



REPUBLIC OF SOUTH AFRICA

SOUTH AFRICA'S CANDIDATURE TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL (UNHRC)

2023 – 2025

*“Together, building back better
through human rights”*



AIDE-MEMOIRE IN SUPPORT OF SOUTH AFRICA'S CANDIDATURE TO THE HUMAN RIGHTS COUNCIL

2023 – 2025

Following the first democratic elections in 1994, South Africa returned to the international community in 1995 to assume its rightful place among the community of nations. In 2006, South Africa demonstrated its commitment to the promotion, protection and fulfilment of all human rights and fundamental freedoms when it played an integral role in the transition from the erstwhile Commission on Human Rights (CHR) to the Human Rights Council (HRC). South Africa was successfully elected to the council as a founding member for two consecutive terms from 2006 to 2010. The country was also elected to two additional consecutive terms from 2014 to 2019. Since the end of its previous term of membership of the council, South Africa has consistently played a key and active role in the development of international human rights and humanitarian law, focussing on the maximum protection of victims of human rights abuses and violations, including the concomitant adequate remedies and the combatting of impunity. South Africa remains dedicated to fulfilling its commitments to advance human rights and fundamental freedoms for all consistent with its constitutional provisions.

South Africa's Constitution and Bill of Rights

The first democratic elections of 1994 placed South Africa firmly on the path of constitutional democracy. South Africa has, since then, held successive national and local government elections, which have been declared free and fair by all international monitors. Currently in its sixth democratic dispensation, the country has made remarkable progress in cementing a democratic constitutional order.

Whereas the South African democracy is relatively young, the heroic struggle by South Africans for democracy, social justice and human




rights and fundamental freedoms is old, extending over a period of 350 years. In the 28 years of democracy, the country has made remarkable progress in building a new nation in which all South Africans have equal rights.

The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) remains the supreme law of the land and no other law or government action can supersede the provisions of the Constitution. The South African Constitution guarantees all the universally recognised human rights and fundamental freedoms and, in effect, internalises the key tenets of the 1948 United Nations' (UN) Bill of Rights.

The Universal Declaration of Human Rights has significantly contributed to the centrality of human rights in the national jurisprudence. Therefore, our pledge and commitment are premised on the pursuit to make rights practically realisable for all peoples everywhere. In this regard, the political vision of the democratic Government in South Africa is predicated on a fundamental principle, which affirms the inextricability between economic, social and cultural rights on the one hand and civil and political rights on the other, which have been aptly captured in Chapter 2 of the South African Constitution. The South African approach negates the false dichotomy and also breathes life into the Declaration on the Right to Development that was the first international instrument that explicitly framed the approach that all human rights are equal and indivisible and that people need to enjoy access to all of these rights for the development of persons, communities and societies.

It is through the Constitution that South Africa has been able to substantiate constitutionally guaranteed rights through the promulgation of numerous key pieces of legislation underpinning our democracy such as, among others, the:

- Promotion of Truth and Reconciliation Act, 1995
 - Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
 - Promotion of Administrative Justice Act, 2000
- 



- Promotion of Access to Information Act, 2000
- Protection of Personal Information Act, 2013
- Employment Equity Act, 1998
- Labour Relations Act, 1995
- Public Service Act, 1994.

These fundamental pieces of legislation, together with other related pieces of legislation addressing health, education, housing, land, water and sanitation, food security and nutrition, have created a platform for the attainment of substantive equality in our society.

South Africa's engagement with the international community is therefore based on the noble ideals for the respect for human rights, the rule of law, democracy, democratic governance and accountable electoral processes. All these ideals are pursued within the multilateral system of the UN and other global governance institutions/organisations. This is predicated on the fact that South Africa has prioritised among its foreign policy objectives the commitment to uphold the notion of: i) respect for (ii) promotion, (iii) protection, and (iv) fulfilment of all human rights and fundamental freedoms consistent with its National Action Plan for the Promotion, Protection and Fulfilment of Human Rights lodged at the UN on 10 December 1998.

