



# General Assembly

Distr.: General  
27 September 2022

Original: English

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## Seventy-seventh session

Agenda item 117 (c)

### **Elections to fill vacancies in subsidiary organs and other elections: election of members of the Human Rights Council**

#### **Note verbale dated 24 August 2022 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly**

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Office of the President of the General Assembly and, pursuant to General Assembly resolution [60/251](#) of 15 March 2006, has the honour to inform the Secretariat that the Government of South Africa will present its candidature to the Human Rights Council for the period 2023–2025 at the elections to be held in October 2022 during the seventy-seventh session of the General Assembly in New York.

The Permanent Mission of South Africa to the United Nations has the honour to confirm that the candidature of South Africa for membership in the Human Rights Council for the period 2023–2025 was endorsed by the African Union at the thirty-ninth ordinary session of its Executive Council, held in Addis Ababa on 14 and 15 October 2021.

South Africa previously served two consecutive terms, twice (2006–2010 and 2013–2019), and in this capacity played an important role in the development of the institution-building text mechanisms for the new Human Rights Council, including the framework for the implementation of these mechanisms.

South Africa is committed to working with all partners to strengthen the United Nations human rights system and to ensure that human rights are respected, promoted and protected everywhere and that they are enjoyed by all without discrimination.

The Permanent Mission of South Africa to the United Nations has the honour to enclose herewith an aide-mémoire outlining its voluntary commitments and pledges during its tenure with respect to the promotion, protection and fulfilment of all universally recognized human rights and fundamental freedoms, in accordance with General Assembly resolution [60/251](#) (see annex).

The Permanent Mission of South Africa to the United Nations would be grateful if the present note and its annex could be circulated as documents of the General Assembly at its seventy-seventh session.



**Annex to the note verbale dated 24 August 2022 from the Permanent Mission of the Republic of South Africa to the United Nations addressed to the President of the General Assembly**

**Candidature of South Africa to the Human Rights Council, 2023–2025**

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

## **I. Introduction**

1. In 1994, South Africa was welcomed back into the family of nations after many years of isolation because of apartheid. The dawn of freedom, justice and democracy in South Africa came about, in large part, as a result of the sterling role played by the international community (with the United Nations in the lead) and the unwavering support from people of goodwill around the world to rid South Africa then of a system of government that was synonymous with racial discrimination, human rights violations, organized disrespect for human life and contempt for international human rights and humanitarian law.

2. After the fall of apartheid, the people of South Africa adopted a new Constitution as the supreme law of the Republic and committed themselves, as a country and people, to “build a united and democratic South Africa able to take its rightful place as a sovereign [and responsible] state in the family of nations” (preamble to the Constitution). When they made this commitment, the people of South Africa wanted to send a strong and reassuring message to the family of nations, *inter alia*, that:

(a) South Africa shall no longer be known as a pariah in the eyes of the international community but a cooperative member of the family of nations and shall be willing to be bound by and respect the rule of international law and promote resolution of conflicts through peaceful means and not war;

(b) South Africa will play a constructive role in international politics and help develop norms, standards and values at the multilateral level (in this case, in the field of human rights) that will foster respect for human dignity, advancement of human rights and fundamental freedoms, and help bring an end to racism, racial discrimination and all forms of intolerance;

(c) South Africa shall no longer use its sovereignty to violate international human rights law, international humanitarian law and the international law of protection.

3. In 2006, South Africa demonstrated its commitment to the promotion, protection and advancement of human rights and fundamental freedoms when it played an integral role in the UN processes that led to the transition from the erstwhile Commission on Human Rights to the Human Rights Council. South Africa was successfully elected to the Council as a founding member for two consecutive terms from 2006 to 2010. South Africa was also elected to two additional consecutive terms from 2014 to 2019. Since the end of its previous term of membership in the Council, South Africa has consistently played a key and active role in the development of norms and standards in the international human rights and humanitarian law fields, focusing on the need to foster maximum protection for victims of human rights abuses and violations and ensuring that appropriate responses are developed to combat impunity.

## II. South Africa's Constitution and Bill of Rights

4. The South African Constitution provides that the Bill of Rights (in the Constitution) is a “cornerstone of democracy in South Africa” and affirms the democratic values of human dignity, equality and freedom. Further, the Constitution places an obligation on the State to “respect, protect, promote and fulfil the rights in the Bill of Rights”.

5. The first democratic elections in 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 administration, South Africa has made remarkable progress in cementing a democratic constitutional order and continues to work to realize the ideals of its democratic project.

6. Whereas the South African democracy is relatively young, the heroic struggle of the South African people for democracy, social justice and human rights and fundamental freedoms is very old and extends over a period of 350 years. In a short space of 28 years of democracy, South Africa has made remarkable progress in building a new nation in which all South Africans have equal rights.

