

### 2.3.8 African Charter on the Rights and Welfare of the Child

The African Children's Charter guarantees the rights and freedoms of children. South Africa ratified it after it came into force; and as per article 43, had to report within two years and thereafter every three years. South Africa's initial report was due on 7 January 2002.<sup>105</sup> South Africa has failed to meet this reporting obligation. The report to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is yet to be submitted, but will mainly contain information from South Africa's report to the CRC Committee, which is permitted by the ACERWC.<sup>106</sup>

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<sup>103</sup>*Id* par 22.

<sup>104</sup>*Id* pars 28, 30 31.

<sup>105</sup>See African Committee on the Rights and Welfare of the Child 'Dates for submission of initial reports on the implementation of the African Charter on the Rights and Welfare of the Child' available at <http://www.africa union.org/child/Due%20date%20of%20Submission%20of%20Reports.pdf>.

<sup>106</sup>See Parliamentary Monitoring Group 'Country Reports for Conventions on Rights of Child and Rights of People with Disabilities: Deputy Minister update' 30 May 2012 where the government confirms that the report will be 'the consolidated second, third, and fourth CRC

### 3 Reporting under the Universal Periodic Review Mechanism

#### 3.1 The UPR process

In resolution 60/251 adopted on 15 March 2006, the UN General Assembly decided that the UN Human Rights Council (HRC) would ‘[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States’.<sup>107</sup> As with state reporting under human rights treaties, this process is intended to be cooperative and based on interactive dialogue.<sup>108</sup> The mechanism is also intended to complement the work of treaty bodies.<sup>109</sup> The UPR applies universally and uniformly, as its creation was based on criticism that all regions were not given equal attention under previous UN mechanisms.<sup>110</sup>

The basis of the review, the objectives, periodicity, process and modalities were elaborated on by the HRC in resolution 5/1.<sup>111</sup> The basis of the review is the UN Charter, 1945, the Universal Declaration on Human Rights, 1948 (UDHR), human rights treaties that have been ratified by the state under review, and voluntary pledges and commitments made by that state, including those that it made when presenting their candidature for election to the HRC.<sup>112</sup> The objectives of the UPR include:

- Improving the human rights situation on the ground;
- Pushing states to fulfil their human rights obligations and commitments, and assessing the positive developments and challenges they face;
- Enhancing the capacity of states, including technical assistance to states, in consultation with them and with their consent;
- Sharing best practice among states and stakeholders;
- Supporting cooperation in the promotion and protection of human rights; and
- Encouraging full cooperation and engagement with the HRC, other human rights bodies and the OHCHR.<sup>113</sup>

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reports for the first Country Report’ on the African Children’s Charter.

<sup>107</sup>Resolution 60/251 Human Rights Council, adopted by the General Assembly UN Doc A/RES/60/251, 3 April 2006 par 5(e).

<sup>108</sup>*Ibid.*

<sup>109</sup>*Ibid.*

<sup>110</sup>Urban Justice Centre *A practical guide to the United Nations’ Universal Periodic Review (UPR)* (2010) at 5 available at <http://www.hrpujc.org/documents/UPRtoolkit.pdf>.

<sup>111</sup>See resolution 5/1 Institution building of the United Nations Human Rights Council adopted by the Human Rights Council 18 June 2007.

<sup>112</sup>*Id* par 1.

<sup>113</sup>*Id* par 4.

Addressing inequalities and all forms of discrimination, is also a key goal of the UPR. As with reporting under treaties, the UPR sets time lines for the review. States are currently reviewed every four years.<sup>114</sup> States must prepare and submit information in the form of a national report which should not exceed twenty pages. The government report for the UPR is generally due three to four months before the review.<sup>115</sup> States are further encouraged to prepare their reports through a broad consultation process at the national level with all relevant stakeholders.<sup>116</sup> Other reports taken into consideration during the review process are: a report compiled by the OHCHR drawing from reports of treaty bodies, special procedures and other UN documents, and a report containing ‘credible and reliable’ information from other relevant stakeholders. Both should be ten-page reports.<sup>117</sup>

The HRC has adopted guidelines for the preparation of information under the UPR.<sup>118</sup> All reports should include information on:

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

The first UN member states reviewed were chosen by the drawing of lots from each regional group, with full respect for equitable geographic distribution. In deciding on whom to review first among the selected countries, an alphabetical order is applied.<sup>119</sup> Following the review, the HRC issues an ‘outcome report’ which summarises the proceedings and contains conclusions and recommendations, and the voluntary commitments of the state.<sup>120</sup> A state would then have to report at the next review on the implementation of the recommendations and pledges and on the human rights situation in the country since the previous review.