The South African Constitutional Court decisions have produced significant judgments and adjudications, which underline the justiciability of economic, social and cultural rights. South African case law and jurisprudence are used at international level to give impetus and momentum to the strengthening of the international human rights instruments dealing with economic, social and cultural rights.

Institutions supporting South Africa's democracy

National institutions, established in terms of the constitutional provisions to support constitutional democracy in the country, are actively involved in the monitoring of South Africa's compliance with respect to

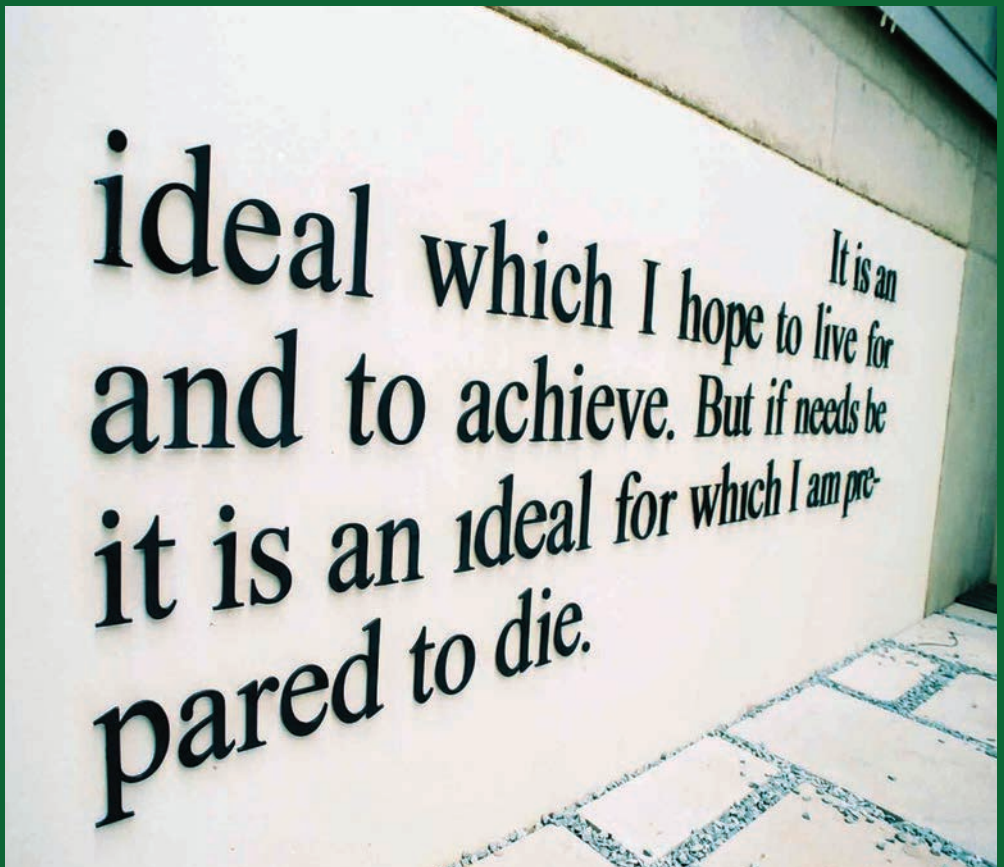
the implementation of international human rights instruments of which South Africa is a party.

The *South African Constitution of 1996* makes provision, through its *Chapter 9*, for the establishment of the following state institutions to strengthen constitutional democracy in the Republic of South Africa:



- the Public Protector
- the South African Human Rights Commission
- the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- the Commission for Gender Equality
- the Auditor-General
- the Electoral Commission.

These institutions are independent and subject only to the Constitution and Parliament.



