

**Human Rights Watch Submission to the Universal Periodic Review of South Africa
March 2022**

1. Despite making commitments to act on recommendations from its third UPR cycle, South Africa has not adopted significant measures to implement many of these recommendations. The government struggled to tackle xenophobia and the ongoing threat of violence against foreign nationals. Despite making commitments to act to prevent, investigate and prosecute cases of violence against persons based on sexual orientation and gender identity, violence and discrimination against lesbian, gay, bisexual, transgender (LGBT) people persist. Violence against women, including rape and gender-based violence (GBV), remains very high. The government has also made scant progress in realizing the right to education for an estimated half-a-million children with disabilities and excluded most students with disabilities during Covid-19 related school closures.
2. The government acknowledged that cases of gender-based violence against women and girls increased during the Covid-19 pandemic and called for an end to the “second pandemic”. Government Covid-19 lockdowns made it harder for victims of gender-based violence, sex workers, LGBT people, asylum seekers and refugees to access shelters and funding shortages, including because of delayed government funding, hampered the effective operation of GBV shelters. Teenage pregnancy rates increased nationally, and in most provinces, during the first year of the Covid-19 pandemic, compared with previous years. Since its last UPR review, the government has taken important steps towards protecting the right to education of students who are pregnant or are mothers.

Gender-Based Violence

3. During the Third Cycle, South Africa accepted at least 20 recommendations to tackle sexual and gender-based violence against women and girls.
4. South Africa continues to criminalize sex work increasing the risk¹ of gender-based violence (GBV) directed at sex workers by further marginalizing this low-income group and making sex workers more vulnerable to violence by clients and men posing as clients, as well as police profiling and abuse. Covid-19 further worsened the poverty of many sex workers including especially vulnerable immigrants.

¹ Human Rights Watch, “Why Sex Work Should be Decriminalised in South Africa,” August 2019, https://www.hrw.org/sites/default/files/report_pdf/southafrica0819_web_0.pdf

5. According to data published by the government, cases of sexual assault and rape almost tripled compared to pre-lockdown rates.² In a positive move, the South African government decried and committed to address South Africa's infamously high rates of GBV both during and before the pandemic.
6. However, during research in 2021, South African GBV experts told Human Rights Watch that despite important planning including in the National Strategic Plan,³ the government still failed to provide necessary funding for GBV shelters and other services.⁴
7. As noted by the umbrella organization, the National Shelter Movement, consisting of 78 shelters across all nine provinces of South Africa⁵ as well as the Commission for Gender Equality,⁶ and the Heinrich Böll Foundation,⁷ funding in many provinces has been patchy for many years with different shelters receiving differing support and with support arriving late, causing serious problems for shelters and limiting their work providing a path away from GBV for women, girls, and other victims of gender-based violence. Underfunding broadly, and delays in promised funds for individual shelters have continued to be problems during the Covid-19 pandemic, threatening some shelters with closure and adding pressure to others already struggling with responding to the pandemic.
8. Covid-19 related government lockdowns have made it harder for victims of GBV to access shelters and social workers and other shelter workers to run these crucial services. In recent research with GBV frontline workers and shelter staff as well as other experts in GBV in South Africa, it also became evident that some groups such as sex workers, LGBT people and immigrants, asylum seekers, and refugees sometimes find accessing shelters especially difficult.

Recommendations:

9. Increase funding to shelters and ensure already-promised funds are delivered on time and finalize the draft Intersectoral Shelter Policy as a matter of urgency, ensuring all government agencies involved carry out planned improvements.
10. Support shelters to provide ongoing sensitization and skills training for shelter staff to prevent discrimination against LGBT people, sex workers, or undocumented

² See, Department of Basic Education, "Reducing Teenage Pregnancy in South Africa – The Role of the Department of Basic Education in Addressing Learner Pregnancy," PowerPoint presentation, presented during Portfolio Committee on Basic Education meeting with the Department of Basic Education on "Teenage Pregnancies and Comprehensive Sexuality Education," September 7, 2021, <https://pmg.org.za/committee-meeting/33580/> (accessed September 9, 2021), "National AGYW Statistics: Teen Pregnancy," Slide 17, and "National AGYW Statistics: GBV and Rape," slides 13, 14. South Africa's "State of Disaster" status was first declared by President Cyril Ramaphosa in March 2020, and remained in place at time of writing.

³ Republic of South Africa, "National Strategic Plan on Gender Based Violence & Femicide," March 11, 2020, https://www.gov.za/sites/default/files/gcis_document/202006/stratplan-gbvs.pdf (accessed March 21, 2022).

