

**A critical appraisal of South Africa's voting patterns on resolutions
of the United Nations Human Rights Council in the period 2008-
2010 and 2013-2015**

**Research paper submitted in partial fulfilment of the Masters of Philosophy: International
and Human Rights Law**

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December 2015

DECLARATION

I declare that **A critical appraisal of South Africa’s voting patterns on resolutions of the United Nations Human Rights Council in the period 2008-2010 and 2013-2015** is my own work, that it has not submitted before for any degree or examination in any other university, and that all the sources I have used have been indicated and acknowledged as complete references.

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LIST OF ABBREVIATIONS



ACHPR	African Charter on Human and Peoples Rights
AMCU	Association of Mineworkers and Construction Union
ANC	African National Congress
APRM	African Peer Review Mechanism
AU	African Union
BRICS	Brazil, Russia, India, China and South Africa
CAT	Convention against Torture
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
DIRCO	Department of International Relations Cooperation
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of Congo
ECOSOC	Economic and Social Council
EU	European Union
Focac	Forum on China Africa Co-operation
GA	General Assembly
G77	Group of 77
IBSA	India, Brazil and South Africa
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDF	Israel Defence Forces
LGBT	lesbian, gay, bisexual and transgender violence

LTTE	Liberal Tigers of Tamil Eelam
MDGs	Millennium Development Goals
NA	National Assembly
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NCOP	National Council of Provinces
NEPAD	New Partnership for Africa's Development
NGOs	Non-governmental Organisations
NHRIs	National Human Rights Institutions
NIEO	New International Economic Order
OAU	Organisation of the African Unity
OHCHR	Office of the United Nations Higher Commissioner for Human Rights
OIC	Organisation of Islamic Conference
SACP	South African Communist Party
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SuR	states under review
TRC	Truth and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UPR	Universal Period Review

US

United States of America



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KEY WORDS:

African Solutions to African Problems

Foreign policy

Human rights

Middle power identity

Multilateralism

National or self-interests

Ubuntu

Human Rights Council

South Africa

Voting patterns



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DEDICATION

This work is dedicated to the all people facing human rights challenges in individual UN member countries in the name of national interests. It is also dedicated to my late grandfather Phokwana Douglas Dubula for his wisdom as a young boy until an elderly man.



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ACKNOWLEDGMENTS

First and foremost I would like to acknowledge and thank Prof. Werner Scholtz who I first approached about this topic and suggested how I should approach it since I have a political studies background. Your suggestion Prof Scholtz is highly appreciated particularly that of I should then approach Prof Benyam Mezmur since he is one of the well-known specialists in the field of human rights law.

Further, I would like to thank then Mr but currently Dr. Angelo Buhle Dube for his immeasurable contribution on the shaping or sharpening of my research question following Ms L Thomas's suggestion in the Department of Public Law and Jurisprudence I should approach him for supervision, yet, our relationship had to come to an end because he has many students that he is supervising, teaching and his own research on top of that. In this regard, I must say Dr Dube your effort and contribution is highly appreciated and God bless you!

Above all, I would like to deeply or sincerely thank Prof. Benyam Dawit Mezmur for his tireless effort in making this work to be an ultimate success from a very poor and intolerable legal writing to a proper legal style because I have a political studies and public administration background that are completely different from legal style of writing. Despite that, you understood me and told yourself you will be patient with me although you have a very tight schedule that I ever saw in my life. In addition to that, to show your commitment Prof Mezmur you even went an extra mile by appointing a co-supervisor while not getting tired to tell me when I was not doing what I was supposed to be doing.

Lastly, I would like to thank my biological parents (Bathembu and Novumile Mfakele) for their tireless support emotionally and upbringing because they taught me well what *ubuntu* means and how to relate with people that I am familiar and unfamiliar with. Further, I would also like to thank my siblings starting from my big brother Vuyolwethu, and youngest brothers Zakheni, and Sibabalwe as well as our only sister Nomasithini for their unwavering support throughout these years. I owe this Masters degree to them!

Chapter 1

1. General introduction and overview of the study

1.1. Background to the study

Despite the fact that in the aftermath of the two World Wars human rights became the pillar of foreign policies of United Nations (UN) member states; '*realpolitik*'¹ also prevailed in order to achieve national interests.² However, South Africa is not an exception in this regard. In the events leading to its liberation, the African National Congress (ANC) as the then government in waiting of South Africa pledged that its international relations will be guided by human rights in all instances whether it is social, political, economical or environmental.³ This led to the aftermath of the 1994 democratic elections Government enacting the South African Constitution Act 108 of 1996 which in Chapter Two embodies the *Bill of Rights* that emphasizes the significance of human rights domestically and internationally. To this end, the 1996 Constitution encompasses the recognition of international human rights law.⁴

This as a backdrop led to the realisation of the philosophy of '*ubuntu*'⁵ as a South African foreign policy diplomacy since 2011. In doing so, the government acknowledges the nature and challenges of the South African society and how it can use the perception of 'humanity' central to *ubuntu* values to resolve or participate in the mediation of the regional or continental, as

¹ *Realpolitik* refers to 'politics based on practical and material factors rather than on theoretical or ethical objectives' [Merriam-Webster available at <http://www.merriam-webster.com/dictionary/realpolitik> (accessed on 14 December 2015)]

² Bohle-Muller N 'Nuanced Balancing Act: South Africa's National and International Interests and its 'African Agenda' (2012) 120 *South African Institute of International Affairs* 5. [Hereafter referred to as Bohle-Muller]

³ Mandela N 'South Africa's Future Foreign Policy' 81 *International Affairs* 87. [Hereafter referred to as Mandela]

⁴ Bohle-Muller supra note 1, at 5.

⁵ *Ubuntu* as reflected on the front page of White Paper on SA's Foreign Policy of 13 May 2011 refers to 'humanity'. In addition to that, the *ubuntu* ideology is described as South African foreign policy diplomacy. However, rather than being known as foreign policy diplomacy, there are significant connotations attached to the concept of *ubuntu*. For instance, its meaning is shared across Nguni official languages in South Africa with the motto in isiZulu '*umuntu ngumuntu ngabantu*' which directly translates in English (a human is a human through other human beings) as cited in Elechi OO, Morris SVC & Schafer EJ 'Restoring Justice (Ubuntu): An African Perspective' (2010) 20 *International Criminal Justice Review* 75. Furthermore, according to Mokgoro, the concept of *ubuntu* entails social values in South Africa or Africans such as group solidarity, conformity, compassion, respect, human dignity, humanistic orientation and collective unity (Mokgoro JY '*Ubuntu and the Law of South Africa* (1998) *Conrad-Adenauer-Sifting Seminar Report of the Colloquium* 3).

well as international issues.⁶ For instance, domestically, the democratic South Africa is faced with developmental challenges in part emanating from its apartheid regime such as poverty, inequality, underdevelopment, and unemployment among youth, endemic diseases like HIV/AIDS and poor healthcare system and lack of basic quality education.⁷ Therefore, these challenges as will be shown in the subsequent sections, have an impact on South Africa's voting in the United Nations Human Rights Council (UNHRC or the Council).

In this regard, on the basis of its foreign policy, South Africa has emerged as a significant role player both on the African continent as well as international stage.⁸ For instance, South Africa participates in a number of peacekeeping missions.⁹ It also takes credit for the creation of the New Partnership for Africa's Development (NEPAD), because it plays a significant role at the African Union (AU) and UN levels, and continues to contribute significantly as a negotiator in a number of conflicts.¹⁰ All of these efforts are aimed towards the promotion and protection of human rights.

However, in recent years, questions have been raised on how the government of South Africa conducts itself in relation to some events. Some examples of this can be cited here such as the situations in Libya conflict, and issues of rule of law, human rights and democracy in Zimbabwe and Myanmar¹¹ have been highlighted as examples where South Africa's actions were not in

⁶ White Paper on South Africa's Foreign Policy (13 May 2011) 4.