7. The South African Constitution guarantees all the universally recognized human rights and fundamental freedoms and, in effect, embraces the key tenets of well-known international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

8. In cooperating with other partners, in this case, in the field of human rights, South Africa's pledge and commitments are premised on the goal to make rights practically realizable for all peoples everywhere and without discrimination. In this regard, South Africa holds a firm view that there is no dichotomy between civil and political rights on the one hand and the economic, social and cultural rights on the other. For instance, South Africa's approach affirms the Declaration on the Right to Development which 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 these rights for the development of persons, communities and societies.

9. In order to give practical meaning and effect to the rights contained in the Bill of Rights, the South African Government has enacted various pieces of legislation such as The Promotion of National Unity and Reconciliation Act, The Promotion of Equality and Prevention of Unfair Discrimination Act, The Promotion of Administrative Justice Act, The Promotion of Access to Information Act, The Protection of Personal Information Act, The Employment Equity Act, The Labour Relations Act, and The Public Service Act. These laws, together with other related pieces of legislation in health, education, housing, land, water and sanitation, food security and nutrition, have placed an obligation on the State to create an environment for the implementation of programmes and policies that will facilitate the progressive realization of human rights.

10. South Africa's commitment to work collaboratively with other partners at the multilateral level to advance human rights was demonstrated from the early beginnings of our democracy when South Africa lodged its National Action Plan for the Promotion, Protection and Fulfilment of Human Rights at the United Nations on 10 December 1998. Thus, South Africa's engagement with the international community, including in the fields of human rights is therefore guided by principles such as respect for human dignity, advancement of human rights and fundamental freedoms, the rule of law, democracy and accountable governance. The South African

Constitutional Court has produced significant judgments that underscore the importance of these values and principles in the quest to advance all human rights and fundamental freedoms, including economic, social and cultural rights.

### **III. Institutions supporting South African democracy**

11. The Constitution has established the following institutions to strengthen constitutional democracy in South Africa. These institutions are independent and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear favour or prejudice. These are:

- (a) The Public Protector;
- (b) The South African Human Rights Commission;
- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- (d) The Commission for Gender Equality;
- (e) The Auditor-General;
- (f) The Electoral Commission.

12. The key function of these institutions is to support South Africa's constitutional democracy by fostering the culture of accountability, responsiveness and people-centred development. For instance, the South African Human Rights Commission has the power (a) to investigate and to report on the observance of human rights; (b) to take steps to secure appropriate redress where human rights have been violated; (c) to carry out research; and (d) to educate.

### **IV. Undertakings/pledges**

13. As a member of the Human Rights Council, the South African Government undertakes to do the following:

(a) Consistently and progressively continue to receive the special procedures and mechanisms of the Human Rights Council wishing to visit South Africa in keeping with their various mandates (as per the commitment South Africa made in its standing invitation to all thematic special procedures which was submitted on 22 October 2002);

(i) During the period of the erstwhile Commission on Human Rights, the South African Government received the following visits by the special procedures of the Commission of Human Rights/Human Rights Council:

- a. The Special Rapporteur on violence against women, its causes and consequences (1996);
- b. The Special Rapporteur on toxic waste (1997);
- c. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1998);
- d. The Special Rapporteur on the sale of children, child prostitution and child pornography (2002);
- e. The Working Group on Arbitrary Detention (2005);

- f. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (2005);
- g. The Special Rapporteur on the right to adequate housing (2007);
- h. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2007);
- i. The Special Rapporteur of the African Commission on Human and Peoples Rights on prisons and conditions of detention (2004);
- j. 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);
- k. The Special Rapporteur on the human rights of migrants (2011);
- l. The Special Rapporteur on the right to food (2012);
- (ii) Since its previous membership in the Council, the following mechanisms have visited South Africa without any restrictions or impediments:
- a. The Independent Expert on the enjoyment of human rights by persons with albinism;
- b. The Committee on the Elimination of Discrimination against Women;
- (iii) Additional to the above, the South African Government is currently processing the request for a visit by the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment;
- (b) Promote respect for the integrity and dignity of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The South African Government will work to ensure that the United Nations High Commissioner for Human Rights and personnel in that Office are above the manipulation and influences of States;
- (c) Support OHCHR, including programmes within OHCHR aimed at advancing the cause of human rights globally;
- (d) Support the regional office of OHCHR in Pretoria. The South Africa Government has signed a memorandum of intent with the Office and is currently processing the host country agreement;
- (e) Continue with 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 General Assembly resolution 48/141. In this regard, South Africa will be one of the chief proponents of a balanced agenda of the Human Rights Council which reflects, among others, the primacy of achieving the realization of the right to development as well as moral human rights issues such as the eradication of poverty and underdevelopment;
- (f) 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 through the rectification of its status as per Human Rights Council resolution 4/7;
- (g) Work towards updating the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights 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;

(h) Work to promote, within the Human Rights Council, a common understanding that human rights can only be practically enjoyed through an effective partnership with all the relevant stakeholders at all levels;

(i) Submit on-time country reports to human rights treaty monitoring bodies;

(j) Ensure that the Human Rights Council adopts four requisite additional protocols to the International Convention on the Elimination of All Forms of Racial Discrimination covering xenophobia, Islamophobia, anti-Semitism and the incitement to hatred through ethnic, religious and racial profiling.