Undertakings/pledges

It should be underlined that South Africa, by its very political nature and for historical reasons, is among the countries within the UN that takes the international human rights agenda very seriously. As a member of the UNHRC, the South African Government has undertaken and continues to abide by the following principles:

- (a) Constantly and progressively continue to receive the Special Procedures and Mechanisms of the HRC wishing to visit the country in keeping with their various mandates (consistent with its standing invitation to all thematic Special Procedures of 22 October 2002):
 - (aa) During the period of the erstwhile CHR, the South African Government received the following visits by the Special Procedures of the CHR/HRC:
 - the Special Rapporteur on Violence against Women, its Causes and Consequences (1996)
 - the Special Rapporteur on Toxic Wastes (1997)
 - the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (1998)
 - the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (2002)
 - the Working Group on Arbitrary Detention (2005)
 - the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (2005)
 - the Special Rapporteur on the Right to Adequate Housing (2007)
 - the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (2007)
 - the Special Rapporteur of the African Commission on Human and Peoples' Rights on Prisons and Conditions of Detention (2004)
 - the Working Group on the Use of Mercenaries as a Means

of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination (2010)

- the Special Rapporteur on the Human Rights of Migrants (2011)
- the Special Rapporteur on the Right to Food (2012).

(ab) Since its previous membership of the council, the following mechanisms have visited South Africa without any restrictions or impediments:

- the Independent Expert on the Human Rights of Persons with Albinism
- the Committee on the Elimination of Discrimination against Women.


(ac) Additional to the above, the South African Government is currently processing the following request for visits:

- the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(b) Respect for the integrity and dignity of the Office of the High Commissioner for Human Rights (OHCHR). The South African Government will work to ensure that the HCHR and her personnel are above the manipulation and influences of states.

(c) Support the regional office of the OHCHR in Pretoria. The South African Government has signed a Memorandum of Intent with the office and is currently processing the Host Country Agreement.

(d) Continue contributing financially to the OHCHR. Such contributions will not be in any way earmarked, as the earmarking of funding to the OHCHR has a limiting effect on the operations of the OHCHR.



- (e) Within its limited resources, support important funds and programmes within the OHCHR aimed at advancing the cause of human rights globally.
- (f) Continue in its unwavering position to advocate for a balanced Sustainable Development Programme within the human rights framework as underlined in the Vienna Declaration and Programme of Action as well as the UN General Assembly Resolution 48/141. In this regard, South Africa will be one of the chief proponents of a balanced agenda of the HRC, which reflects, among others, the primacy of achieving the



realisation of the right to development as well as moral human rights issues such as the eradication of poverty and underdevelopment.

- (g) Work to ensure that the legal status of the Committee on Economic, Social and Cultural Rights is established in the International Covenant on Economic, Social and Cultural Rights (ICESCR) through the rectification of its status as per HRC Resolution 4/7.
- (h) Work towards updating the ICESCR and the International Covenant on Civil and Political Rights (ICCPR), through an amendment protocol, placing the right to development on par with all other rights enumerated in these instruments as agreed by consensus at the World Conference on Human Rights.
- (i) Work to promote, within the HRC, a common understanding that human rights can only be practically enjoyed through an effective partnership with all the relevant stakeholders at all levels.
- (j) Timeously submit country reports to human rights treaty monitoring bodies.
- (k) Commit to ensuring that the HRC adopts four requisite additional protocols to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) covering: xenophobia, Islamophobia, anti-Semitism and the incitement to hatred through ethnic, religious and racial profiling.

International instruments to which South Africa is a state party

The South African Government signed most of the international human rights instruments on 10 December 1995 and has since ratified/acceded to the following instruments:

- the ICESCR
- the ICCPR
- the Rome Statute of the International Criminal Court (ICC)
- the ICERD
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Rights of the Child (CRC)
- Second Optional Protocol to the ICCPR, aimed at the abolition of the death penalty
- Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the CRC on the Involvement of Children in Armed Conflict
- Optional Protocol to the CEDAW
- Optional Protocol to the Convention against Torture
- Convention on the Rights of Persons with Disabilities (CRPD)
- Optional Protocol to the CRPD.