⁷ A/HRC/21/16 "Report of the Working Group on the UPR South Africa, (09 July 2012), at paras 14-21.

⁸ Masters L "Opening the 'black box': South African foreign policy-making", Chapter 2, in Landsberg C & Van Wyk (Eds) *South African Foreign Policy Review*, (2012) 21-26.

⁹ Matheba G 'The Role of South Africa in the Security Structures of Southern Africa' (2003) *Department of International Relations and Trade Office of the South African State President* 16-17 and; Masters L "Opening the 'black box': South African foreign policy making", Chapter 2, in Landsberg C & Van Wyk (eds) *South African Foreign Policy Review*, (2012) 22.

¹⁰ Nathan L 'African Solutions to African Problems: South African Foreign Policy' (2013) 51 *South African Foreign Policy Initiative* 1.

¹¹ Firstly, in the case of Myanmar on 12 January 2007 when a draft resolution was proposed by United States (US) and United Kingdom (UK) calling on the junta to cease military attacks, put an end to human rights and humanitarian law violations and government to begin a substantive political dialogue immediately to pave the way for genuine democratic transition as well as unconditionally release Aung San Suu Kyi. However, despite those attempts the resolution was not passed because permanent members in the UNSC such as Russia and China voted against the resolution. Surprisingly and with a wide criticism, the South African Government despite its human rights and democratic values South Africa inherited in the peaceful transition from apartheid to democracy voted against the resolutions siding with countries known for their dubious human rights record (Tladi D 'Strict positivism, moral arguments, human rights and the Security Council: South Africa and the Myanmar vote' (2008) *African Human Rights Law*

line with its human rights obligations.¹² As a UN member South Africa is obliged to preserve international peace and security and promote and protect human rights as reflected in the UN Charter of 1945. Therefore, despite the fact that it is inevitable of UN member states to act in favour of their national interests they are not allowed to violate the international human rights law.

Furthermore, Government of South Africa's denial of the entrance visa to allow Dalai Lama to enter and take part in activities in the country has also been highlighted as an inconsistency in its foreign policy.¹³ And more recently, questions have been raised as to the extent of commitment by the Government of South Africa to human rights in connection with its non-compliance to effect the arrest of President Al Bashir on the basis of the arrest warrant issued by the International Criminal Court (ICC).¹⁴

As a result of these and other similar issues have been raised regarding whether the South African Government foreign policy is still indeed informed by its international human rights obligations. In general, it is also of greater significance to investigate whether South Africa's actions sometimes contradict its signing and ratification of international human rights and humanitarian law instruments as informed by Section 231(2) of the South African Constitution. Among others, are the four Geneva Conventions and their Additional Protocols of 1949 as well

*Journal*26). Secondly, on the Zimbabwe case study, the South African Government in solidarity with its regional neighbour though at the expense of human rights and democracy was reluctant to criticise authoritarian President Robert Mugabe although there was substantial evidence confirming prevalence of election rigging and state-sponsored violence within the country. Instead the South African urged the west to cease their economic sanctions as Zimbabwe is a prime location for Southern African investment. Consequently, it astonishingly ridiculed and voted against the UN resolution to implement sanctions in Zimbabwe. And thirdly, on the Libyan case study, South Africa despite initially voting in favour of the UNSC resolution 1973 of "no-fly zone" to stop the Libyan forces from killing innocent people following the 2011 Arab Spring, it was dissatisfied with how the resolution was executed by North Atlantic Organisation Treaty (NATO) forces to the extent of enforcing regime change in solidarity with the AU regional counterparts demanding African solution to the Libyan matter. (Keally K 'South African Foreign Policy: Implications for Democracy' (09 November 2012), *Council for a Community of Democracies*, available at http://www.ccd21.org/news/africa/south_africa_foreign_policy.html (accessed 23 April 2015).

¹² Keally K 'South African Foreign Policy: Implications for Democracy' (09 November 2012), *Council for a Community of Democracies*, available at http://www.ccd21.org/news/africa/south_africa_foreign_policy.html (accessed 23 April 2015).

¹³ Ibid.

¹⁴ Cohen M 'Al-Bashir sets up high court and Zuma administration clash' (23 June 2015) *Mail and Guardian Online*, available at <http://mg.co.za/article/2015-06-23-al-bashir-cause-of-clash-between-south-african-courts-and-state> (accessed on 24 June 2015).

as Universal Declaration of Human Rights (UDHR) of 1948, International Covenant on Civil and Political Rights (ICCPR) of 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and their Optional Protocols under the *International Bill of Rights* to promote international peace and security as well as international human rights promotion and protection.¹⁵

This as a backdrop informs the purpose of this paper that endeavours to look specifically at the voting records and patterns of the Government of South Africa as a member of the UNHRC. Thus, this paper will assess such a record with the mandate of determining if the South African Government foreign policy actions are in compliance with its international human rights obligations in the UN Charter and the mentioned instruments that South Africa signed and ratified in order for the international community to take actions against it.

1.2. Statement of the Problem

Despite the fact that South Africa in terms of its Constitution and foreign policy believes in making human rights central to its activities, on many occasions in the UNHRC, it has been found voting opposite to these values. In this regard, it has been found aligning itself with the countries known for poor human rights records. Subsequently, this raises the question of whether the current foreign policy of South Africa is still driven by the high regard for human rights. As a result, this paper endeavours to look specifically at the voting records and patterns of the Government of South Africa as a member of the UN Human Rights Council (2008-2010 and 2013-2015). It will assess such a record with a view to determine whether the Government's foreign policy is in compliance with its international human rights obligations.

1.3. Scope of the study

The proposed study will focus on South Africa's voting record in the UNHRC. In doing so, the study is time bound from 2008-2010 and 2013-2015 because these periods mark the time that South Africa served as a member of the Human rights Council. The assessment will not focus on

¹⁵ Isa FG & de Feyter K (Eds.) *International Protection of Human Rights: Achievements and Challenges* (2006) 140.

all voting done at the Human Rights Council during this period but rather interrogate and highlight those that relate to resolutions on the human rights situations of specific countries or thematic areas.

1.4. Research question(s)

This study aims to respond to the following questions:

- What is the voting record of South Africa in relation to UNHRC resolutions?
- Does the country's voting record comply with its international and regional human rights obligations?
- Does South Africa's voting pattern on resolutions of UNHRC comply with its foreign policy objectives or principles on democracy and human rights?

1.5. Research Methodology and limitation(s)

The study is based on a desk review of series of literature including both primary and secondary sources relevant to the subject of discussion. Such sources as international instruments, treaties and conventions, legislation reports, leading textbooks on the South African foreign policy and international human rights law, journal articles, comments and cases, as well as Department of International Relations Cooperation (DIRCO) or government speeches pertaining to South Africa's international relations policies and actions have been used throughout the study.

However, despite that in this study interviews or fieldwork have not been conducted as a way of gathering data.