⁴ South Africa: Broken Promises to Aid Gender-Based Violence Survivors November 24 2011 available at <https://www.hrw.org/news/2021/11/24/south-africa-broken-promises-aid-gender-based-violence-survivors>

⁵ National Shelter Movement pens open letter to Ramaphosa on poor service delivery, women abuse, *IOL*, August 22, 2020, <https://www.iol.co.za/news/politics/national-shelter-movement-pens-open-letter-to-ramaphosa-on-poor-service-delivery-women-abuse-88195c98-c527-48c8-adaf-9b3a3fbb1b8f> (accessed March 21, 2022)

⁶ Commission for Gender Equality, Report on Consultative Hearings into the State of Shelters in South Africa, 2020, https://static.pmg.org.za/1/CGE_Report_on_Shelters_2019.20.pdf (accessed March 21, 2022).

⁷ Out of Harm's Way: Women's Shelters in the Eastern and Northern Cape. 2020 Lisa Vetten and Claudia Lopes

African non-nationals and to ensure tailored services.

11. Ensure that all shelters accept undocumented survivors and know how to assist them with immigration procedures.

Xenophobia

12. In its Third Cycle, South Africa accepted 28 recommendations to prevent and combat racism and xenophobia. In 2019, the South African government implemented the National Action Plan Against Racism, Racial Discrimination, Xenophobia and Related Intolerance⁸ but three years later, in 2022, many foreign nationals in South Africa still face xenophobic violence. With increased unemployment due to the economic disruption caused by the Covid-19 pandemic groups such as "Operation Dudula"⁹ and "Put South Africa First"¹⁰ have sprouted. Such groups perpetuate the notion that South Africa's high crime and unemployment rates are caused by the number of undocumented foreign nationals residing within the country. Further, xenophobic sentiments in the country are reinforced by prominent political figures such as Julius Malema, a Member of Parliament and leader of the Economic Freedom Fighters party who, in January 2022 visited restaurants in the Mall of Africa in Johannesburg to determine the ratio of South African employees to foreign nationals.¹¹ Malema argued that South Africans should be prioritized when it comes to recruiting in the hospitality industry.
13. South Africa has a transformative and progressive constitution which protects everyone in the country regardless of their race, gender, sex, *inter alia*, including their ethnic or social origin.¹² Yet failure in public service delivery has resulted in many foreign nationals and asylum seekers remaining undocumented. Since the Covid-19 lockdown of 2020, the Department of Home Affairs has closed [Refugee Reception Offices](#),¹³ making it near impossible for refugees to apply for asylum status, thus leaving them open to arbitrary arrests and deportation. This risk extends to nationals with asylum status that is soon to expire. Apart from the fear of arrests and deportation, living outside the bounds of formality and legality makes it difficult for foreign nationals to acquire accommodation, to apply for employment or even to purchase cars for travel.

Recommendations:

⁸ Republic of South Africa, National Action Plan (NAP) to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019, https://www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf (accessed March 21, 2022).

⁹ Operation Dudula Facebook Page https://www.facebook.com/Operation-Dudula-106149638358716/?_rdc=1&_rdr

¹⁰ "Put South Africa First's Victoria Mamogobo: 'We're a peaceful organisation'" *News24*, February 26, 2022, <https://www.news24.com/news24/analysis/saturday-profile-put-south-africa-firsts-victoria-mamogobo-were-a-peaceful-organisation-20220226> (accessed March 21, 2022)

¹¹ "Malema Visits Restaurants to Assess Whether They Are Employing South Africans" *Eye Witness News*, January 19, 2022 <https://ewn.co.za/video/14039/malema-visits-restaurants-to-assess-whether-they-are-employing-south-africans> (accessed March 21, 2022)

¹² Constitution of the Republic of South Africa, section 9, available at: [saconstitution-web-eng.pdf](https://www.justice.gov.za/saconstitution-web-eng.pdf) (justice.gov.za) section 9

¹³ "Refugees who arrived after lockdown have no way to apply for asylum" *Ground Up*, October 8, 2020, available at <https://www.groundup.org.za/article/refugees-who-arrived-after-march-2020-risk-arrest-and-deportation/>

14. Ensure greater accountability among public figures. This may include organizing sensitization workshops which educate about the effects of language on citizens, as well as sensitivity training regarding language and communication which may brew up xenophobic sentiments and incite violence against foreign nationals.
15. Ensure that law enforcement swiftly deals with xenophobic violence, arresting perpetrators and protecting victims from violence and intimidation.