Regional instruments to which South Africa is a state party

South Africa is also a state party to the following regional (African) human rights instruments:

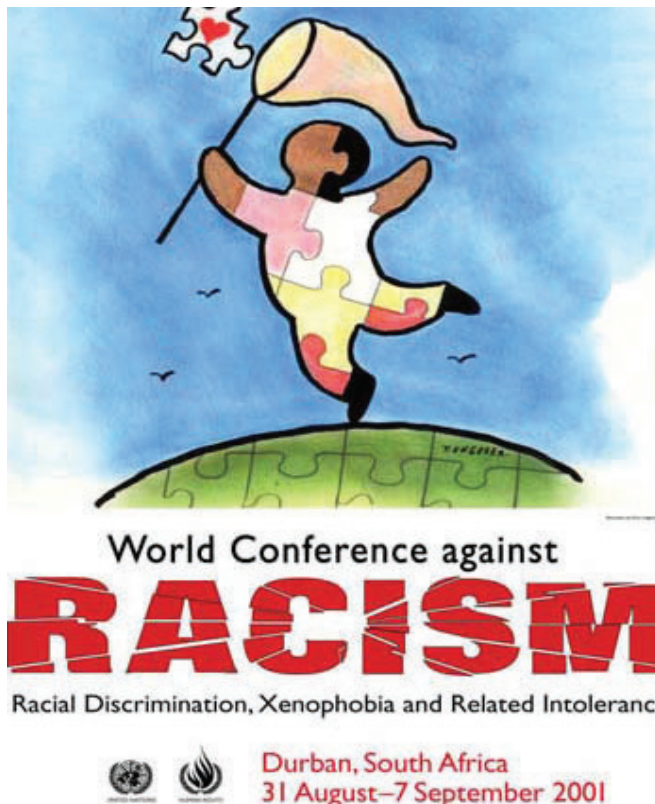
- the African Charter on Human and Peoples' Rights
- the African Union Convention Governing Specific Aspects of Refugee Problems in Africa
- the African Charter on the Rights and Welfare of the Child
- the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- the Protocol of the Court of Justice and Human Rights
- the African Charter on Democracy, Elections and Governance.

Role of South Africa in the evolution of international human rights and humanitarian law, norms and standards

Notwithstanding the fact that South Africa re-joined the UN post-1994, the country has made a significant contribution to the evolution of the norms and standards in the area of international human rights and humanitarian law. The following are some of the major contributions by South Africa:

- The Chairing of the CHR during its 54th Session, 1998 – 1999
- Coordinator of the African Group on human rights issues, 2002 – 2003
- Deployment of South African experts to serve in the following treaty monitoring bodies:
 - the Committee on the Elimination of Racial Discrimination (CERD)
 - the Human Rights Committee
 - the Committee on the Rights of the Child
 - the Committee on Economic, Social and Cultural Rights
 - the African Commission on Human and Peoples' Rights.
- A number of South Africans are serving or have served as special mandate holders of the council:
 - Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
 - Special Rapporteur on Violence against Women, its Causes and Consequences
 - Working Group on Enforced or Involuntary Disappearances
 - Working Group on the Use of Mercenaries as a means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination
 - Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health

- Commission on Human Rights in South Sudan
 - Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel
 - Independent Investigation on Burundi.
- South Africa currently chairs the:
- Open-ended Intergovernmental Working Group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, relating to the activities of private military and security companies.