1.6. Literature review

The selectivity and politicization of international human rights by the United Nations Commission on Human Rights (UNCHR) led to its replacement by the UNHRC on March 2006 by resolution 60/251 of the General Assembly (GA).¹⁶ However, despite positive hopes following the Commission's replacement by the Council, according to commentators, it seems to be a

¹⁶ Mallory C 'Membership and the UN Human Rights Council' (2013) 2 *Canadian Journal of Human Rights* 3.

representation of old wine in new bottles because it continues to fall to the same traps of politicization and selectivity.¹⁷

Following the report of the then UN Secretary General Kofi Annan detailing the failures of the UNCHR because of the election of countries with poor human rights record such as China,¹⁸ Libya, Sudan, Sierra Leone, Uganda and Togo, the credibility of the Commission was undermined further.¹⁹ This is because these countries entered the Commission not to enhance human rights promotion and protection but rather to “point fingers” at others’ deteriorating human rights abuses and argue the case for their sovereignty when it came to reported cases of human rights violations.²⁰ Yet, the actions of these countries blur the good work of other countries that value human rights because sometimes the interests that are protected by these countries have little influence on the protection and promotion of human rights that is envisaged in the world post world wars.²¹

According to Hug and Luk’acs²² the tension is often on existing differences between North and South on which rights should come first- either those in the ICCPR or those on the ICESCR. Therefore, despite the fact that there was hope in the reform of the Commission to the Council in 2006, regional memberships or groupings in the Council still dictate the agenda that is sometimes not progressive or conducive for the promotion and protection of human rights.²³ As a result, individual member states including South Africa are sometimes seen as failing to meet their obligations in the international human rights treaty bodies.²⁴ This is because as the

¹⁷ Hug S & Luk’acs R ‘Preferences or blocs? Voting in the United Nations Human Rights Council’ (2014) 9 *Rev IntOrgan* 84. [Hereafter referred to as Hug and Luk’acs]

¹⁸ It remained in the UNCHR since 1982 until early 2000s as identified by Edwards MS, Scott KM, Allen SH & Irvin K ‘Sins of commission? Understanding membership patterns on the United Nations Human Rights Commission’ (2008)61 *Political Research Quarterly* 5

¹⁹ Cox E ‘State Interests and the Creation and Functioning of the United Nations Human Rights Council’ (2010) 6 *Journal of International Law and International Relations* 100. [hereafter referred to as Cox]

²⁰ Edwards MS, Scott KM, Allen SH & Irvin K ‘Sins of commission? Understanding membership patterns on the United Nations Human Rights Commission’ (2008)61 *Political Research Quarterly* 5.

²¹ Edwards *et al* supra note 18, at 5. [hereafter referred to as Edwards *et al*]

²² Hug and Luk’acs supra note 15, at 86.

²³ Cox supra note 17, at 106.

²⁴ Muntingh L ‘SA’s failures in the international human-rights system’, *Mail and Guardian Thought Leader*, (27 October 2014), available at, <http://www.thoughtleader.co.za/lukasmuntingh/2014/10/27/sas-failures-in-the-international-human-rights-system/> (accessed on 5 July 2015).

new body in the UN system, the UNHRC requires member states to adhere to obligations such as going through the Universal Periodic Review (UPR) process.²⁵

Nevertheless, in the aftermath of UNCHR reform to UNHRC, studies on voting patterns in the international community focused on the notion of “blocs”.²⁶ The idea of “blocs” plays an important role in the GA in order to determine the direction and suggest ideas about voluntary and involuntary cooperation and coordination among countries on specific topics.²⁷ However, although in the early writings during the Cold War era the focus was on the ideological voting patterns in the international community between Western states led by the United States of America (US) and Soviet Union led by Russia and China;²⁸ now this has changed to the voting behaviours among democracies and non-democracies.²⁹

In particular, the change has been noticed post the Cold War era especially by influence of the existence of European Union (EU) in the international scene spearheading the significance of human rights since it is one of the thresholds for its membership.³⁰ This is because since the late 1950s until early 1990s when South Africa received its liberation from minority rule, African countries that were still under colonial rule at the time when the UN was formed, were mobilising for their recognition in the international affairs as independent countries with sovereignty equality right similar to major powers.³¹ Therefore, when ideological differences came to an end among blocs, the issue of the voting in terms of the political systems of democracies and non-democracies came into effect leading to the reform of the UNCHR to

²⁵ 'United Nations Human Rights Council', available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (accessed on 20 June 2015).

²⁶ Hug and Luk'acs supra notes 15, at 87.

²⁷ Hug and Luk'acs supra notes 15, at 88.

²⁸ Holloway S 'Forty Years of United Nations General Assembly Voting' (1990) 23 *Canadian Journal of Political Science* 283.

²⁹ Young H and Rees N 'EU Voting Behaviour in the UN General Assembly, 1990-2002: The EU's Europeanising Tendencies (2005) 16 *Irish Studies in International Affairs* 193.

³⁰ Wouters J, Basu S & Bernaz N 'The role of the European Union in the human rights council' (2008) Technical Report EIUC - *European Inter University Centre*, Venice 6. [hereafter referred to as Wouters *et al*]

³¹ Abebe AM 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council' (2009) *Human Rights Law Review* 2. [Hereafter referred to as Abebe]

UNHRC in 2006 following the proposal by the Swiss Department of Foreign Affairs prepared by Professor Kälin and Cecilia Jimenez.³²

According to Piccone³³ whether a member state votes at the UNHRC in favour of country scrutiny or non-intervention is an important indicator of how “human rights friendly its foreign policy is”. This is because the newly elected democrats such as India, Indonesia and South Africa under the blocs of Non-Alignment Movement (NAM), Organisation of Islamic Conference (OIC) and African Group on Israel’s Occupied Territories seem to always to vote in *favour* of country-specific scrutiny despite the fact that on Myanmar, Sudan and several others they either *abstain* or vote *against* UNHRC resolutions.³⁴ At the centre of the arguments of the countries including South Africa in the mentioned blocs or groups is a rejection of “defamation of religion” or as well known the religious intolerance, which became predominant in the aftermath of the 9/11 event that shocked the international community and consequently led to the US to sometimes illegally fight against the war on terror.³⁵

In this regard, the focus of this paper has not yet been a subject of discussion in any academic literature; hence, the aim of this paper is to close that vacuum. This is because South Africa’s voting patterns on resolutions requiring country-specific scrutiny especially when it comes to DRC, Sri Lanka and Iran in addition to the others mentioned raises many questions that relates to its constitutional and foreign policy values of *ubuntu*. Instead the South African Government is being noticed siding with countries that have poor human rights records in the international system.³⁶ Therefore, as reiterated the extent to which South Africa adhered to its founding values and obligations will be measured based on how it had been voting in the UNHRC especially when it comes to resolutions pertaining to particular countries.

³² Wouters *et al* supra note 28, at 6.

³³ Piccone T ‘Do New Democracies Support Democracy? The multilateral dimension (2011) 22 *Journal of Democracy* 144. [Hereafter referred to as Piccone]

³⁴ Piccone supra note 31, at 141.

³⁵ Scharffs BG ‘International Law and the Defamation of Religion Conundrum (2013) 11(1) *The Review of Faith & International Affairs* 66.

³⁶ Jordaan E ‘South Africa and Abusive Regimes at the UN Human Rights Council’ (2014) 20 *Global Governance* 233. [Hereafter referred to as Jordaan]

1.7. Chapter Overview

This paper is made up of four chapters.

Chapter One will introduce the work, and hence will address issues pertaining to the background to the study, objectives, questions, literature review and research methods as well as chapter outline as indicated above.

Furthermore, **chapter two** will examine the challenges South African Government encountered in its international relations. In doing so, the aim is to discover which international human rights documents that the South African Government have signed and ratified so that South Africa could easily be held accountable by the international community. This is also because the ratification of international treaty on human rights by the South African Government for instance indicates that it is committed to abide by international standards government human rights. Therefore, determining to what extent the South African Government achieved its international human rights duties and what it will do further for progressive realisation of human rights in the country and at the international level in particular as the UNHRC member state in the periods 2008-2010 and 2013-2015 is of great significance.

Chapter three will assess South Africa's voting patterns for the terms of 2008-2010 and 2013-2015. In doing so, the aim is to determine whether the voting patterns of the South African Government confirm its signing and ratification of international human rights instruments and commitments as entailed in its campaign documents to the UNHRC. In addition to that, whether the voting patterns of the South African Government are in line with its constitutional and foreign policy values in the UNHRC will be assessed in order to determine what informs a particular way of voting on each UN member state in the Council.

Chapter four will link together conclusions that have been reached in the previous three chapters and more importantly chapters two and three. In doing so, this chapter will bind together the responsibilities of the South African Government as embodied in Chapter Two of this paper taking into consideration South Africa's signing and ratification of international documents. It will furthermore, assess whether the South African Government in the UNHRC

voted according to the responsibilities embodied in Chapter Two in the periods 2008 to 2010 and 2013 to 2015. Therefore, at the heart of this, is to explore whether the South African Government failed or succeeded to meet its international human rights obligations in the UNHRC and if South Africa failed to abide by the international community rules actions needs to be taken against it.