Sexual Orientation and Gender Identity

16. In its Third Cycle, South Africa accepted all recommendations to end violence and discrimination against LGBT people and is presently finalizing a revised and updated National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI), including input from civil society¹⁴, and that incorporates essential elements of the National Strategic Plan on Gender-Based Violence and Femicide.¹⁵ Notwithstanding comprehensive legal and policy protections based on sexual orientation and gender identity, violence and discrimination against LGBT people remains a systemic issue in South Africa compromising the government's duty to protect. This is evident in high levels of violence directed against LGBT people, in spite of efforts by the Department of Justice and Constitutional Development (DoJCD) to combat violence and bring perpetrators to account.¹⁶
17. South Africa's constitution prohibits unfair discrimination by the state or by any person, on several enumerated grounds including gender and sexual orientation. The constitution guarantees equality before the law and equal protection and benefit of the law.¹⁷ Since the adoption of the constitution in 1996, the government has implemented laws and policies to ensure equal rights and protections for LGBT people, in line with the constitution. These rights and protections extend to LGBT asylum seekers and undocumented migrants who have fled their countries of origin to seek protection in South Africa.¹⁸ Despite a protective legislative framework, effective implementation remains a challenge.
18. Undocumented migrants, asylum seekers and refugees were especially hard hit by the Covid-19 lockdown and faced difficulty, or ineligibility, in accessing government relief. LGBT people, many of whom work in the informal sector and who often lack family or social support networks were hard hit.¹⁹

¹⁴ Human Rights Watch Submission to the South Africa Department of Justice, July 6, 2021,

<https://www.hrw.org/news/2021/07/06/human-rights-watch-submission-south-africa-department-justice>

¹⁵ Department of Justice and Constitutional Development, Gender-Based Violence and Femicide National Strategic Plan National Action Plan <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf> (accessed March 21, 2022).

¹⁶ South Africa: End Bias in Covid-19 Food Aid Refugees, Asylum Seekers Excluded; Face Starvation <https://www.hrw.org/news/2020/05/20/south-africa-end-bias-covid-19-food-aid> (accessed March 21, 2022)

¹⁷ Constitution of the Republic of South Africa, section 9, available at: [saconstitution-web-eng.pdf \(justice.gov.za\)](https://www.justice.gov.za/constitution-web-eng.pdf) section 9

¹⁸ Refugees Act, 130 of 1998 section 1 (xxi), https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf (accessed March 21, 2022)

¹⁹ "South Africa: End Bias in Covid-19 Food Aid: Refugees, Asylum Seekers Excluded; Face Starvation," Human Rights Watch news release, March 20, 2020, <https://www.hrw.org/news/2020/05/20/south-africa-end-bias-covid-19-food-aid>

19. According to media reports,²⁰ at least 24 LGBT individuals were murdered in South Africa between 12 February and 30 December 2021. Human Rights Watch recognizes the ongoing efforts of the Department of Justice and Constitutional Development (DoJCD) through the National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTI Persons to respond to these violations. Human Rights Watch is a member of the National Task Team. In response to an enquiry from Human Rights Watch,²¹ the DoJCD has provided a comprehensive update of ongoing cases.²²

Recommendations:

20. Comply with obligations to protect people from hate crime, by investigating and prosecuting cases of violence against persons based on sexual orientation and gender identity effectively at each stage of the criminal justice system.
21. Through the National Intervention Strategy, strengthen systems for monitoring, reporting and analyzing crimes of violence and discrimination against individuals based on sexual orientation or gender identity.
22. Ensure the South African Police Service (SAPS) collects data on physical and sexual violence and disaggregates the data by motive to track incidents of homophobic and transphobic violence.
23. Provide adequate financial support to shelters and enable them to provide sensitization training for staff at shelters to accommodate LGBT individuals, including African LGBT asylum seekers and undocumented migrants seeking accommodation and emergency support.

Rights of Children and People with Disabilities

24. During the Third Cycle, South Africa accepted recommendations to “adopt measures to ensure the inclusive education of persons with disabilities (139.187), and to “Prioritize implementing the right to an inclusive basic education for all children with disabilities (139.188).” It also accepted broader recommendations to “make further efforts to achieve equal and universal access to education.”
25. South Africa continues to fail to guarantee the right to inclusive education of children with disabilities, including their right to free education.²³ The government’s slow progress in the implementation of its inclusive education obligations has resulted in the denial of this right to hundreds of thousands of children with disabilities. Children with disabilities are discriminated against in enrollment decisions, and routinely

²⁰ Roberto Igual, “Human Rights Watch asks SA govt what it’s doing to stop LGBTIQ murders,” *Mamba Online*, January 27, 2022, <https://www.mambaonline.com/2022/01/27/hrw-asks-sa-govt-what-its-doing-to-stop-lgbtqi-murders/> (accessed March 21, 2022).

