

FOLLOW UP TO THE PREVIOUS REVIEW

1. In the previous review, South Africa accepted (supported) 187 out of 243 recommendations.¹
2. South Africa accepted 28 recommendations related to violence against women. As recommended, a National Strategic Plan (NSP) on Gender-Based Violence was adopted in 2020, but its implementation remains slow and violence against women continues with impunity.² Furthermore, the government has not established the National Council on Gender-Based Violence and Femicide, responsible for the coordination and implementation of the NSP.³
3. Out of 15 accepted recommendations related to health, four pertained to sexual and reproductive health and rights, including recommendations to improve access to services.⁴ While some measures were taken to improve access and stop discrimination, barriers continue to prevent women and girls from accessing these.
4. South Africa supported 16 recommendations related to improving access to and quality of education, including recommendations to take concrete measures to reduce the level of dropouts and to improve the quality of school facilities.^{5 6} Yet an additional 500,000 learners dropped out of school in 2021, exacerbated by the Covid-19 pandemic,⁷ and 5,167 schools still use pit latrines.⁸
5. Three recommendations related to business and human rights – specifically to hold companies in the extractives industry accountable for human rights abuses and environmental degradation – which South Africa only noted and did not accept.⁹ As such mines are operating with little to no oversight and monitoring by the government, negatively impacting the rights of the communities they operate in.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

6. In January 2022, President Cyril Ramaphosa signed three new laws to strengthen the legislative response to gender-based violence. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, the Criminal and Related Matters Amendment Act, and the Domestic Violence Amendment Act.¹⁰
7. South Africa maintains its declaration under Article 13 2(a) and Article 14 of the International Covenant on Economic, Social, and Cultural Rights, despite the Constitutional Court finding that the right to basic education in the South African Constitution is “immediately realisable”.^{11 12}
8. The South African Human Rights Commission continues to battle resource and capacity constraints whilst fulfilling its Constitutional mandate, forcing it to explore alternative funding opportunities.¹³
9. South Africa is yet to accept a request for a country visit from the Working Group on Business and Human Rights.¹⁴

THE HUMAN RIGHTS SITUATION ON THE GROUND

10. President Cyril Ramaphosa took office in 2018 after former President Zuma stepped down, following years of public protests calling for the latter’s resignation due to allegations of corruption. In his first State of the Nation Address, President Ramaphosa promised to usher in a new dawn and deal with the lack of service delivery, unemployment, and gender-based violence. Despite these promises, there has been little tangible improvement to people realising their human rights, and in some cases, the situation has worsened.

GENDER-BASED VIOLENCE

11. Gender-based violence (GBV) in South Africa is pervasive. Between 2019 and 2020, police recorded 171,070 contact crimes committed against women.¹⁵ In the same period, 2,695 women were murdered, bringing the total number of women murdered to one every three hours. This is almost five times the global average.¹⁶
12. Between October to December 2021, the South African Police Services received a total of 14,188 reports of sexual offences, of which 11,315 were cases of rape. Of domestic violence-related crimes during the same period, women reported 94% of rape cases, 83% of common assault cases, and 86% of sexual assault cases.¹⁷
13. In January 2022, President Cyril Ramaphosa enacted three new laws to strengthen protection against GBV.¹⁸ However, despite progressive legislation addressing GBV in South Africa, there are systemic failures in the implementation of policies and legislation. Many women and girls are therefore unable to access and enjoy the rights and protections that have been provided for by law. Experiences reported by survivors highlight that the police often do not fulfil their obligations as mandated in legislation. For example, one survivor, who was raped three times in 2018 and 2019, reported the first and second cases, but did not report the third due to a lack of confidence in the police who she felt had bungled her cases. They failed 'to adequately investigate the cases even though she knew who the suspects were.¹⁹
14. In September 2017, the Medical Research Council found that only 8.6% of rape cases opened by the police in 2012 had resulted in convictions, citing a lack of resources and training for police officers, as well as failures to investigate the crimes and gather evidence. The study found that decisions of the police to arrest perpetrators and prosecutors to proceed with cases are influenced by wrongful beliefs of what constitutes 'serious' rape. This bias is replicated during trial proceedings, on part of the judge or defence attorney.²⁰
15. Victims are often fearful of reporting assaults to the police as there is an entrenched culture of harmful gender stereotypes and discriminatory attitudes. Some of these attitudes abet and perpetuate rape myths.²¹ Many victims have reported secondary victimisation when they come forward to report a case.²²

SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS

16. Despite abortion being legally available in South Africa under the Choice in Termination of Pregnancy Act (1997) (CTOPA), barriers to accessing safe abortion services persist.
17. Only 264 (7%) of the country's 3,880 health facilities are providing termination of pregnancy services.²³ The unregulated refusal by health care professionals to provide abortion services is a major contributor to the shortage of health facilities providing abortion services. While the Department of Health has drafted guidelines to regulate conscientious objection in 2019 – the National Clinical Guideline for Implementation of the Choice of Termination of Pregnancy Act²⁴ - these were only released in 2021 and have yet to be fully disseminated and implemented.
18. Approximately 83% of South Africa's population relies on public facilities with unequal access to services, infrastructure and resources cutting across the public/private divide.²⁵ The public health system services historically marginalised groups who experience intersecting forms of discrimination. Access to sexual and reproductive health (SRH) services, and particularly abortion services, follows this same pattern of unequal health care access and service provision.
19. Barriers to accessing abortion are exacerbated by the failure to ensure abortion services are available at the primary health care level and especially in rural areas due to large distances to health facilities and the high costs of transport to reach them.
20. The lack of knowledge among women and girls in relation to the legality of abortion is a major driver of unsafe abortions.²⁶ Lack of information can lead to unnecessary delays in women and girls accessing lawful abortion services.
21. A 2018 study noted "the need to push for population-wide education of women about their rights under the CTOPA, and how and where to gain access to services".²⁷ However, a subsequent investigation found that "national and provincial health departments have not been able to say where services are provided".²⁸

EDUCATION

22. The public education system continues to be characterised by decaying and dangerous infrastructure, overcrowded classrooms, and poor educational outcomes that perpetuate inequality, particularly among those living in poverty. In 2017, more than 75% of nine-year-olds could not read properly; less than 60% got as far as high school, and of those, less than 50% passed their matriculation.²⁹
23. According to the government's own statistics for 2021, 80,07% of schools had no laboratory; 69,59% had no library; only 17,39% of school-libraries were stocked; 79,6% had no internet access and 35,12% had no sports facilities. 90 schools lacked any electricity.³⁰ Current government data shows that South Africa still has 5,167 schools with basic pit toilets³¹ contrary to the government's own initial commitment to eradicate dependency on them in identified schools by March 2022.³² However, data provided by the Department of Basic Education (DBE) on pit toilets is conflicting and indicative of a poor monitoring system or a lack of transparency.³³
24. Educational inequality was further exacerbated when the Covid-19 pandemic led to school closures and students in poorer communities not having access to remote learning.³⁴ The government diverted funding which had been promised for the improvement of infrastructure in around 2,000 schools to Covid-19-related projects.³⁵ In 2020, budget cuts from the DBE and other national departments were used to bail out state owned entity, South African Airways.^{36 37}
25. The National Income Dynamics Coronavirus Rapid Mobile Survey found that an additional 500,000 children dropped out of school during the pandemic compared to pre-pandemic rates. The drop-out rate reached approximately 750,000 by May 2021, or more than three times the pre-pandemic number of 230,000.³⁸ The government has yet to announce how it plans to ensure these children return to school.³⁹

BUSINESS AND HUMAN RIGHTS: LACK OF ACCOUNTABILITY AND OVERSIGHT OF MINING COMPANIES

26. Under the Mineral and Petroleum Resources Development Act, Social and Labour Plans (SLPs) are legally binding mechanisms through which mining companies are required to address socio-economic impacts of mining on communities surrounding the mines.⁴⁰ The Department of Mineral Resources and Energy (DMRE), the government body regulating the mining industry and the enforcement of SLPs, failed to adequately monitor mining companies' implementation of SLPs. The failure by the DMRE to monitor SLPs results in these harmful impacts being exacerbated which negatively impacts the enjoyment of human rights by communities.⁴¹
27. SLPs have done little to transform how mining companies operate and ensure that they meet their human rights responsibilities. This is largely due to the lack of state oversight on their activities.⁴²
28. The failure by mines to implement their SLPs is a compounding factor to the many challenges faced by communities, some of which include negative environmental, social and economic outcomes, gender inequality, and polluted water sources.⁴³
29. The DMRE is under-resourced and unable to perform its legislative duties; has a poor record management system and hinders access to information; has not given effect to the South African Human Rights Commission directives regarding public access to SLPs; and is unable to enforce mining companies' compliance with SLP reporting obligations, resulting in communities feeling abandoned and unable to enjoy human rights.⁴⁴

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of South Africa to:

Gender-Based Violence

30. Develop clear, measurable targets for every indicator of the National Strategic Plan on Gender-Based Violence in annual performance plans and ensure that this information is available to the public.
31. Prioritise appropriate, mandatory, initial and continuous training for all relevant professionals, including police and investigating officers, detectives, and other law enforcement officials who work with victims and survivors of gender-based violence on fulfilling their legal obligations.
32. Appropriately resource police officers and stations, including ensuring each station has a victim-friendly room.
33. Ensure regular, independent monitoring and evaluation of the handling of rape cases by the police, including monitoring the quality and timeliness of investigations, and link performance related targets to these.
34. Promote changes in the knowledge, attitudes and behaviours of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence, and promoting personal and bodily autonomy and consent, for instance through informed awareness-raising campaigns owned by and directed at everyone in South African society.
35. Provide appropriate, systematic and mandatory training for the relevant professionals working with sexual violence survivors in prevention and detection of sexual violence, gender equality and intersectional discrimination, rape myths and stereotypes, with a view to preventing secondary victimisation, and eradicating discriminatory practices and the application of gender stereotypes at all stages of the legal process.

Sexual and Reproductive Health and Rights

36. Disseminate and implement awareness raising programmes and conduct comprehensive training for all health care workers and staff affiliated to healthcare facilities (including security guards, receptionists) on the National Clinical Guidelines for Implementation of the Choice of Termination of Pregnancy Act across all nine provinces, to ensure that refusals to provide abortion care is adequately regulated so it doesn't undermine pregnant people's right to access abortion.
37. Ensure that facilities and services for sexual and reproductive health (SRH), including for abortion, are available and accessible for all, particularly in rural areas.
38. Improve knowledge among health care workers and adolescents about sexual and reproductive health and rights, including through comprehensive sexuality education that involves both women and girls, and men and boys and through provision of accessible information on where to access SRH services, including abortion services.

Education

39. Withdraw the declaration in relation to Articles 13(2)(a) and 14 of the International Covenant on Economic, Social and Cultural Rights.
40. Set concrete targets and deadlines for addressing all school infrastructure that requires upgrading and commit to meeting them by 2023 at the latest.
41. Ensure all schools have access to adequate and safe water and sanitation, including replacing all unsafe and unsanitary pit toilets by 2023.
42. Ensure that where targets are not met, appropriate remedial action is taken including holding both ministers and officials to account for any failings.

Business and Human Rights: Lack of accountability and oversight of mining companies

43. Develop and implement an action plan outlining the steps that will be taken to ensure that the DMRE increases its capacity to monitor SLP compliance with clear timelines for the implementation and take any necessary action to ensure a more effective enforcement of the provisions of the SLPs.

44. Legally require that all company SLP reports to the DMRE are publicly disclosed and made available and accessible to employees, affected communities, and other stakeholders, in English and one other relevant local language and in a format that is understandable to the most marginalised irrespective of education levels.
45. Increase the human and financial resources available to the DMRE to monitor and enforce compliance with SLPs.
46. Review, in consultation with affected communities, mining companies and other relevant stakeholders, the SLP regulatory framework. This review must include:
 - Clear divisions of duties and responsibilities between the local government, the DMRE and mining companies.
 - Gender responsiveness and the inclusion of women in decision-making processes.
 - Creation of administrative, civil or criminal liability mechanisms for mining companies that fail to comply with their SLPs.
 - Clear directives that mining companies cannot defer unmet duties in a particular five-year SLP reporting cycle into the next five-year iteration.
47. Amend the Mineral and Petroleum Resources Development Act to align with the Interim Protection of Informal Land Rights Act which embeds the right to full and informed consent.

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³ A/HRC/36/16/Add.1, recommendation 139.207 [Spain]

⁴ A/HRC/36/16/Add.1, recommendations 139.173 [Iceland], 139.164 [Portugal], 139.174 [Iceland], 139.172 [Denmark]

⁵ A/HRC/36/16/Add.1, recommendation 139.183 [Moldova]

⁶ A/HRC/36/16/Add.1, recommendation 139.182 [State of Palestine]

⁷ Spaul, N., Daniels, R. C et al, NIDS-CRAM Wave 5 Synthesis Report, 2021, cramsurvey.org/wp-content/uploads/2021/07/1-Spaul-N.-Daniels-R.-C-et-al.-2021-NIDS-CRAM-Wave-5-Synthesis-Report.pdf

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¹² United Nations Human Rights Office of the High Commissioner, Status of Ratification Interactive Dashboard, indicators.ohchr.org/

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