## V. International instruments to which South Africa is a State party

14. 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:

(a) International Covenant on Economic, Social and Cultural Rights;

(b) International Covenant on Civil and Political Rights;

(c) Rome Statute of the International Criminal Court (ICC);

(d) International Convention on the Elimination of All Forms of Racial Discrimination;

(e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(f) Convention on the Elimination of All Forms of Discrimination against Women;

(g) Convention on the Rights of the Child;

(h) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(i) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child Prostitution and child Pornography;

(j) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(k) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

(l) Optional Protocol to the Convention against Torture;

(m) Convention on the Rights of Persons with Disabilities;

(n) Optional Protocol to the Convention on the Rights of Persons with Disabilities.

### Regional instruments to which South Africa is a State party

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

(a) African Charter on Human and Peoples' Rights;

(b) African Union Convention Governing the Specific Aspects of Refugee Problems in Africa;

- (c) African Charter on the Rights and Welfare of the Child;
- (d) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (e) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- (f) Protocol on the Statute of the African Court of Justice and Human Rights;
- (g) African Charter on Democracy, Elections and Governance.

## **VI. Role of South Africa in the evolution and development of international human rights and humanitarian norms and standards**

16. South Africa sees the Human Rights Council as an important multilateral forum where the international community can work together in a constructive and meaningful way to develop norms and standards in the field of human rights that will foster the promotion, protection and practical realization and enjoyment of all human rights by all people across the world. Since its readmission to the family of nations after the end of apartheid in 1994, South Africa has made a significant contribution and played its role in the development of the norms and standards in the areas of international human rights and humanitarian law.

17. The following are some of the major contributions by South Africa:

- (a) The Chairing of the Commission on Human Rights during its fifty-fourth session, 1998–1999;
- (b) Coordinator of the African Group on human rights issues during 2002–2003;
- (c) South African experts have served in the following treaty monitoring bodies:
  - (i) Committee on the Elimination of Racial Discrimination;
  - (ii) Human Rights Committee;
  - (iii) Committee on the Rights of the Child;
  - (iv) Committee on Economic, Social and Cultural Rights;
  - (v) African Commission on Human and Peoples' Rights.

18. Several South Africans are serving or have served as special mandate holders of the Council:

- (a) Special Rapporteur on extrajudicial, summary or arbitrary executions;
- (b) Special Rapporteur on violence against women, its causes and consequences;
- (c) Working Group on Enforced or Involuntary Disappearances;
- (d) 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;
- (e) Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
- (f) Commission on Human Rights in South Sudan;
- (g) Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel; and

(h) Independent investigation on Burundi.

19. 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.

20. The South African Government has played a leading role in some flagship United Nations human rights programmes, including:

(a) Advocating for the agenda for development through intergovernmental structures of the Non-Aligned Movement and the Group of 77 and China;

(b) 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;

(c) Continuous advocating for the universal acceptance of the notion of justiciability of economic, social and cultural rights, including the realization of the right to development;

(d) Establishing an international independent expert mechanism aimed at furthering transformative change for racial justice and equality in the context of law enforcement globally, particularly where it relates to the legacies of colonialism and the transatlantic slave trade in enslaved Africans, 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.

21. South Africa, on behalf of the African continent, hosted the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban. As a result, South Africa 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 quite significant progress in the implementation of the Durban Declaration and Programme of Action which is the outcome document of the conference. These include:

(a) The creation of the intergovernmental working group on the follow-up to the Durban Declaration and Programme of Action, which meets annually in Geneva;

(b) The creation of a dedicated thematic special procedure mechanism of the Human Rights Council for people of African descent called the Working Group of Experts on People of African Descent;

(c) 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";

(d) The declaration of 2015–2024 as the International Decade for People of African Descent by the General Assembly. The International Decade for People of African Descent 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 works toward eradication of racial prejudices and discrimination that people of African descent continue to endure. It also contributes to a greater knowledge, appreciation



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and respect for people of African descent and their contribution to the economic, social, intellectual, cultural and ethical development of humanity and human civilization;

(e) The Group of Independent Eminent Experts on the Implementation of the Durban Declaration and Programme of Action, which meets yearly to examine progress on the implementation and follow-up to the Durban Declaration and Programme of Action;

(f) The annual thematic resolutions at the level of New York and Geneva.

22. South Africa leads on the following additional resolutions:

(a) Elimination of discrimination against women and girls in sport;

(b) 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.

## **VII. Instruments in the process of ratification**

23. The South African Government is in the process of ratifying the following important human rights instruments: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

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

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