²¹ Human Rights Watch Letter to South African Authorities Regarding LGBTI Murders and Assaults, January 18, 2022, <https://www.hrw.org/news/2022/01/19/letter-south-african-authorities-regarding-lgbti-murders-and-assaults>

²² Letter from Deputy Minister of Justice and Constitutional Development, February 17, 2022, <https://www.hrw.org/news/2022/02/17/letter-south-african-authorities-response-human-rights-watch>

²³ Submission by Human Rights Watch to the Committee on Economic, Social and Cultural Rights on South Africa, August 2018, <https://www.hrw.org/news/2018/08/30/submission-human-rights-watch-committee-economic-social-and-cultural-rights-south>; South Africa: Children with Disabilities Shortchanged, May 24, 2019, <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged>.

marginalized in mainstream schools.²⁴ South Africa has not adopted legislation that guarantees the right to an inclusive quality education system for children with disabilities. The government has repeatedly failed to allocate adequate funding for its inclusive education objectives.²⁵ The majority of the government's limited budget for learners with disabilities is allocated to special, segregated schools rather than to inclusive mainstream education.

26. Covid-19 related school closures exacerbated previously existing inequalities; children who were already most at risk of being excluded from a quality education have been most affected.²⁶ South Africa's Covid-19 pandemic education response largely excluded students with disabilities – its remote education plans did not take into account the specific needs of students with disabilities, including accessibility needs and specific accommodations for students who could not access online or other remote education measures.²⁷
27. The Department of Basic Education's initial guidance on school re-openings largely missed references to students with disabilities, and disregarded appropriate safety measures to take in special schools, boarding schools for students with disabilities, therapy and rehabilitation centers, among others. The government's social distancing Covid-19-related measures also required the closure of special schools where adherence to the rules was not possible, without adequate alternative means to guarantee continued education of students who could not physically attend school.²⁸

Recommendations:

28. Guarantee, in law and practice, the right to inclusive, quality education of children with disabilities, and ensure students with disabilities do not pay school fees to attend public schools.
29. Adopt a law on inclusive quality education, and/or amend the South African Schools Act to enshrine the right to inclusive education in national legislation.

Teenage Pregnancy

30. During the Third Cycle, South Africa accepted recommendations to "prioritize the retention of girls in schools and accord to them the opportunity and the environment to progress at a par with their male colleagues" (139.185); and to "Provide appropriate solutions to the significant decline in the rate of school attendance in

²⁴ Human Rights Watch submission to the Universal Periodic Review of South Africa, September 2016, May 5, 2017, <https://www.hrw.org/news/2017/05/05/human-rights-watch-submission-universal-periodic-review-south-africa>.

²⁵ Equal Education Law Centre, Let in Or Left Out? A 20-year review of the regulatory framework for inclusive education and its implementation in South Africa, December 2021, <https://eelawcentre.org.za/wp-content/uploads/ie-report-let-in-or-left-out.pdf> (accessed March 9, 2022).

²⁶ Impact of Covid-19 on Children's Education in Africa, Human Rights Watch news release, August 26, 2020, <https://www.hrw.org/news/2020/08/26/impact-covid-19-childrens-education-africa>

²⁷ Robyn Beere and Anjuli Maistry, "Schools reopen: Learners with disabilities left behind again," *Maverick Citizen*, July 17, 2020, <https://www.dailymaverick.co.za/article/2020-07-17-schools-reopen-learners-with-disabilities-left-behind-again/#gsc.tab=0> (accessed March 9, 2022).

²⁸ Ibid.; Kamga, S. D. (2021), *Covid-19 and the Violation of the Right to Basic Education of Learners with Disabilities in South Africa; An Examination of Centres for Child Law v Minister of Basic Education*, September 10, 2021, *Journal of African Law*, 65(S2), 347-360, <https://www.cambridge.org/core/journals/journal-of-african-law/article/covid19-and-the-violation-of-the-right-to-basic-education-of-learners-with-disabilities-in-south-africa-an-examination-of-centre-for-child-law-v-minister-of-basic-education/402E48C656AC19178CAE0C5478B443F8> (accessed March 9, 2022).

secondary education, especially among girls” (139.184). It also accepted a related recommendation to “Ensure comprehensive sexuality education in the school curriculum, including on consent, contraception, and gender-based violence” (139.172).

