



25 YEARS ON: A HUMAN RIGHTS MANIFESTO FOR SOUTH AFRICA

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South Africa will be holding its sixth democratic election on 8 May 2019, celebrating 25 years since the end of Apartheid in 1994. Though great progress has been made since 1994, especially in developing a robust Constitution and progressive legislation to promote and protect the human rights of all those who live in South Africa, compliance and implementation of such laws by the State is often lacking.

South Africa remains one of the most unequal countries in the world and continues to grapple with the progressive realisation of socio-economic rights. Despite the adoption of the National Development Plan (Vision 2030), which aims “to eliminate poverty and reduce inequality by 2030”, the country continues to struggle with the triple burden of unemployment, poverty and inequality.

South Africa continues to be a key player in multilateral fora including the Southern Africa Development Community (SADC), African Union (AU) and United Nations (UN), despite its track record of being a human rights champion gradually being eroded by its foreign policy and voting patterns on human rights issues, and the 2016 decision indicating its intention to withdraw from the International Criminal Court.

Amnesty International has documented a range of human rights violations over the years, and ahead of the general elections is calling on all political parties and candidates to comply with South Africa’s Constitution and legislation to ensure that the rights of all those in South Africa are upheld.

Amnesty International presents this human rights manifesto highlighting eight issues we consider important for political parties and candidates to commit to in order to build a rights-respecting society.



A community meeting organised by the Amadiba Crisis Committee in Xolobeni, Easter Cape, South Africa, 8 August 2018. © Amnesty International



Access to healthcare: Ambulances in Uthungulu district, KwaZulu-Natal, South Africa. © Amnesty International

1. ENSURE THE RIGHT TO HEALTH FOR ALL

South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2015. Article 12 of the ICESCR guarantees the right to health, recognising the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health.” Domestically, Section 27 of The Constitution of South Africa, affirms this right. Section 27(1a), prescribes – “everyone has the right to have access to healthcare services, including reproductive healthcare.” Goal 3 of the Sustainable Development Goals (SDGs) on “Good Health and Well-Being for People” also prescribes specific targets for countries, including South Africa, to “ensur[e] healthy lives and promot[e] well-being.”

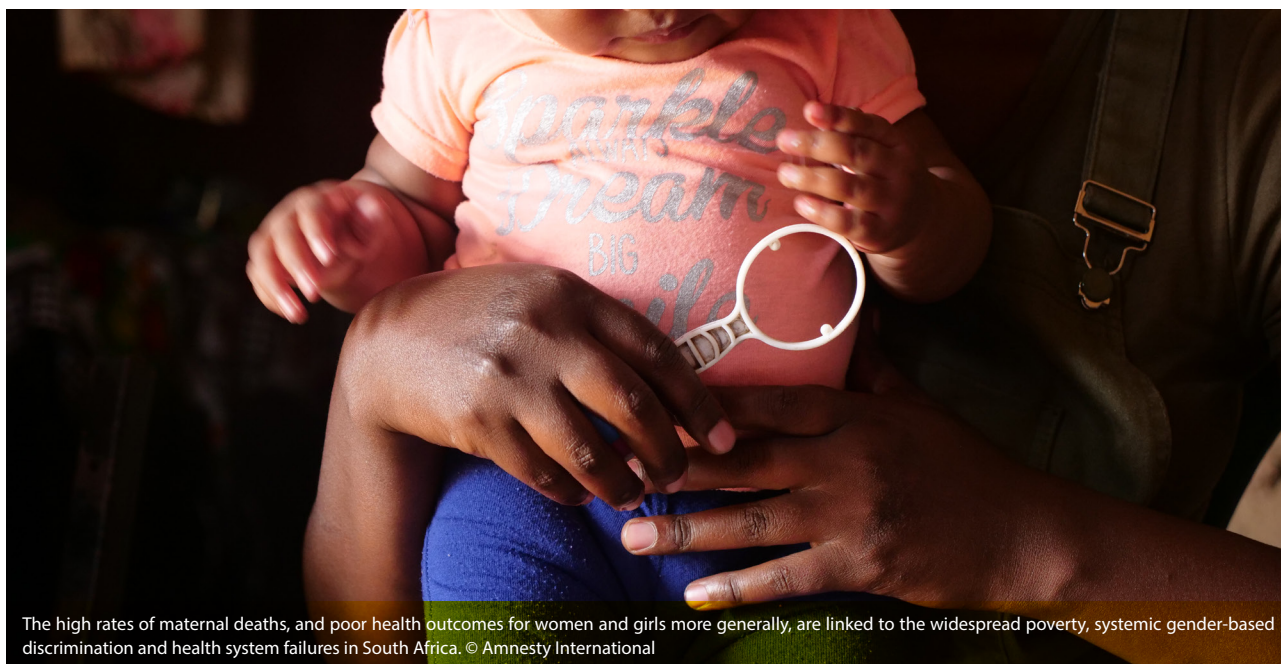
To improve access to healthcare in the country, the government of South Africa is proposing the roll out of the National Health Insurance (NHI). The NHI is a financing system that will ensure that all citizens of South Africa and legal long-term residents are provided with essential healthcare, regardless of their employment status and ability to make a direct monetary contribution to the NHI Fund. The NHI Bill proposes changes to both the public and private health sectors. It aims to “create a single framework for the public funding and public purchasing of healthcare services, medicines, health goods and health-related products, and to eliminate as far as is reasonably possible the fragmentation of healthcare funding in South Africa.”