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Chapter 2

2. Human rights challenges in South Africa's international relations

2.1. Introduction

Despite the fact that South Africa signed and ratified international human rights documents as indicated in chapter one, it remains questionable whether its voting patterns in the UNHRC are aligned with the responsibilities that are attached to the signing and ratification of international documents in the global stage post the World War II era. The same applies to its Constitutional and foreign policy values that require the democratic South African Government to fulfil its human rights obligations post 1994 domestically and internationally. Hence, the purpose of this chapter is to assess the challenges that South Africa encountered in its international relations in the UNHRC and related treaty bodies later in the chapter with knowledge of its international human rights treaties and in its 2011 foreign policy document guided by the diplomacy of *ubuntu*.

Since the UNHRC is a formal body in the UN based on principles of professionalism, countries during their campaign to serve in the UNHRC countries are required to submit pledging documents on human rights achievements and prospects for the future.³⁷ Considering that, in this chapter whether South Africa encounter challenges in fulfilling its global human rights obligations international relations will be demarcate according to three subsections. In Part one it will explore the UNHRC membership and the challenges that the body itself had encountered previously. Further, in Part two it will discuss what is entailed in the pledging documents in juxtaposition with the obligations of the South African Government to the UNHRC.

In so doing, it will take into consideration the objectives of the South African foreign policy on human rights as well as what the Constitution of South Africa propose when it comes to international human rights issues.³⁸ Then, Part three will outline the examples of challenges

³⁷ A/HRC/RES/5/1, 18 June 2007, para. 1.

³⁸ Section 39 of the South African Constitution of 1996 on interpretation of Bill of Rights.

that the South African Government encountered with regards to international human rights issues generally followed by the concluding remarks of the author.

2.2. UNHRC membership and its challenges

As highlighted in the literature review section of chapter one the UNHRC directly reports to the GA rather than the Economic and Social Council (ECOSOC) as that was the case in the previous body.³⁹ In the UN sub-bodies, the Council is made up of 47 member states from regional political or economic communities such as Africa, Asia-Pacific, Latin America and Caribbean as well as Western Europe and other States and Eastern Europe of the UN.⁴⁰ These countries, therefore collectively constitute the UNHRC membership which acts as an inter-governmental body mandated to monitor the promotion and the protection of human rights in the world.⁴¹

Moreover, there are tools that the UNHRC uses to fulfil its mandate. These include among others the UPR which was approved by the GA resolution in terms of Article 64 of the UN Charter.⁴² It requires the review of human rights situations in states in a manner that is universal, objective and non-discriminatory.⁴³ In doing so, the UPR is accompanied by special procedures, advisory committee and complaint procedure as approved by the UNHRC

³⁹ Smith R 'A review of African States in the first cycle of the United Nations Human Rights Council's Universal Periodic Review' (2014) 14 *African Human Rights Law Journal* 348.

⁴⁰ 'The UNHRC Member States are distributed as follows: 13 from the African Group and another 13 from the Asia-Pacific States, 8 in Latin America and Caribbean, 7 in Western Europe and other States as well as 6 from Eastern European States as reflected in the United Nations Office of Higher Commission on Human Rights Website. For instance see 'Membership of the Human Rights Council', available at, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx> (accessed on 20 July 2015). Also see 'United Nations Human Rights Council', available at, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (accessed on 20 July 2015).

⁴¹ 'United Nations Human Rights Council', available at, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx> (accessed on 20 July 2015).

⁴² Article 64(1) and (2) of the UN Charter which requires the GA to take appropriate steps to obtain regular reports from the specialized agencies or make arrangements with the Members States and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the GA. It also may communicate its observations on these reports to the General Assembly.

⁴³ See A/RES/60/251, 3 April 2006, para 5 (e); Davala M 'Universal Periodic Review: Effective monitoring of human rights standards?' (2009) *Days of Law: The Conference Proceedings in Masaryk University*. In this regard, according to the current serving Secretary-General of UN Ban Ki-moon "the UPR is defined as having a greater potential to promote and protect human rights in the darkest corners of the world" as indicated in the United Nations Human Rights Office of the High Commissioner for Human Rights, 'Universal Periodic Review', available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (accessed on 26 July 2015).

Resolution 5/1.⁴⁴ These techniques were drafted in order to avoid the repetition of mistakes of the UNCHR and to enhance the work of the UNHRC in advancing human rights promotion and protection using independent bodies such as experts in the field of human rights law and non-governmental organisations (NGOs) which previously had little room to intervene or participate on international human rights matters.⁴⁵

Despite those theoretical achievements, the UPR of the UNHRC in practice encountered many challenges in the execution of its human rights mandate or obligations.

2.2.1. Challenges encountered by the UPR of the UNHRC

Although the UNHRC has plausible theoretical framework since it was envisaged as to be more far-reaching than the Commission, there are several failures that it consistently encounters similar to those of the UNCHR on the ground.⁴⁶ These challenges are specific to the UPR tool as embodied in Article 64 of the UN Charter that requires the Council as per Resolution 60/251 of the GA to institutionalise human rights periodic reporting by member states on achievements and commitments.⁴⁷ At this particular juncture, they relate in particular to the process of the resolutions and translation into practices, recommendations made to the states under review (SuR) as well as implementation and follow up procedures.⁴⁸

For instance, countries such as Israel, Pakistan, Iran, Gambia and China as SuR deliberately rejected or politicized some of the UNHRC modal practicalities regarding the UPR process.⁴⁹

⁴⁴ Nada L 'The role of NGOs in the UN Human Rights Council' (2007) 7 *SUR-International Journal on Human Rights* 9. [hereafter referred to as Nada]

⁴⁵ Nada supra notes 41, at 9.

⁴⁶ See the Secretary-General Address to the Commission on Human Rights, *Geneva*, (07 April 2005) available at <http://www.un.org/sg/STATEMENTS/index.asp?nid=1388> (accessed on 20 July 2015). Also see GA/RES/60/251, 03 April 2006, para. 5(e).

⁴⁷ Hickey E "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?" *ILC Journal* 3. [Hereafter referred to as Hickey].

⁴⁸ Hickey supra note 44, at 3-8.

⁴⁹ In this regard, see the Troika as a Council's three member states rapporteurs prepare the review process and transmit questions to the SuR in advance of the interactive dialogue. However, despite part of the Troika Pakistan on 28 February 2008 declined to serve on the review of India. Furthermore, the Outcome Report is adopted by the plenary of the Council either via resolution or decision reached on consensus basis in order to underline the cooperative nature of the mechanism. Therefore, in the first cycle of the UPR in 2011 the considerable negotiations occurred before the report of Israel was adopted (ISHR, 2009, Overview of 10th Session p.12). Also see HRC Resolutions 12/25 Outcome on China, March

These according to Resolution 5/1 of June 2007 include a report prepared by the state containing self assessment of human rights situation; a compilation of information from the Offices of the Higher Commissioner on Human Rights (OHCHR) as well as additional, reliable and credible information provided by other relevant stakeholders such as National Human Rights Institutions (NHRIs) and NGOs reports that are summarised by the OHCHR to constitute ten pages of length.⁵⁰ In this regard, these member states used their sovereign equality right to defend themselves from complying with the UN human rights standards as embodied in the UPR process in favour their national interests at the expense of human rights.

Therefore, as stated in chapter one, among the reasons for the rejection of modal practicalities of the UPR by the mentioned member states relates specifically to controversial loyalty to their sovereignty equality right as embodied in Article 2(7) of the UN Charter that sometimes lead to the disrespect of democracy and compromise of human rights.⁵¹ This blind loyalty to the principle of non-interference is sometimes particularly associated with religious or cultural and racial or ethnic aspects of human rights as argued by mentioned countries during their UPR process.⁵² However, as a result of sovereign integrity veneration principle, the South African Government encountered a challenge of balancing its human rights obligations with its national interests internationally.