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<sup>114</sup>*Id* par 14.

<sup>115</sup>Urban Justice Centre (2010) at 9.

<sup>116</sup>Resolution 5/1 par 15.

<sup>117</sup>*Id* par 15.

<sup>118</sup>Human Rights Council Decision 6/102: Follow up to Human Rights Council resolution 5/1 27 September 2007 available at [http://ap.ohchr.org/documents/E/HRC/decisions/A\\_HRC\\_DEC\\_6\\_102.pdf](http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf).

<sup>119</sup>Resolution 5/1 par 12.

<sup>120</sup>*Id* par 26.

### 3.2 *Review of South Africa*

South Africa was one of the first countries to be reviewed under the UPR. South Africa was reviewed on 15 April 2008. South Africa, however, did not seem to have taken its obligation seriously as it did not submit a report in advance. This has been criticised by many, including the SAHRC, which has expressed its disappointment at the fact that South Africa did not submit a report before appearing for the interactive dialogue.<sup>121</sup> The seventeen-page state report was submitted during the interactive dialogue; and sadly, does not follow the guidelines (for example, the report does not include information on consultation processes in the preparation of the report). In fact, South Africa failed to consult civil society as required. This notwithstanding, a range of stakeholders made written submissions to the HRC, which were compiled in a fourteen-page document, highlighting various issues relating to the protection and promotion of human rights in the country.<sup>122</sup> The state report included a background section which highlighted, among other things, the treaties that South Africa has ratified and those which it is in the process of ratifying. Another section of the report was devoted to the practical enjoyment of rights.<sup>123</sup> The documents considered included a compilation report from the OHCHR.<sup>124</sup> This compilation included a section on South Africa's cooperation with treaty bodies, which showed that South Africa has not complied with its reporting obligations, as many reports remain overdue.<sup>125</sup>

Before the review of South Africa, as is the practice of most treaty bodies, a list of questions was prepared by Ireland, Germany, Portugal, Canada, Denmark, the United Kingdom of Great Britain and Northern Ireland, Finland and Sweden, and transmitted to South Africa.<sup>126</sup> Following the review on 15 April 2008, the UPR Working Group adopted its outcome report on 18 April 2008. The report included a summary of the proceedings of the review

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<sup>121</sup>See Parliamentary Monitoring Group 'Strategic planning workshop: Human Rights Commission, Commission on Gender Equality, Child Rights Institute, Human Sciences Research Council, University of Stellenbosch, Disability Alliance presentations (2009) available at [http://www.pmg.org.za/report/20090812\\_women\\_youth\\_children\\_and\\_people\\_disabilities\\_portfolio\\_committee\\_strat](http://www.pmg.org.za/report/20090812_women_youth_children_and_people_disabilities_portfolio_committee_strat).

<sup>122</sup>See Human Rights Council 'Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with par 15 (c) of the annex to Human Rights Council resolution 5/1' UN Doc A/HRC/WG.6/1/ZAF/3, 11 March 2008.

<sup>123</sup>'South Africa's country report to the Human Rights Council's Universal Periodic Review Mechanism: 15 April 2008' available at [http://www.upr.info.org/IMG/pdf/South\\_Africa\\_State\\_report\\_Off\\_E\\_2008.pdf](http://www.upr.info.org/IMG/pdf/South_Africa_State_report_Off_E_2008.pdf).

<sup>124</sup>Human Rights Council 'Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with par 15(b) of the annex to Human Rights Council resolution 5/1' UN Doc A/HRC/WG.6/1/ZAF/2, 11 April 2008.

<sup>125</sup>*Id* part II.