Amnesty International posits that even before the NHI comes into force, the government must take necessary steps to address the major challenges faced in the health sector. The government must take concrete steps to address the shortage of medical professionals in the public health sector, proper maintenance of facilities and improvement in service and care. If these challenges are adequately resolved, the NHI has the potential to make healthcare more accessible and affordable to all persons in South Africa.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- **Ensure the provision of health services in the country is of good quality, accessible, affordable and acceptable for all.**
- **Further ensure that the provision of the proposed NHI improves access to affordable and quality healthcare in South Africa for all persons, free from discrimination.**
- **Prioritise the enhancement of the social determinants of health which include the environment in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping conditions of daily life.**



The high rates of maternal deaths, and poor health outcomes for women and girls more generally, are linked to the widespread poverty, systemic gender-based discrimination and health system failures in South Africa. © Amnesty International

ENSURE EQUAL ACCESS TO MATERNAL HEALTHCARE, PARTICULARLY ANTENATAL CARE

Section 27 of the South African Constitution provides for the right to have access to healthcare services, including reproductive healthcare. But, South Africa's rate of preventable maternal mortality remains unacceptably high. In 2012, 60% of maternal deaths in South Africa were avoidable, and more than a third were linked to HIV. The government made commendable steps towards improving this situation, including by prioritising primary healthcare, improving access to antiretroviral therapy for pregnant women and girls living with HIV, and providing free antenatal care. However, barriers to early and ongoing antenatal care continue to hamper these efforts. The high rates of maternal deaths, and poor health outcomes for women and girls more generally, are linked to the widespread poverty, systemic gender-based discrimination and health system failures in South Africa.

In *Struggle for Maternal Health: Barriers to Antenatal Care in South Africa*, Amnesty International documented three key barriers to women and girls accessing timely antenatal care, which can contribute to the high rates of maternal mortality in South Africa:

1. Lack of privacy and informed consent;
2. Transport and cost barriers to access health services; and
3. Lack of adequate information.

High numbers of births continue to take place outside of health facilities reflecting unaffordable transport costs and lack of emergency transport in rural areas. The government is also failing to ensure that adequate information on sexual and reproductive health and rights is available to all sections of the population.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- Continue the provision of free antiretroviral treatment for pregnant women and girls living with HIV and ensure appropriately resourced and accessible healthcare facilities that ensure that all health system procedures uphold patient confidentiality and combat stigma and discrimination.
- Urgently address the persistent lack of safe, convenient and adequate transport to health facilities and the poor condition of roads, particularly in rural settings, including through subsidised or free transport, grants to pregnant women and girls to cover transport costs, improved road infrastructure, and improved transport options.
- Improve access to information among healthcare workers and adolescents about sexual and reproductive health and rights, including through comprehensive sexuality education that involves women, girls, men and boys, and accessible information on where to access sexual and reproductive health information and services, including termination of pregnancy services.



Pro-choice generation: Young activists taking action for the right to safe and legal abortions. © Amnesty International

ENSURE ACCESS TO SAFE AND LEGAL ABORTION SERVICES TO ALL THOSE WHO SEEK IT

Abortion has been legal in South Africa for over twenty years. When enacted in 1997, South Africa's Choice on Termination of Pregnancy Act (CTOPA) led to a 90% reduction in abortion-related deaths and injuries. Pregnant people in South Africa have the right to an abortion on request until the 12th week of pregnancy, and in some cases until the 20th week. Many women and girls – especially those in the poorest and most marginalised communities – are still struggling to access safe and legal abortion services to which they are entitled.

Unsafe abortions are frequently occurring in the country, contributing to high rates of preventable maternal mortality and morbidity. In 2017, Amnesty International found only 7% of the country's public health facilities offered abortion services. Unregulated refusal by healthcare professionals to provide abortion services is a major contributor to the shortage of health facilities providing abortion services. Furthermore, accurate information regarding which public health facilities provide abortion services is not maintained by the national department of health and is unavailable to the public. A 2017 expert review of maternal deaths in South Africa found that unsafe abortion was a factor in almost a quarter of maternal deaths. The Department of Health has developed National Clinical Guidelines on Abortion, yet they have not been passed nor has budget been allocated for their implementation.

The government must ensure safe and legal abortion services are available and must stop putting the lives of pregnant women and girls at unnecessary risk due to lack of access to these essential health services.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:



My Body My Choice march, 2018. © Amnesty International

RECOMMENDATIONS:

- Prioritise the prevention of unwanted pregnancy through access to comprehensive sexuality education and modern contraception, including emergency contraception, and abortion services, as guaranteed under the Choice on Termination of Pregnancy Act.
- Pass the National Clinical Guidelines on Abortion and allocate requisite budget for their implementation.
- Issue clear guidelines and protocols to all healthcare professionals and health facility management in relation to regulation of conscientious objection and implement related accountability mechanisms, and ensure accurate information and referrals for abortion services are provided.
- Increase access to medical abortion services at primary health facilities and publish accurate and accessible information to the public on which health facilities provide services at earlier and/or later stages.

2. STOP VIOLENCE AGAINST WOMEN AND GENDER NON-CONFORMING PEOPLE

South Africa is not lacking in domestic legislation and policy to address sexual and gender-based violence (SGBV). The South African Government is bound by the Constitution, whose Bill of Rights clearly outlines the State's obligations to promote and uphold the human rights of all of those in the country. In particular, the government must comply with Section 9(3) and (4) of the Constitution which explicitly prohibits violence and discrimination based on sexual orientation and gender identity, as well as the Domestic Violence Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act. South Africa is also party to a range of International and Regional instruments and obligations that prohibit discrimination based on sexual orientation and gender identity, including the International Covenant on Civil and Political Rights (ICCPR), Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) and its recommendations; The African Charter on Human and Peoples' Rights (ACHPR) and Maputo Protocol.

Despite this, SGBV continues to be widespread across the entire society.

SGBV in South Africa is pervasive and cuts across all divides including gender, race, religion, class, sexuality, etc., and impacts all aspects of life. In 2016, the UN Special Rapporteur on violence against women (VAW), its causes and consequences, stated in her South Africa mission report that: "Data on prevalence and manifestations of VAW reveal high level and persistence of different forms of such violence what amounts to systemic women's human rights violations." Such affects women and gender non-conforming people disproportionately and is deeply entrenched in institutions, cultures and traditions. In South Africa, gendered power inequality is the primary underlying factor that enables and perpetuates SGBV, which is driven by entrenched patriarchal social norms and complex and intersectional power inequalities, including those of gender, race, class and sexuality.