31. Adolescent girls and young women face many barriers to their rights to education and sexual and reproductive rights, and thousands experience unwanted pregnancies. South Africa has a high rate of teenage pregnancies: around four percent of girls and women ages 14 to 19 reported being pregnant between 2013 and 2018, according to UN data.²⁹ Between 2017 and the first quarter of 2021, over 512,000 girls and young women ages 10 to 19 delivered children in health facilities and close to 57,000 terminated their pregnancies, according to government data.³⁰ Adolescent girls and young women are also among the key groups most heavily affected by HIV infections.³¹
32. Teenage pregnancy rates increased nationally, and in most provinces, from April 2020 and March 2021, compared with previous years. Seven out of nine South African provinces reported higher delivery rates among girls and young women ages 10 to 19, compared with the previous year, according to data from the Department of Basic Education.³² In Gauteng province, the Department of Health registered more than 23,000 pregnancies of girls and young women ages 10 to 19, between April 2020 and March 2021.³³ Nearly 3,000 of these girls terminated their pregnancy, according to the data. Gauteng province registered the lowest rate of teenage pregnancies in this period; provinces like the Northern Cape and the Eastern Cape registered almost twice the rate of deliveries by girls and young women.³⁴
33. According to South Africa’s 2018 General Household Survey, approximately 33 percent of girls do not return to school after falling pregnant.³⁵ Since its last UPR review, the government has taken important steps towards protecting the right to education of students who are pregnant or are mothers. In November 2021, South Africa’s Department of Basic Education adopted an updated “Policy on the Prevention

²⁹ United Nations Population Fund, “South Africa,” undated, <https://www.unfpa.org/data/ZA> (accessed March 9, 2022)

³⁰ See, Department of Basic Education, “Reducing Teenage Pregnancy in South Africa – The Role of the Department of Basic Education in Addressing Learner Pregnancy,” PowerPoint presentation, presented during Portfolio Committee on Basic Education meeting with the Department of Basic Education on “Teenage Pregnancies and Comprehensive Sexuality Education,” September 7, 2021, <https://pmg.org.za/committee-meeting/33580/> (accessed September 9, 2021), “National AGYW Statistics: Teen Pregnancy,” Slide 17.

³¹ South African National AIDS Council, “Let Our Actions Count - South Africa’s National Strategic Plan for HIV, TB, and STIs 2017 – 2022,” December 2019, <https://sanac.org.za/the-national-strategic-plan/> (accessed March 9, 2022).

³² Parliamentary Monitoring Group, “Teenage Pregnancy & Comprehensive Sexuality Education,” September 7, 2021, <https://pmg.org.za/committee-meeting/33580/>.

³³ “Bleak future for young girls with 23,226 reported teenage pregnancies in Gauteng,” August 17, 2021, *Polity*, <https://www.polity.org.za/article/bleak-future-for-young-girls-with-23-226-reported-teenage-pregnancies-in-gauteng-2021-08-17> (accessed March 9, 2022). Statistics South Africa, “General Household Survey,” 2018, <http://www.statssa.gov.za/publications/P0318/P03182018.pdf> (accessed March 21, 2022).

³⁴ Department of Basic Education, “Reducing Teenage Pregnancy in South Africa – The Role of the Department of Basic Education in Addressing Learner Pregnancy,” PowerPoint presentation, slide 27.

³⁵ Parliament of the Republic of South Africa, “Media Statement: Basic Education Committee agrees holistic approach needed to curb teen pregnancies,” September 7, 2021, <https://www.parliament.gov.za/press-releases/media-statement-basic-education-committee-agrees-holistic-approach-needed-curb-teen-pregnancies> (accessed March 9, 2022).

and Management of Learner Pregnancy in Schools” that includes measures to guarantee the rights of students who are pregnant or adolescent mothers to education and sexual and reproductive rights –including a provision that girls will be able to remain enrolled in school during and after pregnancy, schools’ obligations to ensure non-discrimination and protect girls from expulsion. Through this policy, the government states schools’ obligation to provide students with “scientifically accurate, age-appropriate and comprehensive information,” as well as materials on sexual and reproductive health rights.³⁶

Recommendations:

34. Ensure students who are pregnant or are adolescent mothers are fully supported to stay in school and complete secondary education.
35. Ensure all schools teach age appropriate, scientifically accurate and inclusive comprehensive sexuality education, and ensure children with disabilities have access to information on sexual and reproductive rights in accessible formats.

³⁶ Department of Basic Education, Policy on the Prevention and Management of Learner Pregnancy in Schools,” General Notice 704 of 2021, November 8, 2021.