For instance, despite beyond the scope of this paper the South African Government during its first tenure in the UNSC in 2008 following the human rights outbreak in Zimbabwe after the 2008 elections result rejection by the ruling party in that country, used the 'quiet diplomacy' approach to preserve or respect the sovereignty of Zimbabwe and African unity, although little regard for democracy and human rights was paid as embodied in its Constitution and foreign policy documents.⁵³ Despite that, below there are other examples where the South African

2009, para. 27; 14/12, Outcome on Iran, 15 March 2010, para.92 and 14/61, Outcome on Gambia, 24 March 2010, para.62.

⁵⁰ A/HRC/RES/5/1, 18 June 2007, para. 15.

⁵¹ Hickey supra note 44, at 5.

⁵² See A/HRC/14/12 Outcome Report on Iran, 15 March 2015, para. 92 and A/HRC/14/61 Outcome on Gambia, 24 March 2010, para.62 and several others on China, Democratic Peoples' Republic of Korea etc.

⁵³ See Smith K 'Soft power: The essence of South Africa's foreign policy', Chapter 4 in Landsberg C & Van Wyk (eds) *South African Foreign Policy Review*, (2012) 77. Also see Qobo M & Dube M 'South

Government failed to balance its national interests and international human rights obligations will be provided.

In doing so, according to commentators the South African Government fell to the same traps of unbridled loyalty to both regional unity and geopolitics of the Commission now in the Council.⁵⁴ Despite that, these actions sometimes keep on undermining the very essence of progressive activities that the UNHRC could offer in the field of human rights at the international level now contributing to the expansion of the Commission tactics in the Council.

However, when these factors are combined together consistently undermine the positive role that could be played by UNHRC in the attainment of national interest in the global stage. This is because when there are no violations of human rights, economic relations are being facilitated between countries without fears of losing one country interests in particular member states of UN that are known for dubious human rights record. Possibly, this approach may also assist the South African Government in the UNHRC to reconsider how it has been voting on the Council resolutions (2008-2010 and 2013-2015) that are specific to particular member states as will be elaborated in the subsequent chapters below particularly taking into consideration the broader scope of the South African foreign policy diplomacy post 1994.

2.3. South African Government ratification and challenges in the UPR of the UNHRC and beyond

2.3.1. Ratification phase of human rights documents in South Africa

Despite the fact that South Africa's democratic Government post 1994 signed and ratified international human rights documents such as UDHR, ICCPR and ICESCR under the theme of *International Bill of Rights* as highlighted in chapter one and African Charter of Human and Peoples Rights of 1981 (ACHPR or the African Charter) regionally,⁵⁵ it remains to be seen

Africa's foreign economic strategies in a changing global system' (2015) 22 *South African Journal of International Affairs* 149.

⁵⁴ Johnson S & Mark N 'The United Nations Institutions: A critical Analysis of Their Ability to Promote and Protect International Human Rights' (2014) 15 *NUCB JLCC* 7-10.

⁵⁵ African Union 'List countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights (21 February 2013), available at

whether its actions in the UNHRC are in line with its obligations. For South Africa post 1994 provided its prior apartheid unpromising history of human rights violations and thus the ratification of the above mentioned documents is important in order to reverse the injustices of the past because by their nature civil, political and social, economic and cultural rights are interrelated, interdependent and indivisible as this reinforcing relationship was envisaged in the 1968 Declaration of Tehran and 1993 Vienna Declaration and Programme of Action. Hence, the South African Government in 2015 took one step further by ratifying the ICESCR following its general signing of the instrument in 1994⁵⁶ because it has the responsibility to respect, protect, promote and fulfil all human rights in the *Bill of Rights* as stipulated in section 7(2) of the 1996 Constitution.⁵⁷

In doing so, there is an understanding that comprehensive recognition or realisation of the interdependence between civil and political rights as well as socioeconomic rights domestically and internationally by South Africa is linked with its unpromising history of human rights violations prior 1994. However, whether or not if South Africa in the Council acted according to its values in the constitutional and foreign policy as embodied in its overall ratification of international human rights instruments post 1994 in the UPR process of the UNHRC before the actual voting patterns (2008-2010 and 2013-2015) is the subject of the following subsection. In this regard, the aim is to determine to what extent South Africa before being voted to serve in the Council fulfilled its obligations in the form of reporting and pledges as required generally from the UN members in order to access their human rights achievements and failures.

<http://www.au.int/en/sites/default/files/African%20Charter%20on%20Human%20and%20Peoples'%20Rights.pdf> (accessed on 26 July 2015).

⁵⁶ See Petherbridge D 'South Africa's pending ratification of the International Covenant on Economic, Social and Cultural Rights: What are the implications?' *SERAJ*: Stellenbosch University Faculty of Law, (06 November 2006), available at <http://blogs.sun.ac.za/seraj/2012/11/06/south-africas-pending-ratification-of-the-international-covenant-on-economic-social-and-cultural-rights-what-are-the-implications/> (accessed 19 March 2015); Chenwi L, Dugard J & Durojaye E 'SA Human Rights Groups welcomes the country's ratification of the UN ICESCR' (20 January 2015) *Community Law Centre Faculty of Law University of the Western Cape* available at <http://communitylawcentre.org.za/news/sa-human-rights-groups-welcomes-the-country2019s-ratification-of-the-un-icescr/?searchterm=None> (accessed on 19 March 2015) and Chapter Two of the 1996 Constitution.

⁵⁷ Vilgoen F and Orago N 'An argument for South Africa's accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in the light of its importance and implications' (2014) *PER/PELJ* 2555. [Hereafter referred to as Vagoen and Orago]

This is because the respective accession of international treaties goes in line with obligations which require member states including South Africa to honour in the UNHRC. For instance, as highlighted in the previous section UN member states including South Africa are required to submit periodic reports to the international human rights treaty bodies as required by the progressive UPR of the UNHRC of 2006.⁵⁸

2.3.2. South Africa's compliance to the UPR process

The signing and ratification of international human rights documents creates the expectation that South Africa as a UN member states South Africa must comply with the terms and conditions of the international community, particularly those of reporting on human rights achievements and commitments.⁵⁹ Informed by that notion, the South African Government in the events leading to its re-election to the UNHRC in the UPR report of 2008 presented what it had done in the realisation of human rights as embodied in the international human rights instruments that it signed and ratified.⁶⁰ Therefore, the South African Government informed by the provisions of Article 64 of the UN Charter of 1945 had also outlined what it will do for further enhancement or fulfilment of human rights at the national and international level.

For example, the Government of South Africa in the UPR process made reference to its colonial and apartheid histories and how they have contributed to the current “challenges”⁶¹ that it still

⁵⁸ United Nations Human Rights Office of the High Commissioner for Human Rights, 'Universal Periodic Review', available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (accessed on 26 July 2015).

⁵⁹ Article 64(1) & (2) of the UN Charter.

⁶⁰ South Africa's country report to the Human Rights Council's Universal Periodic Review Mechanism: (15 April 2008).