Because of under-reporting and the lack of recent national studies on SGBV in South Africa, prevalence across the country is difficult to ascertain. According to Statistics South Africa (SSA), there were 613,759 reported sexual offenses between 2007 and 2017. In 2017, SSA began disaggregating sexual offenses into rape, sexual assault, attempted sexual offenses and contact sexual offenses. In 2017, 39,633 rapes and 6,253 sexual offences were reported to the South African Police Service (SAPS). Domestic violence



#TheTotalShutdown: Intersectional Women's Movement Against GBV demonstration, 2018. © Amnesty International

is not recorded as a specific category by the SAPS, therefore no statistics are available for this category of violence. A study by the Medical Research Council indicates high attrition rates in the criminal justice system, "of the 3,952 cases included in the study, an arrest was made in 2,283 (57%) cases and 2,579 (65%) were referred for prosecution. Prosecutors accepted 1,362 cases (34.4%) and these were enrolled for trial. Trials started in 731 (18.5%) cases and 340 (8.6%) cases were finalised, with a verdict of guilty of a sexual offence." Lack of resources and training for police officers, as well as failures to investigate the crimes and gather forensic evidence, were cited as reasons for the low conviction rates.

In spite of being explicitly prohibited, through Section 9(3) and (4) of the South African Constitution, violence and discrimination based on sexual orientation and gender identity are prevalent in South Africa. In 2011, Noxolo Nogwaza, 24-year-old mother and activist for lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, was murdered. Her attacker(s) raped and repeatedly beat her – because of her sexual orientation – before dumping her body in a drainage ditch. Eight years later, no progress has been made in the investigation into her murder and her killer(s) remain at large. While there is limited data on the prevalence of hate crimes against gender non-conforming people, including such



practices as so-called “corrective rape” of lesbians, the Special Rapporteur on violence against women, its causes and consequences, noted in her 2016 report: “This type of violence was reported on the rise, despite the difficulty to detect it since victims are unlikely to spontaneously report their sexual orientation, and police do not record this information.” It has been a decade since calls were made to enact hate crime law in South Africa, largely motivated by horrific attacks against LGBTI people. In October 2016, the government published the Prevention and Combating of Hate Crimes and Hate Speech Bill, which criminalises hate speech. While the proposed criminalisation of hate speech in the bill has been strongly criticised, civil society is calling on the State to pass this important piece of legislation as soon as possible to address hate crimes in the country.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- Adopt a multisectoral plan of action to address the high levels of violence against women and gender non-conforming people in South Africa and allocate the requisite resources for implementation.
- Ensure that disaggregated statistics on domestic violence are collected and reported on by SAPS.
- Ensure that the criminal justice system has the capacity to deal with cases of SGBV and that perpetrators of violence are promptly brought to justice.
- Enact hate crime legislation that ensures that the hate element of crimes against women and gender non-conforming people are recorded and dealt with appropriately.

DECRIMINALISE SEX WORK

The Sexual Offences Act, 1957 criminalises both the buying and selling of sex. Amnesty International research has found that all forms of criminalisation of sex work results in disproportionate violence against sex workers. Sex workers in South Africa face pervasive human rights abuses by the police, including violence, torture and intimidation; rape and sexual assault; harassment; corruption and bribes; unlawful arrest and detention. Where crimes are reported, sex workers face discrimination and barriers to justice.

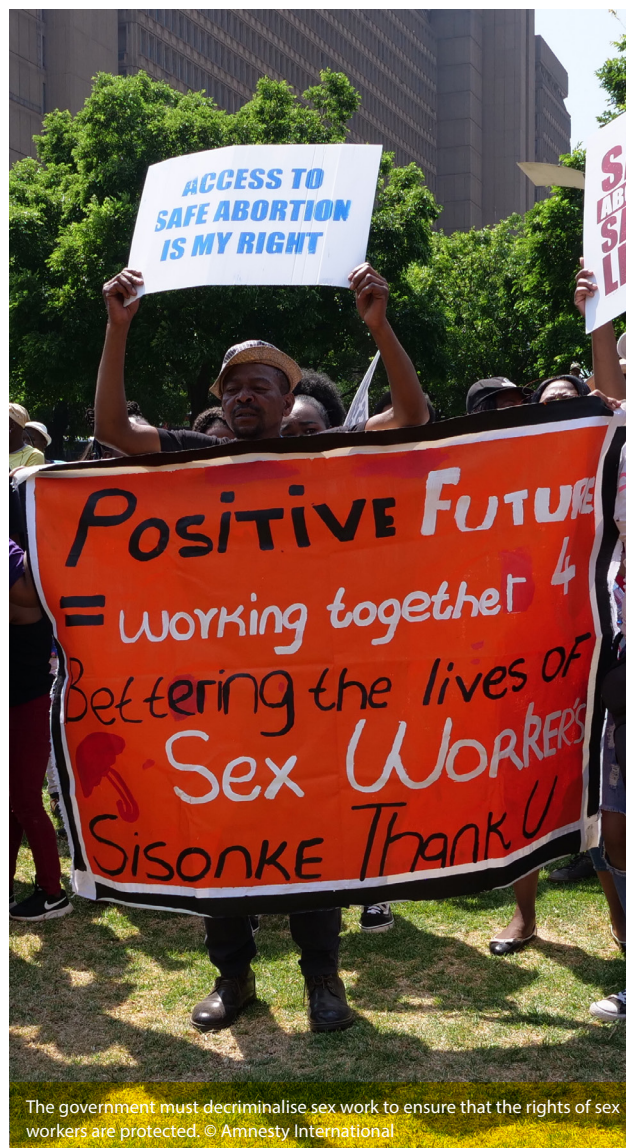
Amnesty International has consistently documented that sex workers are at particularly high risk of human rights violations. These include: rape, violence, extortion, arbitrary arrest and detention, forced eviction from their homes, harassment, discrimination, exclusion from health services, and lack of legal redress. We have also found that state responses to sex work that seek to criminalise or penalise involvement in sex work actively disempower sex workers, entrench stigma, discrimination and social inequalities, and support a culture of impunity for human rights abuses against them.