- The South African Government has showcased leadership in flagship UN human rights programmes:
 - Advocating for the agenda for development through intergovernmental structures of the Non-Aligned Movement, the Group of 77 and China.
 - Supporting landmark initiatives aimed at closing the protection gap in international human rights law. This includes setting norms and standards of accountability mechanisms with respect to transnational corporations and other business enterprises, private military and security companies and the extractive industries.
 - Continuously advocating for the universal acceptance of the notion of justiciability of economic, social and cultural rights, including the realisation of the right to development.
 - Establishing an international independent expert mechanism aimed at furthering transformative change for racial justice and equality in the context of law enforcement globally, especially where relating to the legacies of colonialism and the transatlantic slave trade in enslaved Africans, and to investigate governments' responses to peaceful anti-racism protests and all violations of international human rights law and to contribute to accountability and redress for victims.

- South Africa, on behalf of the African continent, hosted the 2001 WorldConference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in Durban. As a result, the country was bestowed the honour to lead the follow-up process on behalf of the African Group both at the level of Geneva and New York. South Africa's custodianship of the follow-up process has resulted in significant progress in the implementation of the Durban Declaration and Programme of Action (DDPA), which is the outcomes document of the conference (2001 WCAR). These include:

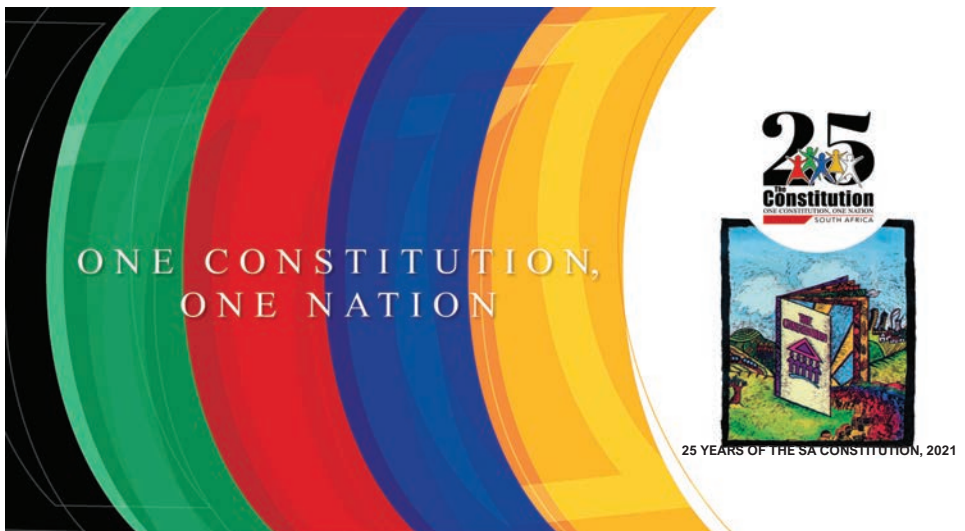


- The creation of the Intergovernmental Working Group on the Follow-up to the DDPA, which meets annually in Geneva.
- The creation of a dedicated thematic Special Procedure Mechanism of the HRC for people of African descent, called the Working Group of Experts on People of African Descent.
- The Ad Hoc Committee on the Elaboration of Complementary Standards whose mandate is to “elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps in the Convention, and also providing new normative standards aimed at combating all forms of



contemporary racism, including incitement to racial and religious hatred”.

- The declaration of 2015 to 2024 as the International Decade on People of African Descent by the UN General Assembly. The decade is aimed at reinforcing the actions and measures securing the full enjoyment of economic, social, cultural, civil and political rights of people of African descent, and their full and equal participation in society. It provides an operational framework for the eradication of current and historical social injustices and is aimed at the eradication of racial prejudices and discrimination against people of African descent. It also contributes to a greater knowledge, appreciation and respect for people of African descent and their contribution to the economic, social, intellectual, cultural and ethical development of humanity.
- The Group of Independent Eminent Experts on the implementation of the DDPA meets annually to examine progress on the implementation and follow-up to the declaration.



- Annual thematic resolutions at the level of New York and Geneva.
- The country has also led on the following additional resolutions:
 - Elimination of discrimination against women and girls in sport
 - Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality.

Instruments in the process of ratification

The South African Government is in the process of ratifying the following important human rights instrument:

- the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.