⁶¹ These includes service delivery challenges such as housing, healthcare as well as water and sanitation as they were indicated in the cases before the Higher Court and Constitutional Court such as *Government of Republic of South Africa and Others v Grootboom* 2000 (11) BCLR 1169 (CC); *Minister of Health and Others v Treatment Action Campaign and Others* (No 1) (CCT9/02) [2002] ZACC 16; 2002 (5) SA 703; 2002 (10) BCLR 1075 (5 July 2002) and in the letter the Makhaza in Khayelitsha Cape Town and Rammulotsi Township in Free State Sagas of which government responded heavy handedly against the protesters for service delivery and labour unrest leading to the killing of Andries Tatane and Marikana Massacre under the administration of President Jacob Zuma since 2009. This is because according to commentators the South African citizens are hopeless because if they communicate with either isiXhosa, English, Afrikaans, Sotho or Swati or isiZulu their grievances fall to the deaf ears of government so the only language that they think is easy to hear is getting to the street and protest in order for the services to be delivered [Zuern E 'Contentious Democracy', Chapter 5: 'Contentious Democracy' in Zuern E *The Politics of Necessity: Community Organising and Democracy in South Africa (Critical Human Rights)* (2011) 133]. In addition to that, some perceive the current service delivery issues in South Africa as

faces years in democracy, post 1994. Subsequently, in response to those challenges the South African Government outlined the steps that have been taken through “legislation”⁶² in the realisation of human rights as highlighted in the *Bill of Rights* of the South African Constitution and *International Bill of Rights* embodied in the ICCPR and ICESCR.⁶³ Furthermore, the significance of independent or autonomous Chapter Nine institutions⁶⁴ of the Constitution of 1996 has been recognized as tools that aimed at enhancing and strengthening rule of law, democracy and human rights in the democratic South Africa post 1994.⁶⁵ Over and above that, the South African Government pledged to ratify all the left human rights documents of the international community in 2012.⁶⁶

Additionally, as per Resolution 5/1 of the UNHRC recommendations on the South African side as a norm have been made in terms of troika and other UPR reporting tools regarding where and how it can improve its human rights obligations nationally and internationally. These include the national reports of 2008 and 2012 submitted by South Africa in the UPR process;

debating back from 1996 when the democratic government under President Nelson Mandela and his then deputy Thabo Mbeki changed the economic policies from Reconstruction and Development Programme (RDP) which aimed to attack poverty, inequality and underdevelopment as the apartheid legacies to Growth, Employment and Redistribution (GEAR) of 1996 as the result of global international economic trends leaving tensions between those in the tripartite alliance (ANC, COSATU and SACP) up to late 2007 when former President Mbeki was recalled as indicated in the writings of Habit A & Padayachee V 'Economic Policy and Power Relations in South Africa's Transition to Democracy' (2000) 28 *World Development* 252; and Roux A *Everyone's Guide to the South African Economy* (2008) 9th ed. Cape Town. Zebra Press.

⁶² They include the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, Employment Equity Act 55 of 1998; National Health Act and several others.

⁶³South Africa's Report to the Human Rights Council's Universal Periodic Review Mechanism of 15 April 2008 para. 6.

⁶⁴ State Institutions Supporting Constitutional Democracy as embodied in Sections 181-194 of the South African Constitution Act 108 of 1994 include Public Protector, South African Human Rights Commission (SAHRC), Commission for the Promotion and Protection of the Cultural, Religious and Linguistic Communities, Commission for Gender Equality and Auditor-General as well as Independent Electoral Commission (IEC).

⁶⁵ South Africa's Report to the Human Rights Council's Universal Periodic Review Mechanism of 15 April 2008, para. 5.

⁶⁶ South Africa's Report to the Human Rights Council's Universal Periodic Review Mechanism of 15 April 2008, para. 11; Report of the Working Group on the Universal Periodic Review (9 July 2012) Para. 34 and; Statement by Ms MaiteNkoana-Mashabane, Minister of International Relations and Cooperation of the Republic of South Africa, to the 16th Session of the United Nations Human Rights Council Geneva, Switzerland, (28 February 2011), available at <http://www.dfa.gov.za/docs/speeches/2011/mash0228.html> (accessed on 15 June 2015). These despite South Africa's ratification of ICESCR include the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The International Convention for the Protection of All Persons From Enforced Disappearance; the International Covenant on Economic, Social and Cultural Rights and Optional Protocol to the CRC on the Use of Children in Armed Conflict.

compilations of the OHCHR on the human rights status of South Africa as required by paragraph 5 of the annex to the Human Rights Council Resolution 16/21. In doing so, recommendations acceptable in terms of Annex A were made to the Government of South Africa regarding the promotion, protection and fulfilment of Economic, Social and Cultural Rights as well as the attainment of the Millennium Development Goals (MDGs).

2.3.2.1. Recommendations made to South Africa and extent of compliance

The significance of the ratification of ICESCR has been at the forefront of all recommendations made by several UN member states in the UNHRC on the UPR reporting process against the South Africa Government.⁶⁷ These relate in particular to the developmental challenges that South Africa still faces such as poor primary/secondary education, health, growing the economy and creation of decent jobs, fighting corruption and crime and rural development and land reforms.⁶⁸ Subsequently, following the National Assembly (NA) and National Council of Provinces (NCOP) sittings regarding South Africa's ratification of the ICESCR and its Optional Protocol in October 2012 in terms of section 231(2) of the South African Constitution,⁶⁹ the South African Government at the beginning of the year 2015 ratified the ICESCR document.⁷⁰

Similarly, as entailed in the questions submitted in advance to the SuR, the South African Government was asked by Czech Republic and Denmark the reason for its failure to enact the legislation that criminalise the acts of torture as embodied in Article 1 of the 1984 Convention against Torture (CAT) and sexual violence against women as well as lesbian, gay, bisexual and transgender violence (LGBT)".⁷¹ Informed by these questions and in terms of section 231(4) of the Constitution, the South African Government enacted Act 13 of 2013 regarding Prevention of Combating and Torture of Persons in terms of Article 1 of CAT and in line with section 12(1)(d)

⁶⁷ Annex A 'Recommendations acceptable to South Africa paras. 124.21-124-56.

⁶⁸ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, (21 May-4 June 2012), para 3. Also see The Annual International Report of the SAHRC (2012) 2.

⁶⁹ Vilgoen and Orago supra note 53, at 2575.

⁷⁰ Chenwi L, Dugard J & Durojaye E 'SA Human Rights Groups welcomes the country's ratification of the UN ICESCR' (20 January 2015) *Community Law Centre Faculty of Law University of the Western Cape* available at <http://communitylawcentre.org.za/news/sa-human-rights-groups-welcomes-the-country2019s-ratification-of-the-un-icescr/?searchterm=None> (accessed on 19 March 2015).

⁷¹ Advance Questions to South Africa.

of the Constitution that criminalises torture and other related matters. However, on the homosexuality or LGBT legislations due to contradicting views on the related issues failed to pass the legislation that acutely criminalises intolerance due to varying reasons. According to commentators these include opposing perceptions on the LGBT issue alleged to be part and parcel of majority and minority rights in the 1996 South African Constitution.⁷² This is despite the fact that there is an abundance of cases daily in South Africa that indicate intolerance of homosexuals pointing to the direction of lack of legislation opposed on the basis redundancy and irrelevance when analysed from cultural relativism or conservatives perspectives.⁷³ Therefore, the South African Constitution, after the ratification stage of international treaties, expects the Government to incorporate the treaty's obligations into domestic law after the approval of the NA and NCOP.⁷⁴

However, despite the above mentioned achievements in terms of complying with the international human rights obligations difficulties were experienced on other recommendations as they were declined by the South African Government on political grounds. These include in particular South Africa's rejection of Canada's allegations of sexual violence by South African peacekeeping missions on political grounds.⁷⁵ This indicates that, although the South African Government partly accepted and acted upon some recommendations in the UPR process regarding human rights issues, the government became adamant on those that have a potential to compromise its national interests. Specifically, the denial of peacekeepers' human rights violations by the South African Government of the recommendations is linked with South Africa's little indication to take prominent actions against the offenders and the innocent

⁷²Ilyayambwa M 'Homosexual Rights and the Law: A South African Constitutional Metamorphosis' (2012) 2 *International Journal of Humanities and Social Science* 50.

⁷³Ibid50.