Criminalisation of sex work has specifically been shown to directly undermine global HIV prevention efforts. Along these lines, the South African National Sex Worker HIV Plan 2016-2019 recognises the challenges for implementing a human rights-based approach to health in the context where sex work is criminalised and endorses decriminalisation of sex work.

In South Africa, research on the policing of sex work found a range of offences perpetrated by the police against sex workers, including, violence, torture and intimidation; rape and sexual assault; harassment; corruption and bribes; unlawful arrest and detention. It concludes: “Violence against sex workers by police is pervasive and entrenched. Where crimes are being reported, and sex workers are seeking the protection and support of police, they are often met with a refusal to co-operate and obstruction of the course of justice.”

In our 2018 [submission](#) to the Multi-Party Women’s Caucus on the South African Law Reform Commission Report on “Project 107 Sexual Offences Adult Prostitution”, Amnesty International recommended full decriminalisation of consensual adult sex work – the exchange of sexual services between consenting adults for some form of remuneration, with terms agreed between the seller and buyer.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:



RECOMMENDATIONS:

- Repeal existing laws that criminalise the sale and purchase of sex and refrain from introducing new laws that criminalise or penalise directly or in practice the consensual exchange of sexual services between adults for remuneration.
- Ensure that sex workers have equal access to justice, healthcare and other public services, and to equal protection under the law.
- Ensure the meaningful participation of sex workers in the development of law and policies that directly affect their lives and safety.
- Refrain from the discriminatory enforcement of other laws, such as those on vagrancy, loitering, and immigration requirements against sex workers.

3. MAKE QUALITY EDUCATION A REALITY FOR ALL IN SOUTH AFRICA

Internationally, South Africa has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the African Charter on Human and Peoples' Rights. Section 29 of the South African Constitution guarantees the "right to education." In a landmark ruling, the South African Constitutional court held that the right to basic education should be "immediately realisable" and not subject to progressive realisation. The International Covenant on Social, Economic and Cultural Rights (ICESCR) in article 13(2) states: "Whereas primary education shall be available 'free to all', State parties are required to progressively introduce free secondary and higher education." This framework also provides for the protection, promotion and fulfilment of socio-economic and cultural rights by state parties.

South Africa has made significant progress in increasing access to education since the end of apartheid. Educational participation among five-year-olds has increased from about 40% in 2002 to nearly 90% in 2017. Primary school and secondary school completion rates have increased considerably over time, especially among black South Africans, although the level of drop outs is still worryingly high.

However, the education system is still facing major challenges, mirroring the country's deep socio-economic inequality as the country struggles to overcome the historic legacy of Apartheid. Outcomes vary greatly with very high percentages of children at grade 4, the vast majority from disadvantaged communities, not achieving basic literacy and numeracy. The government's own statistics show that it is continuing to miss its own targets for infrastructure upgrading as thousands of schools across the country continue to suffer from poorly maintained and outdated buildings, lack of decent sanitation with the continued use of pit toilets and the absence of essential amenities such as libraries, laboratories and sports facilities. Amnesty International's recent research carried out in Gauteng, Limpopo and the Eastern Cape reinforces many of these observations: under-resourced schools struggling with poor infrastructure lack of basic amenities; teacher shortages; etc.

Although the government has spent a relatively high amount on education, particularly compared to other areas of social spending since taking over power in 1994, the level of government spending on education has not increased since 2012 and recently, like other public services, has been subject to significant cuts due to austerity measures.



Presently, students are being asked to pay fees at state primary schools in South Africa because the government has exempted itself from the requirements in the International Covenant on Economic, Social and Cultural rights, that primary education should be available free for all. Schools that charge fees typically serve learners from families with higher incomes, while no-fee schools typically serve families on lower incomes. As a result, schools that charge fees are able to leverage additional resources compared to no-fee institutions thereby further widening the inequality gap.

Amnesty International has also observed the proliferation of new private actors in the country's education sector. In its recent [review](#) of South Africa, the Committee on Economic, Social and Cultural Rights was concerned about the lack of guidance on the roles and responsibilities of private sector actors in education. It recommended that the government improve the regulatory framework to define the roles and responsibilities of private sector actors, and monitor the education provided by such actors.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- **Withdraw the declaration with respect to the implementation of Articles 13(2)(a) and 14 of ICESCR that allows public schools to still charge fees at primary level.**
- **Improve school infrastructure and ensure that all schools have access to water and proper sanitation facilities.**
- **Ensure that the right to basic education be 'immediately realisable' and not subject to progressive realisation as determined by the Constitutional Court.**
- **Ratify the Optional Protocol to ICESCR to ensure that South Africans can have recourse to improved access to justice for violations of economic, social and cultural rights.**

4. UPHOLD REFUGEE AND ASYLUM SEEKER RIGHTS

Failures in South Africa's asylum management process have been well documented over the years. While a strong legal and human rights framework exists, the implementation of these laws and policies, and compliance with court orders is starkly lacking.

Research by Amnesty International and others shows major discrepancies between policy and practice, which result in violations of the rights of asylum seekers. The illegal closures of three of the urban Refugee Reception Offices (RROs) in 2011 and 2012, incorrect and inconsistent application of the law, and an insurmountable backlog of asylum applications, have left close to 200,000 asylum seekers living in limbo for years on end. There have been increasingly lower refugee status approval rates, down from only 15% in 2011 to 4% in 2015. This is substantially lower than the global refugee recognition rate of approximately 37% in 2015. Amnesty International believes that the decreased recognition rates are caused by the shortcomings of the South African asylum system.