<sup>126</sup>See Human Rights Council 'Report of the Working Group on the Universal Periodic Review: South Africa' UN Doc A/HRC/8/32, 23 May 2008 par 4. The questions are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZAQuestions.aspx> (accessed 06/06/2012).



process. Some of the statements made by other states related to South Africa's non-compliance with its reporting obligation.<sup>127</sup>

South Africa's response was that 'there was no political obstacle to the preparation of reports, but rather that it consumed a considerable effort, and South Africa was seeking ways to optimize the preparation of such reports'.<sup>128</sup> South Africa further committed to submit its overdue report to the CERD Committee.<sup>129</sup> The UPR Working Group made a number of recommendations, some of which also related to South Africa's reporting obligation. The Working Group recommended, among other things, that South Africa should follow up on the recommendation made by the CAT Committee to adopt all necessary measures to prevent, combat and punish violence against women and children, and to follow up on the recommendations of the CERD Committee.<sup>130</sup> The HRC adopted the report of the Working Group on 11 June 2008.<sup>131</sup>

South Africa underwent its second review on 31 May 2012. This time, however, South Africa submitted a state report, providing information on developments since the first review (including efforts at implementing recommendations from that review), South Africa's human rights framework and achievements, challenges and constraints, and expectations of technical assistance.<sup>132</sup> It also stated that the '[r]eport is a culmination of an extensive national consultation process across government'.<sup>133</sup> One could read this as implying that non-governmental stakeholders were not consulted. Submissions by various stakeholders were compiled in a fifteen-page report by the OHCHR.<sup>134</sup> Also worthy of note in the state report, is the reference to three clusters of government – Social Sector Cluster; Justice, Crime Prevention and Security Cluster; and International Cooperation, Trade and Security Cluster – that have committed to place South Africa's compliance with international obligations, including treaty reporting obligations, on their agenda and work programmes.<sup>135</sup> Prior to the review, lists of questions to which South Africa was expected to respond, were prepared by Czech Republic, Denmark,

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<sup>127</sup>See, for instance, the statement of New Zealand in Human Rights Council UN Doc A/HRC/8/32 par 38.

<sup>128</sup>*Id* par 49.

<sup>129</sup>*Id* par 57.

<sup>130</sup>*Id* par 67.

<sup>131</sup>Human Rights Council Decision 8/114. Outcome of the universal periodic review: South Africa 11 June 2008 available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/zasession1.aspx> (accessed 14 September 2010).

<sup>132</sup>Human Rights Council 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: South Africa' UN Doc A/HRC/WG 6/13/ZAF/1, 7 March 2012.

<sup>133</sup>*Id* par 1.

<sup>134</sup>See Human Rights Council UN Doc A/HRC/WG 6/13/ZAF/3.

<sup>135</sup>Human Rights Council UN Doc A/HRC/WG 6/13/ZAF/1 par 44.

Iceland, Netherlands, Norway, Slovenia, Sweden and United Kingdom.<sup>136</sup> The questions related to, amongst others, the systematic prevalence of sexual violence among women and girls, criminalisation of torture, persistent violence against individuals based on their sexual orientation, meeting the concerns of civil society regarding the Protection of State Information Bill, freedom of expression, and the implementation of socio-economic rights. The compilation report from the OHCHR again highlighted non-compliance with reporting obligation under various treaties.<sup>137</sup> In response to questions submitted in advance, as well as to those posed during the interactive dialogue, South Africa indicated that ‘a work plan is being developed to address not only reporting to human rights bodies and mechanisms but also ratification of human rights instruments’.<sup>138</sup> Cabinet’s recent approval of the ratification of the ICESCR is thus in line with the latter commitment.

The UPR Working Group produced a draft report on 4 June 2012<sup>139</sup> and a final report dated 9 July 2012.<sup>140</sup> The report summarises the proceedings and South Africa’s responses during the interactive dialogue. The report contains an extensive list of recommendations (151 in total) made by various states,<sup>141</sup> requiring South Africa to, amongst others:

- Ratify outstanding human rights treaties such as the ICESCR;
- Adopt legislation that would facilitate the holding of registered South African companies for violations of labour and human rights that occur outside South Africa’s borders;
- Review the judiciary to ensure its compatibility with world practice;
- Establish an independent monitoring mechanism in line with CRPD;
- Take measures to address xenophobia, domestic and sexual violence;
- Fast track the adoption of law to combat trafficking;
- Promote freedom of expression;
- Protect freedom of the press by rescinding the Protection of Information Bill.