⁷⁴Chenwi L 'USING INTERNATIONAL HUMAN RIGHTS LAW TO PROMOTE CONSTITUTIONAL RIGHTS: THE (POTENTIAL) ROLE OF THE SOUTH AFRICAN PARLIAMENT' (2011) 15 *LDD* 3

⁷⁵ Annex C 'Recommendations Rejected by South Africa: Violence against women and children, manifestations of domestic and social violence and human trafficking'. Also see A/HRC/21/16 'Report of the Working Group on the UPR: South Africa, (09 July 2013) para. 95.

victims of the unrests, on the one hand; while on the other hand driven by its Pan-Africanist agenda.⁷⁶

Likewise, according to the International Annual Report of the South African Human Rights Commission (SAHRC) these allegations continue despite the fact that the NCOP's Security and Constitutional Affairs Committee held public hearings from 18-21 September 2012.⁷⁷ In this regard, numerous groups both from South Africa and abroad voiced significant criticism of the Traditional Courts Bill on giving authority to Home-Lands in contrast with Article 14 of the ICCPR and section 35(3) of the South African Constitution on fair trial.⁷⁸ And also, on the grounds that it might have potential impact on the rights of women and other vulnerable groups, notably LGBT persons' particularly affecting people living in rural areas.⁷⁹ Nevertheless, these are against the background that the South African Government have been arguing in favour of the Gender parity since 1994 as embodied in the Constitution of South Africa and international human rights law.⁸⁰

Despite those consistencies and inconsistencies, it would be of greater significance to outline the examples of human rights challenges that arose in the South Africa's international relations. In particular, some of the challenges as will be indicated arise as the result of the diversity in the South African foreign policy.

2.4. Examples of human rights challenges in the South Africa foreign policy

There are many human rights challenges that arose as the result of the diversity in the foreign policy of South Africa. Some of these challenges as will be indicated are linked with the broad nature of the South African foreign policy that is made up of trade, defence or security and

⁷⁶Nathan L 'Consistency and Inconsistencies in South African Foreign Policy' (2005) 81 *International Affairs*362.

⁷⁷The Annual International Report of the SAHRC, (2012), 18.

⁷⁸ UN Watch and Human Rights Foundation, 'Electing the 2014-2016 Members of the UN Human Rights Council: *For presentation at United Nations Headquarters, New York*' (04 November 2014) 14. Also see Guardian "The traditional courts bill threatens LGBT South Africans" 26 May 2012, <http://www.guardian.co.uk/commentisfree/2012/may/26/south-africa-gay-lgbt-traditional> (accessed on 31 August 2015).

⁷⁹Ibid, at 14.

⁸⁰ A/HRC/21/16 'Report of the Working Group on the UPR: South Africa, (09 July 2013) para.30. Also see Article 2(1) of the ICCPR on non-discrimination on the grounds of race, sex or gender etc.

human rights as represented by various government departments.⁸¹ Therefore, this diversity of South African foreign policy creates confusions when the Government is required to act on international human rights issues in the global stage particularly on countries that it has direct or indirect bilateral or arrangements.

For instance, in the first glance, South Africa encountered challenges during its two tenures as the United Nations Security Council (UNSC) non-permanent member in 2007-2008 and 2011-2012 on the human rights cases of Zimbabwe, Myanmar and Libya.⁸² In doing so, the South African Government rejected resolutions of the UNSC on the grounds of Pan-Africanism embodied in the notion of *African solution to African problems* and bilateral or multilateral arrangements with countries such as China and Russia.⁸³ The example of this is the South African Government denial of whether the Myanmar case of massive human rights violations was also equal to threat of international peace and security as embodied in Article 1 of the 1945 UN Charter and belonging to the Security Council by referring the case to the UNHRC where its voting behaviour is inconsistent with its international human rights obligations as will be indicated in chapter three below on certain case studies.⁸⁴

Similarly, the South African Government refused Dalai Lama entrance visa several times since 2009 on the grounds that it has bilateral relations with China that considers him to be a *Splittist*

⁸¹ These include such departments as International Relations and Cooperation, Trade and Industry as well as Defence and Parliament. For further details read Masters L "Opening the 'black box': South African foreign policy-making" Chapter 2, in Landsberg C & Van Wyk (eds) *South African Foreign Policy Review*, (2012) 27-32.)

⁸² See Keally K 'South African Foreign Policy: Implications for Democracy' (09 November 2012), *Council for a Community of Democracies*, available at http://www.ccd21.org/news/africa/south_africa_foreign_policy.html (accessed 23 April 2015). Also read Liebenberg I 'War in disguise: the responsibility to protect (R2P) as a new means to armed aggression' Chapter 15, in Potgieter T and Liebenberg I *Reflections on War: Preparedness and Consequences* (2012) 274-275.; Smith K 'Soft power: The essence of South Africa's foreign policy', Chapter 4 in Landsberg C & Van Wyk (eds) *South African Foreign Policy Review*, (2012) 75; and Tladi D 'Strict positivism, moral arguments, human rights and the Security Council: South Africa and the Myanmar vote' (2008) 8 *African Human Rights Law Journal* 27.

⁸³Nathan L 'African Solutions to African Problems: South African Foreign Policy' (2013) 51 *South African Foreign Policy Initiative* 1 and; Keally K 'South African Foreign Policy: Implications for Democracy' (09 November 2012), *Council for a Community of Democracies*, available at http://www.ccd21.org/news/africa/south_africa_foreign_policy.html (accessed 23 April 2015).

⁸⁴Tladi D 'Strict positivism, moral arguments, human rights and the Security Council: South Africa and the Myanmar vote' (2008) 8 *African Human Rights Law Journal* 27.

or separatist because of seeking independence of Tibet from China.⁸⁵ In the same vein, the South African Government has been gloomed by the scourge of xenophobia not for the first time since its democratic era after 1994. This intolerance against foreign nationals first surfaced in May 2008 and more recently in April 2015 undermining or tarnishing the international image of South Africa and its *ubuntu* founding values embodied in its Constitution and its foreign policy.⁸⁶

Similarly, the SAHRC welcomed the bringing to book of the South African Police Services (SAPS) officials who killed Mozambican man called Mido Macia after they dragged him behind the police vehicle to death.⁸⁷ As a result, the SAHRC acknowledged that the Macia issue compromised the diplomatic relations between Mozambique and South Africa.⁸⁸ And more recently, South African Government failed to observe its ICC obligations as a member of the Rome Statute of 1998 after the executive branch of government disregarded Gauteng High Court ruling to effect arrest warrant of Al-Bashir following his AU attendance summit in South Africa in June 2015.⁸⁹

Lastly, these cases of human rights failures in the South African foreign policy as well as those that have been partly identified in the previous section, particularly on gender or sexuality issues are clear observations of South Africa's failure to sufficiently fulfil its international obligations. In this regard, as also observed by the reports of the SAHRC particularly on equality issues between South African citizens themselves and foreign nationals reflect badly on the

⁸⁵The Guardian 'Dalai Lama denied South Africa visa for Nobel Summit', (04 September 2014), *The Guardian*, available at <http://www.theguardian.com/world/2014/sep/04/dalai-lama-denied-south-africa-visa-nobel-summit> (accessed on 31 August 2015).

⁸⁶ South African National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, (07 March 2012), paras. 37-41. Also see South African History Online 'Xenophobic violence in Democratic South Africa', *South African History Online: towards a peoples history*, available at <http://www.sahistory.org.za/article/xenophobic-violence-democratic-south-africa> (accessed on 01 September 2015).

⁸⁷ 'SAHRC welcomes conviction of former police officers in MidoMacia case', available at <http://www.sahrc.org.za/home/index.php?ipkMenuID=25&ipkArticleID=344> (accessed on 01 September 2015).

⁸⁸Ibid.

⁸⁹deVos P 'Opinion: Democracy Snuffed out by Arbitrary Decision Made in Self-Interest', (26 June 2015), available at <http://ewn.co.za/2015/06/26/OPINION-Pierre-de-Vos-Democracy-snuffed-out-by-arbitrary-decisions-made-in-selfinterest> (accessed on 27 June 2015).

image of the South African Government internationally post 1994.⁹⁰ This is because South Africa's approval of international documents on human rights comes with responsibilities that require UN member countries to act as expected on human rights issues at home and internationally.