Refugees and asylum seekers are still facing daily discrimination and living in constant fear of physical attacks since the first outbreak of xenophobic attacks in 2008, when xenophobic violence claimed more than 60 lives and injured more than 600 people. Xenophobic statements by government officials, political and cultural leaders have arguably fuelled xenophobic violence, based on notions that all refugees are criminals or economic migrants who take jobs from South African nationals. According to the report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change: "The Special Reference Group on Migration and Community Integration in KwaZulu-Natal, which was established to undertake a comprehensive assessment of the cause of the xenophobic attacks, found that gaps in implementation of the Immigration Act and Refugees Act leaves foreign nationals feeling vulnerable and fuels fear and mistrust."

Worryingly, the White Paper on *International Migration for South Africa*, adopted in July 2017, emphasises adopting a risk- and security-based approach to migration, as well as proposing the establishment of Asylum Seeker Processing Centres. These would severely restrict the rights of asylum seekers, particularly the right to work, study and access basic services such as health and education.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:



Refugee and asylum seekers wait in long lines outside Cape Town's Refugee Reception Office. © Amnesty International

RECOMMENDATIONS:

- Immediately re-open and resource the Cape Town RRO to ensure that asylum seekers are granted fair and efficient access to asylum procedures.
- Ensure that the refugee status determination (RSD) process is administratively and procedurally just and fair and it complies with domestic and international laws, standards and policies; in particular the process should ensure that each case is adjudicated on its own merits and that all relevant information, including country of origin, is correct and taken into account when making decisions; and train RSD officers to effectively and efficiently undertake their duties in this regard.
- Implement existing mechanisms that respect, protect and promote the rights of asylum seekers and refugees, rather than emphasising a risk and security approach to migration.
- All political leaders must refrain from promoting divisive political narratives that fuel xenophobic violence and speak out firmly and promptly against intolerance and discrimination.
- Implement a broader set of measures to tackle the root causes of intolerance, such as intercultural dialogue, education on diversity and pluralism and policies empowering minorities to exercise their right to freedom of expression.



A demonstration by activists protesting against the excessive use of force by police. © Amnesty International

5. END EXCESSIVE USE OF FORCE

International human rights law protects the right to peaceful assembly. Public authorities, including the police, have a positive duty to facilitate and protect peaceful assemblies and to enable people to exercise their right to peaceful assembly. Section 17 of South Africa's Constitution enshrines the right to assembly, demonstration, picket and petition. Law enforcement agencies must comply with domestic, regional and international law and standards governing the use of force by law enforcement officials and respect, promote and fulfil the rights enshrined in South Africa's Constitution. Amnesty International has documented a pattern of excessive use of force by the police in South Africa, particularly in the context of peaceful assembly.

On 16 August 2012, in a notorious display of police brutality, the South African Police Service (SAPS) fatally shot 34 striking mineworkers at Marikana in South Africa's North-West province, and another 10 people were killed during the strike, bringing the total fatalities to 44. The men were employees of the mining company, Lonmin, and had been engaged in a strike and protest action over pay and conditions at the mine. Although some steps have been taken, there have been delays in holding police officers suspected of responsibility for these deaths to account, and the affected families have not received compensation.

In response to university student protests, police have used excessive force, including firing rubber bullets at students and supporters when the use of force was neither necessary nor proportionate. In October 2016, a student leader was shot 13 times with rubber bullets in the back at the University of Witwatersrand in Johannesburg and, in February 2019, a student was killed on the Durban University of Technology campus after a security guard allegedly opened fire during an altercation between protesting students and law enforcement agencies. In September 2018, Amnesty International received video

footage, photos and witness testimonies of the SAPS using excessive force to disperse Xolobeni community members and prevent them from attending a meeting called by the Department of Mineral Resources about a proposed titanium mine in the area.

Law enforcement agencies should act to facilitate the enjoyment of the rights to freedom of association, assembly and expression. They must comply with domestic and international law and standards governing the use of force by law enforcement officials, including full respect for the principles of necessity and proportionality.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- All acts of excessive or otherwise unlawful use of force must be thoroughly investigated and followed by appropriate criminal and disciplinary proceedings; this must include accountability for past violations including those referred to in this manifesto.
- Provide the police and public with guidelines on the use of weapons in policing assemblies.
- Provide effective remedy and reparations, including compensation to those who have been harmed by excessive use of force.
- Ensure that there is rigorous training for police on crowd control as well as for equipment used in crowd control to reduce or prevent injury.
- Publicly condemn the use of unlawful force whenever it occurs and provide measures for dealing with breaches of guidelines for policing assemblies and other crowds.

6. HOLDING MINING CORPORATIONS TO ACCOUNT

South Africa has an obligation to respect and protect human rights in the context of corporate activities through regulation, oversight, investigation, adjudication and punishment. South Africa's obligations are based on the human rights treaties it has ratified and other international standards, including, but not limited to, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

The right “to have an environment protected, for the benefit of present and future generations” is clearly articulated in Section 24 of the Constitution of South Africa. The South African Constitution also recognises the need to redress inequalities of Apartheid South Africa regarding unequal access to land and security of tenure.

South Africa also adopted the Interim Protection of Informal Land Rights Act (IPILRA) in 1996, which aims to protect “certain rights to and interests in land which are not otherwise adequately protected by law.” The IPILRA focuses on protecting communities' informal rights to land and provides that “no person may be deprived of any informal right to land without his or her consent.”

The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) preamble acknowledges that “South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof.” It entitles the State, and no longer the common law owner of the land, to be the custodian of all mineral resources, which belong to the nation. The MPRDA includes a procedural requirement of consultation when applying for a mineral right. Part of the consultation process is that a mining company must provide landowners with all the necessary information for them to be able to make an informed decision about proposed mining.