South Africa was required to examine the recommendations and respond to them by September 2012.<sup>142</sup> The UPR process expects states to indicate the recommendations that are acceptable, not acceptable, or rejected. South Africa,

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<sup>136</sup>The lists of questions are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession13.aspx>.

<sup>137</sup>See Human Rights Council UN Doc A/HRC/WG 6/13/ZAF/2 part II.

<sup>138</sup>Human Rights Council ‘Report of the Working Group on the Universal Periodic Review: South Africa’ UN Doc A/HRC/21/16, 9 July 2012 par 121.

<sup>139</sup>Human Rights Council ‘Draft report of the working group on the universal periodic review: South Africa’ UN Doc A/HRC/WG 6/13/L 14, 4 June 2012.

<sup>140</sup>Human Rights Council UN Doc A/HRC/21/16.

<sup>141</sup>*Id* at par 124.

<sup>142</sup>*Ibid*.

accordingly, accepted some of the recommendations; but did not accept others, including those relating to legislative processes before parliament.<sup>143</sup> South Africa also indicated that in September, a National Development Plan 2030 was adopted, after a process of ‘extensive research, consultation and dialogue’; and the Plan is aimed at the elimination of poverty and reduction of inequality by 2030.<sup>144</sup> South Africa committed itself to ‘issuing periodic reports on the status of implementation of the recommendations as required’.<sup>145</sup> The Human Rights Council adopted the outcome report on the review of South Africa on 21 September 2012.<sup>146</sup> During the consideration of the report by the Council, the SAHRC welcomed, amongst others, the recommendations relating to the ratification of outstanding international treaties and the domestication of the CAT.<sup>147</sup> In its concluding remark, South Africa, recognised the UPR process and most of the recommendations made as ‘constructive and helpful in consolidating South Africa’s future efforts towards the achievement of its national Constitutional vision, namely social cohesion predicated on respect for human dignity and fundamental human rights and freedoms’. It further pledged to ‘ensure the respect, promotion and fulfilment of all human rights’ and ‘to work in a collaborative and inclusive’ way to achieve their realisation and report periodically on this.<sup>148</sup>

#### **4 Reporting under the African Peer Review Mechanism**

Olivier has considered the APRM, its mandate, the types of review, and South Africa’s report under its initial review.<sup>149</sup> I therefore focus here on the consideration of that report and South Africa’s second review. At the outset, it is important to emphasise two points. First, the APRM process deals with a range of governance activities of which human rights is but one component. Second, as regards the time frames for review: the first country review, which is referred to as the ‘base review’ is done within eighteen months of a country becoming a member of the APRM. The periodic reviews are then undertaken every two to four years. Furthermore, states can request that they be reviewed, or where there are early signs of imminent political or economic crisis in a

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<sup>143</sup>See Human Rights Council ‘Report of the working group on the universal periodic review: South Africa Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the state under review’ UN Doc A/HRC/21/16/Add 1 18 September 2013 pars 2 and 6; and Human Rights Council ‘Report of the Human Rights Council on its twenty first session’ UN Doc A/HRC/21/2 22 November 2012 pars 769 780. As at 24 September 2012, South Africa had accepted 120 of the recommendations and rejected 14 see ‘Recommendations and pledges: South Africa’ at [http://www.upr-info.org/IMG/pdf/recommendations\\_to\\_south\\_africa\\_2012.pdf](http://www.upr-info.org/IMG/pdf/recommendations_to_south_africa_2012.pdf).

<sup>144</sup>Human Rights Council UN Doc A/HRC/21/2 par 772.

<sup>145</sup>*Id* at par 775.

<sup>146</sup>*Id* at par 767.

<sup>147</sup>*Id* at par 796.

<sup>148</sup>*Id* at par 806.