The Amadiba coastal traditional community is an indigenous community with communal rights to prime pristine coastal land in South Africa's Eastern Cape province. The community currently comprising at least 600 people have lived in five villages on this land for centuries. An Australian mining company, Transworld Energy and Mineral Resources (SA) Pty LTD (TEM) and the Department of Mineral Resources (DMR) want to mine this land's titanium-rich sands. The community do not want the mining on their ancestral land, saying it threatens their homes, livelihoods and cultural heritage, among others. The community founded the Amadiba Crisis Committee (ACC) to unite people across the five



villages in Amadiba that will be affected by the proposed mine. Sikhosiphi ‘Bazooka’ Rhadebe, a land and environmental rights defender and former chairperson of the ACC, was shot dead on 22 March 2016. To date, no one has been held accountable for his murder. This is part of a wider context where the community are facing threats and harassment.

On 23 April 2018, the ACC brought a court challenge against the DMR and the mining company TEM, after the Minister of Mineral Resources granted the mining licence without the community's consent.

Although the Mineral and Petroleum Resources Development Act (MPRDA) and the IPILRA appear to be in conflict regarding the requirements of consultation and consent, in the landmark High Court ruling of November 2018, Judge Basson concluded that the “MPRDA and the Interim Protection of Informal Land Rights Act (IPILRA) must be read together.” She added that the affected community “may not be deprived of their land without their consent.”

The MPRDA, which contains provisions relevant to housing, requires that a company develop a Social and Labour Plan (SLP) in order for the government to grant it mining rights. The SLP should set out company plans in relation to a range of specific issues including a Housing and Living Conditions Plan. SLPs are legally binding documents and the responsibility for approving and enforcing SLPs lies with the Department of Mineral Resources (DMR).

On 16 August 2012, 34 mineworkers who were killed by the South African Police Services (SAPS), following a protracted strike and protest action over wages at Lonmin's mine in Marikana. In *Smoke and Mirrors* published in 2016, Amnesty International documented the failure of mining company Lonmin to address housing conditions at Marikana and its links to the tragic events of August 2012. Under its 2006 SLP, Lonmin had committed to construct 5,500 houses for workers by 2011. By 2012 it had built just three show houses.



Corporations must be held accountable for activities that threaten human rights. © CC-BY-SA-4.0 Ryanj93 – Own work

The Government established the Marikana Commission of Inquiry, led by Judge Ian Farlam, to “investigate matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana.” The Commission found that Lonmin had failed to adhere to the terms of its SLP, as set out in the MPRDA, with regard to housing, and that the company had “created an environment conducive to the creation of tension and labour unrest” by not addressing the housing situation at Marikana.

Amnesty International believes that Lonmin is not solely responsible for the appalling housing and living conditions for its mineworkers, but that the South African government is equally responsible. These failures would not have happened if the government enforced the legal provisions it has put in place to protect the right to adequate housing of mine workers and to address the historical discrimination and disadvantage in the mining industry. The failure to deliver on the SLP constitutes a breach of South Africa’s MPRDA, which requires companies to provide financially and otherwise for their SLPs.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- **Respect and protect all communities’, including the Amadiba coastal community, rights to effective participation on any future mining activities on their land and provide landowners with all the necessary information for them to be able to make an informed decision about proposed mining on their ancestral land.**
- **Ensure that all mining companies, including Lonmin, fulfil their obligations under the Mineral and Petroleum Resources Development Act.**
- **Require the DMR to investigate and, if required, sanction Lonmin over its failure to fulfil the terms of its SLP with regard to the provision of 5,500 houses, in line with the recommendation of the Farlam Commission.**
- **Require that all mining company SLP reports to the DMR are publicly disclosed and made available, and accessible, to employees, local communities and other stakeholders.**
- **Review the human and financial resources available to the DMR to monitor and enforce SLPs and increase these resources to enable effective monitoring of SLPs.**



7. ADOPT HUMAN RIGHTS-CONSISTENT CLIMATE CHANGE STRATEGIES

Climate change poses a severe threat to human rights globally including in South Africa. According to the Special Procedures of the Human Rights Council, “climate change is one of the greatest human rights challenges of our time.” Climate change affects a wide range of human rights, including the right to life, health, housing, water and sanitation, with developing countries being particularly more vulnerable to its impacts. It exacerbates inequalities and its effects are disproportionately felt by those who are more vulnerable, marginalised and/or subject to discrimination. A recent report by the UN Intergovernmental Panel on Climate Change showed that global warming has already reached 1°C above pre-industrial levels and that not exceeding a global warming of 1.5°C is an absolute imperative to avoid the worst consequences for human rights in the coming years.

Under Section 24 of South Africa’s Constitution, “Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent

pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

Additionally, under international human rights law, states have the duty to protect people from the adverse effects of climate change. This means that states must take all reasonable steps to the full extent of their abilities to reduce greenhouse gas emissions within the shortest possible timeframe both nationally and through international cooperation and assistance. States must also adopt all necessary measures to assist people in adapting to the unavoidable effects of climate change, thus minimising the impact of climate change on their human rights. In addition, states must ensure that measures intended to address climate change do not result in human rights violations and that the transition towards a zero-carbon economy enhances human rights, including by addressing inequalities and discrimination.

South Africa is already suffering at the hand of climate change. The Eastern Cape is drought-stricken, with empty dams and unprecedented water shortages negatively affecting maize production and pushing up food prices.