<sup>149</sup>Olivier n 2 above at 181 182 and 192 193.

country, a review could also be instituted.<sup>150</sup>

The first review of South Africa under the APRM process commenced in 2005 and was completed in 2006. In addition to Olivier, this first review process has been dealt with extensively in several writings that have also identified the milestones of the review process.<sup>151</sup> Thus, I focus here on the Country Review Report that was produced following the review. Post-Olivier's article, the 404-page Country Review Report was released in 2007. The report deals with the achievements, the status of governance, best practices or lessons to be learnt, and areas of deficiency.<sup>152</sup> The strengths of South Africa identified in the report included the existence of a political environment that is conducive to political debate, dialogue and contestation, and a good framework for the protection of human rights.<sup>153</sup> The key challenges included problems in the translation of democratic ideals into practice, and the pervasive and costly legacy and distortions of apartheid, particularly in relation to discrimination in the provision of education.<sup>154</sup> The report also noted that South Africa needs transformation of both the economic base and social structure of society, which would create an environment in which the majority of people can participate fully in development. A number of recommendations were made to South Africa, including the need for South Africa to:

- Strengthen and enhance social dialogue and participation of people in the socio-economic development process;
- Enhance partnerships between government and other development stakeholders;
- Establish regular monitoring and reporting mechanisms within the country.<sup>155</sup>

South Africa was not receptive to the report; it dismissed the findings and recommendations.<sup>156</sup> Notwithstanding this, South Africa has presented two implementation progress reports. Its first implementation progress report was presented on 4 February 2009, close on two years after the Country Review Report. The 67-page report, covering the period November 2007 to December 2008, has been criticised for its failure adequately to discuss and analyse

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<sup>150</sup>See New Partnership for Africa's Development 'The African Peer Review Mechanism (2003)' at 4 available at <http://www.dfa.gov.za/au.nepad/nepad49.pdf>.

<sup>151</sup>See, eg, Herbert and Gruzd *The African Peer Review Mechanism: Lessons from the pioneers* (2008) at 255 311; and Mbelle *The APRM process in South Africa* (2010).

<sup>152</sup>African Peer Review Mechanism 'South Africa: Country Review Report (2007)' available at <http://www.aprm.org.za/docs/SACountryReviewReport5.pdf>.

<sup>153</sup>*Id* at 29 30.

<sup>154</sup>*Id* at 30 31.

<sup>155</sup>*Id* at 271.

<sup>156</sup>Boyle 'South Africa rejects African Peer Review Mechanism report (2007)' available at <http://www.africafiles.org/article.asp?ID 15042>.

progress on commitments made in South Africa's APRM National Plan of Action (NPA); thus failing to provide evidence of South Africa's compliance with the NPA.<sup>157</sup> The report, for example, highlights the need for more opportunities for community and public engagement in the provision of services, but does not indicate whether the government has created additional opportunities in this regard.<sup>158</sup> Despite the existence of cases of non-compliance with human rights, the report notes that human rights are enjoyed by all.<sup>159</sup> Furthermore, the report is silent on South Africa's ratification of key international treaties.<sup>160</sup>

South Africa's second implementation report covering the period January 2009 to November 2010 was submitted in 2011.<sup>161</sup> The report addressed issues around gender equality, corruption, unemployment, service delivery, poverty alleviation, the approach to HIV and AIDS, crime, xenophobia, racism, and violence against women. Despite incessant service delivery protests in the country, South Africa reported that it 'has made progress in accelerating access to basic services for the poor and remains committed to addressing service delivery challenges that persist'.<sup>162</sup> Though the report states that 'forums and mechanisms for social dialogue have been established and strengthened',<sup>163</sup> it is questionable whether the participation has in fact been meaningful. It is evident from the report that poverty, unemployment, and inequality continue to be huge challenges.<sup>164</sup> While highlighting a sub-regional protocol and anti-corruption instruments that South Africa has ratified during the reporting period,<sup>165</sup> the report is silent on processes towards ratifying other outstanding key treaties.

South Africa indicated in its second report that it will submit its third implementation report in 2013 and 'will assess at that time if the country is ready for the 2nd peer review'.<sup>166</sup> At the time of writing, the third report had not been produced.

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<sup>157</sup>Turianskyi 'Off track? Findings from South Africa's first APRM implementation report' South African Institute of International Affairs Occasional Paper 53 (2010) at 5 and 7 available at [http://www.saiaa.org.za/images/stories/pubs/occasional\\_papers/saia\\_sop\\_53\\_turianskyi\\_2010\\_0125.pdf](http://www.saiaa.org.za/images/stories/pubs/occasional_papers/saia_sop_53_turianskyi_2010_0125.pdf).

<sup>158</sup>*Id* at 8-9.

<sup>159</sup>*Id* at 9-10.

<sup>160</sup>*Id* at 12.

<sup>161</sup>African Peer Review Mechanism 'Second report on the implementation of South Africa's APRM Programme of Action' available at [http://aprm.africa/sites/default/files/npoa\\_south\\_africa\\_eng2010\\_0.pdf](http://aprm.africa/sites/default/files/npoa_south_africa_eng2010_0.pdf).

<sup>162</sup>*Id* at 17 and 34.

<sup>163</sup>*Id* at 23-24.

<sup>164</sup>*Id* at 18, 31 and 43.

<sup>165</sup>*Id* at 25, 26.

<sup>166</sup>*Id* at 15.

## 6 Conclusion

This article has considered the extent to which South Africa has complied with its reporting obligations to human rights bodies and mechanisms. Generally, there has been little or no improvement, instead of making significant strides in meeting its reporting obligations and addressing the reporting backlog it currently faces. It would seem that the government approaches state reporting as a mere formality, and not as a self-critical assessment of its efforts to realise the rights in the treaties it has ratified or to meet the commitments it has made. In relation to human rights treaties, with the exception of the CEDAW, reports under other treaties are overdue. Furthermore, effective civil society involvement in the reporting process is lagging behind. The limited role that parliament has thus far played in the reporting process, as well as the delays in tabling draft reports before the relevant parliamentary committee, are also issues for concern. While parliament has been more visible in relation to the APRM and CEDAW reporting (noting the recent efforts in relation to the CRC), the same cannot be said for reporting under the UPR or other human rights treaties.

It must be acknowledged that state reporting has no doubt placed a burden on the South African government. However, the reporting process should not be seen as a burden imposed on South Africa as it willingly ratified treaties or acceded to these mechanisms. Though the reporting process requires resources, data, and technical expertise, and can be time consuming, investment in resources to produce a quality report that is part of a continuing process of realising rights can assist in government's accountability to its citizens and its international accountability on human rights issues. Moreover, some UN bodies and agencies are able to provide expert and technical assistance to states, upon request, on the preparation of reports or on addressing specific issues in their state reports. The Joint United Nations Programme on HIV/AIDS, for instance, has committed to assisting states in addressing HIV and AIDS issues in their reports.<sup>167</sup> States can also seek technical assistance from the OHCHR in collaboration with the Division for the Advancement of Women, and from other relevant UN agencies in the preparation of their reports. Civil society organisations are also able to assist with the reporting processes, including in providing necessary information to be included in the reports. The government needs to make best use of the SAHRC, as it is well placed, taking its mandate into consideration, to assist the government in collecting the necessary information.

State reporting is an important strategy to ensure compliance with international

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<sup>167</sup>Joint United Nations Programme on HIV/AIDS and Inter Parliamentary Union *Handbook for legislators on HIV/AIDS, law and human rights: Action to combat HIV/AIDS in view of its devastating human, economic and social impact* (1999) at 106.

human rights norms. South Africa's improved compliance with its reporting obligations is therefore vital. The obligation to report requires positive action, implying that a prerequisite for the realisation of this obligation is the political will to prepare a concrete and comprehensive report. Government needs to go beyond making a commitment to address the backlog, and develop and implement a methodology or comprehensive strategy to deal with the reporting backlog. There is also a need to improve institutional capacity and coordination between government departments in the collection of data and the preparation of reports. During the efforts to collect information during the initial phases of this research, the lack of coordination 'between' and 'within' departments was clear. Officials within a responsible department were not even aware that the department is in charge of overseeing the specific treaty. Furthermore, findings and recommendations arising from concluding observations or UPR and APRM reports, must be mainstreamed into policy discussions and documents, so as to ensure their effective implementation.

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