Following a two-year-long drought, Cape Town narrowly survived an acute water shortage leading to a possibility of “day zero” when the city’s water pipes would run dry, making it potentially the first major city in the modern era to run out of water. The likelihood of this type of crisis occurring again has tripled due to climate change. A key feature of the projected climate change future of South Africa is that temperatures



Amnesty International Secretary General Kumi Naidoo speaks at the school climate strike in London, United Kingdom, on 15 March 2019. © Amnesty International

are to increase drastically if only low mitigation measures are undertaken. For the far-future period of 2080-2099, temperature increases of more than 4 °C are likely over the entire South African interior, with increases of more than 6 °C plausible over large parts of the western, central and northern parts. Such increases will also be associated with drastic increases in the number of heatwave days and very hot days, with potentially devastating impacts on agriculture, water security, biodiversity and human health.

In light of this devastating scenario, South Africa must scale up its ambition and action to seriously mitigate climate change. Its pledges for emission reductions by 2030 made under the Paris Agreement (through its National Determined Contribution) are consistent with global warming levels between 3 and 4°C and therefore are insufficient to avoid catastrophic levels of climate change.

Although coal is the most carbon-polluting of all fossil fuels, South Africa continues to rely very heavily on coal for electricity production, generating 93% of its electricity from coal, making it the one of the 15 largest emitters of CO₂ worldwide, and is the world's 7th largest coal producer, despite the fact that natural conditions are favourable for the shift towards solar and wind-generated energy. In addition to human rights impacts associated with climate change, coal mining and coal-fired energy production also result in a number of human rights impacts for the affected workers and communities. A rapid transition to clean energy is therefore imperative to protect people from the human rights impacts of both climate change and coal mining and production. Such transition should also ensure that the human

rights of workers and communities are taken into account when phasing out fossil fuel production.

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:

RECOMMENDATIONS:

- **Align its emissions reduction targets for 2030 with the imperative to limit the increase of global average temperatures to 1.5°C above pre-industrial levels.**
- **End the use of all fossil fuels (coal, oil and gas) and shift to 100% renewable energy in the shortest possible time and well before 2050.**
- **Promote a just transition to a zero-carbon economy which respects, protects and fulfils human rights and leaves no-one behind.**
- **Adopt and implement effective and human rights-consistent climate adaptation and disaster-risk reduction strategies and provide adequate support to people whose rights have been negatively affected by climate change.**

8. CHAMPION HUMAN RIGHTS AND INTERNATIONAL JUSTICE IN FOREIGN POLICY AND RELATIONS

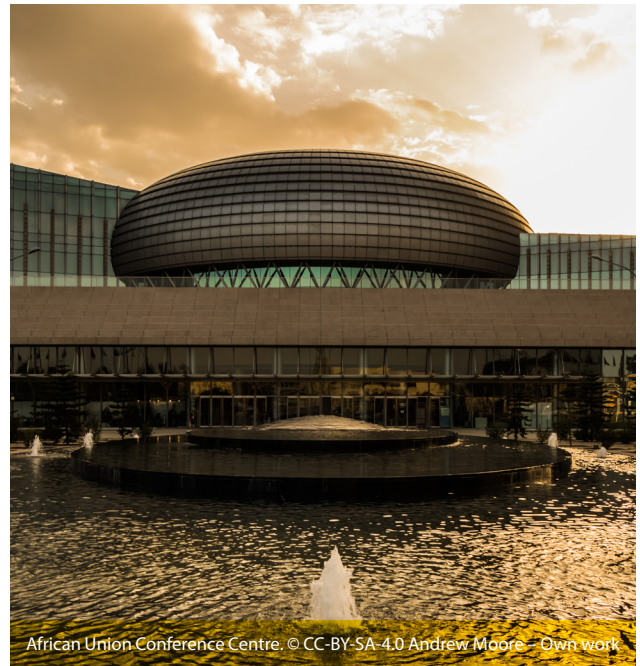
South Africa is a key player globally, continentally and regionally. Its role in international, continental and regional institutions, including its membership of the Brazil Russia India China South Africa group (BRICS), the Group of 20 (G20), Southern African Development Community (SADC) and the African Union (AU), affords the country tremendous influence in addressing critical and growing human rights concerns.

This year, South African government stands to play a critical role in the maintenance of peace and security on the continent now that it has taken up a non-permanent seat on the United Nations Security Council (UNSC). Moreover, South Africa will assume the chairmanship of the AU in January/February 2020, giving it the opportunity to demonstrate leadership at a continental level.

The key texts that framed and anchored South Africa's transition – including the Constitution, the Freedom Charter of 1955 and strategic plans and pronouncements by the Department of International Relations and Cooperation (DIRCO) – all affirm promoting, respecting and fulfilling human rights as the cornerstone of South Africa's external relations.

The 2012 draft White Paper on Foreign Policy, entitled *Building a Better World: The Diplomacy of Ubuntu*, also highlights the centrality of human rights in South Africa's foreign policy. Its preamble states: "Since 1994, the international community has looked to South Africa to play a leading role in championing values of human rights, democracy, reconciliation and the eradication of poverty and underdevelopment. South Africa has risen to the challenge and plays a meaningful role in the region, continent and globally." On 5 March 2019, South Africa reaffirmed its commitment to human rights when Minister of International Relations and Cooperation, Lindiwe Sisulu, stated that "human rights remains central to South Africa's foreign policy and interaction with other countries."

Now, more than ever, amidst growing politics of hate, division and demonisation, there is a pressing need for principled global leadership that advocates for human rights and strengthens global governance, accountability and human rights mechanisms. From Syria to Yemen, the UNSC has repeatedly failed to take action to prevent or end mass atrocities. UN human rights bodies and international accountability

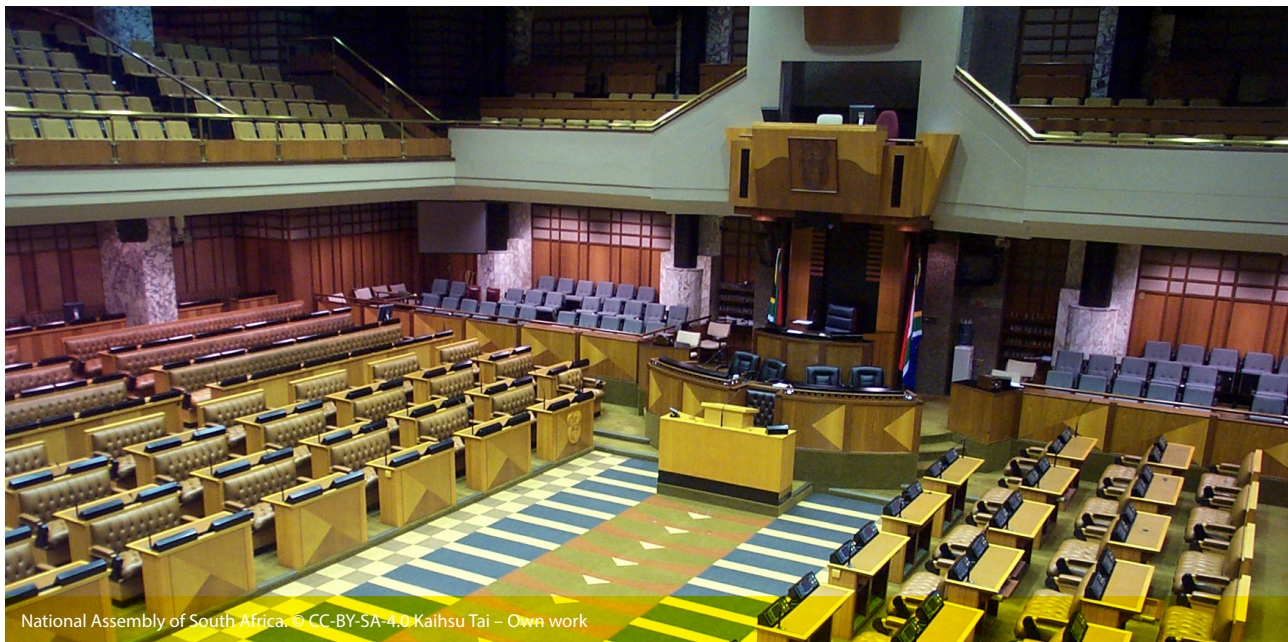


mechanisms, including the International Criminal Court (ICC), are facing growing threats and challenges. These institutions need more, not less, support from South Africa. Amnesty International notes and welcomes South African government's announcement in 2018 that it is reviewing its previous intention to withdraw from the ICC. There is an urgent need to translate this policy statement into concrete action, affirming South Africa's support of international justice by remaining a State Party to the Rome Statute.

Regionally, much is also needed from South Africa to address underlying causes of conflicts – persistent human rights violations and perpetual cycles of impunity. From Central African Republic (CAR), Democratic Republic of the Congo (DRC) and South Sudan, to northeastern Nigeria and Cameroon, there has been no meaningful progress to hold perpetrators accountable. There are worrying signs of growing political backlash on regional human rights mechanisms, including undue interference with the independence and autonomy of the African Commission on Human and Peoples' Rights. The African Court on Human and Peoples' Rights also needs much support, including ensuring State parties like South Africa guarantee peoples' access to the Court by accepting the competence of the Court to receive petitions from individuals and Non-Governmental Organisations (NGOs).

Amnesty International calls on the South African government to fill the vacuum in global and regional leadership on human rights and ensure that its foreign policy and practice actively contributes towards promoting, protecting and fulfilling human rights for all people

Amnesty International urges all political parties and candidates to prioritise and commit to the following recommendations, and make a pledge to deliver these commitments if elected:



RECOMMENDATIONS:

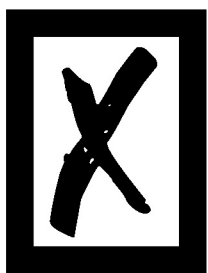
Promote justice and accountability in the region by:

- Calling on and ensuring robust, consistent and principled regional responses to underlying causes of conflicts, particularly persistent human rights violations and perpetual cycles of impunity for serious crimes committed.
- Calling for and supporting the expeditious establishment of the Hybrid Court in South Sudan (HCSS), with priority given to establishing the investigative branch of the HCSS to ensure the preservation of evidence.
- Calling on the new government of the Democratic Republic of Congo (DRC) to ensure effective investigations of allegations of human rights violations by the security forces and ensuring protection of civilians in conflict-torn areas, where security forces have failed in their duty to protect.
- Defending the integrity, independence and autonomy of the African regional human rights mechanisms, particularly the African Commission on Human and Peoples' Rights, and ensuring that the ongoing AU reforms strengthen, rather than weaken these mechanisms.
- Pursuant to Article 34(6) of the Protocol on the Establishment of an African Court on Human and Peoples' Rights, make a declaration accepting the competence of the African Court on Human and Peoples' Rights to receive petitions from individuals and Non-Governmental Organisations (NGOs).

Advocate for stronger global mechanisms for preventing and responding to serious violations of international human rights and humanitarian law by:

- Remaining a member of the International Criminal Court (ICC) and engaging with it constructively to resolve any legitimate concerns and strengthening the Court to deal with serious crimes committed that fall within its jurisdiction irrespective of origin.
- Publicly discouraging permanent members of the UNSC from using, or threatening use of, their veto power to prevent action to end mass atrocities and standing up to them when needed.
- Championing the inclusion of human rights in UNSC debates and ensuring that human rights and humanitarian principles are front and centre of such debates.
- Taking concrete action to implement the Global Compact on Migration by, amongst other measures, offering safe and legal channels for migration and leading the way with a compassionate and fair approach to people on the move.
- Ensuring that it complies fully with UNSC Resolution 2334, including by prohibiting goods and services originating from the Israeli illegal settlements in the Palestinian Occupied Territories from entering the South African market and preventing corporations domiciled in South Africa from operating in the settlements or trading in settlement products.

LESS TALK, MORE ACTION.



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