2.5. Conclusion

Despite the fact that hopes were high in the reform of the UNCHR to UNHRC on the improvement in response to international human rights issues various issue emerged taking the Council back to the faults of its predecessor. These include challenges of politicization, selectivity, and double standards by the UN member states. Specifically, these were noticed before the Council by the inability to accept or conform to obligations of international human rights law by Iran, China and Gambia among others. Among the reasons raised by these countries in support of their non-compliance is the sovereign equality principle when issues are raised on religious intolerance being labelled as defamatory, therefore, rejecting the international community interference and its recommendations to resolve the immediate identified human rights violations. Consequently, this is even exacerbated by the formation of the UNHRC in spite of the fact it uses a criterion in its membership as indicated in the second section of this chapter, because the countries that are being elected when they are serving argue cases of self interests and now the submissions of faulty reports and their forcefully defence without the fear of accountability deteriorates the situation further.

In particular, even those countries as will be indicated in the following chapter serve as the members of the UNHRC for a specific period in their voting patterns especially South Africa there is no concern for professionalism and adherence to their international human rights obligations. Hence the South African Government although partially complied with the minimum standards of compliance in the UNHRC through ratifying necessary international human rights instruments (ICCPR and ICESCR without specific reservations and declarations)

⁹⁰RDM News Wire 'Right to equality violations persist in SA: SAHRC', (25 June 2015), *Rand Daily Mail*, available at <http://www.timeslive.co.za/local/2015/06/25/Right-to-equality-violations-persist-in-SA-SAHRC> (accessed on 30 August 2015).

and acted on recommendations despite rejecting some it had encountered many human rights challenges on its international relations related to *realpolitik*.

These include Zimbabwe, Dalai Lama, Myanmar and more recently its failure to effect arrest of Sudanese leader on the basis of its international obligations of being a member of the ICC Rome Statute of 1998. Furthermore, due to domestic intolerance as the result of developmental challenges in South Africa over the competition of limited resources there was a xenophobic outbreak that led to the diplomatic deterioration between South Africa and other African countries especially Mozambique as a result of police allegedly killing of Mido Macia.

Therefore, when these international and national challenges of human rights as will also be highlighted in the subsequent chapters base on how and why it had voted in a specific manner in the Council in periods of 2008-2010 and 2013-2015, it is clear that the South African Government acts according to its national interests rather than human rights obligations in the international human rights treaty bodies. The case mentioned in the previous paragraph and its inability to accept the Canadian recommendation against its peacekeeping missions that are accused of human rights abuses in defence of African solidarity are indications of the overreliance on self interests rather than human rights, therefore, politicizing, being selective and indicating elements of double standards in the UNHRC formal UN body of human rights.

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Chapter 3

3. The analysis of South Africa's voting patterns in the UNHRC for the periods 2008-2010 and 2013-2015

3.1. Introduction

The lack of professionalism or selectivity that destroyed the UNCHR seems to persist even in the newly founded progressive UNHRC of 2006⁹¹ as indicated in the previous chapters. Instead of helping to consolidate the international human rights body because of the important role that South Africa played in the formation of UNHRC in 2006;⁹² the South African Government seems to worsen the situation. However, how South Africa contributed in the mentioned problems of selectivity and unprofessionalism in the UNHRC will be measured based on how the Government voted on the human rights resolutions of the periods 2008 to 2010 and 2013 to 2015 respectively. This is because as will be indicated below the South African Government voting patterns in the UNHRC (2008 to 2010 and 2013 to 2015) pertaining allegations of human rights violations by specific member states before the Council reflects elements of politicization and double standards in favour of the national interests at the expense of its human rights obligations.

Therefore, in going about assessing the voting patterns of South Africa in the Council, it is going to be of greater significance to investigate what inform a particular way of voting based on how the Council is structured and who or which countries are dominating in the body from what or which geographic or political region of the world as highlighted in chapter two in the first Part of this chapter. This will further be followed by the voting methods in the UNHRC in Part two of the chapter, therefore, after that in the third Part the analysis will be conducted on the basis of how South Africa voted in 2008 to 2010 and 2013 to 2015 in the Council during its tenures. The manner in which South Africa voted and why it had voted in a particular way towards a specific member state in the Council will be measured on the bases of its human rights foreign policy

⁹¹ Freedman R 'The United Nations Human Rights Council: More of the same?' (2013) 13 *Wisconsin International Law Journal* 208. [hereafter referred to as Freedman]

⁹² Advertorial, 'Protecting human rights in Africa', (26 June 2014), *Mail and Guardian Online*, available at <http://mg.co.za/article/2014-06-26-protecting-human-rights-in-africa> (accessed on 17 June 2015).

objectives as well as its internationally expected human rights obligations. Thus, in case human rights cases of particular member states have glided across the two tenures (i.e. 2008 to 2010 and 2013 to 2015), it would be significant to analyse how and why the South African Government voting behaviour have changed in the subsequent period of the study.

3.2. Brief overview of the UNHRC structure and possibilities of politicization: *South Africa Case study*

Despite the fact that UNHRC is different from the UNSC and GA because it is more professional, UN member states including South Africa seem to always find it difficult not to politicise or be selective on the resolutions of the Council on human rights. To validate this point, it is of greater significance to revisit the formation of the UNHRC itself. For instance, as indicated in the previous chapter that, the Council's 47 member states comprises different regional bodies that were created on a geographical, political, economical, social or cultural basis. Therefore, reliance on these groupings by member states implies that selectivity and politicization of UNHRC resolutions is inevitable in light of the regional groups as identified in the literature review section of chapter one such as NAM, OIC, and Group of 77(G77).⁹³

In addition to that, they are informed by the theme of New International Economic Order (NIEO) that unites developing countries across the geographic spectrum because they advocate for South-South formations such as India, Brazil and South Africa (IBSA) and Brazil, Russia, India, China and South Africa (BRICS) and NEPAD where the South African Government has a membership.⁹⁴ Thus, the loyalty to these groupings consistently informs the voting patterns of member countries in the UNHRC as this will be analysed in this chapter below on the South African Government in the 2008 to 2010 and 2013 to 2015 of the Council membership.

According to Abebe,⁹⁵ the South African politicization of the UNHRC comes from the general allusion of all African states arguing that, even the formation of the UN international

⁹³ Freedman R *United Nations Human Rights Council: A Critical Critique and Early Assessment* (Unpublished PHD thesis, University of London 2011) 169-172.

⁹⁴ Jordaan E 'South Africa, Multilateralism and the Global Politics of Development' (2012) 24 *European Journal of Development Research* 283.

⁹⁵ See Abebe supra note 29, at 2.

organisations such as the Commission which is currently the Council was unfair because many African countries were still under colonialism and apartheid.⁹⁶ As a result, at times, the heated debate on the creation of the UNHRC was particularly influenced by the classical conflict of developing an effective international human rights system on the one hand and the preservation of national sovereignty on the other.⁹⁷ In this regard, the politics of dissatisfaction in the GA and UNSC which are characterised by selectivity, double standard and politicization in the Commission, now in the UNHRC are setting it up for failure with the South African Government that contributes to that in the form of its counterproductive voting patterns as will be shown below.

Part of the reasons why the South African Government is contributing to the politicisation of the UNHRC decisions may be that of African solidarity as embodied in the African Group in the Council as well as its ambitions of leading or representing the African continent in the UNSC where there is no African country that has a permanent sit.⁹⁸ In addition to that, South Africa does so through *abstaining* or voting *against* on resolutions by the Council that require international community intervention in protection of its bilateral or multilateral arrangements as embodied in multilateral institutions like BRICs, IBSA and others as indicated above. In this regard, the South African Government has been alleged as siding with countries that are known for dubious human rights record in the Council by faith or religious leaders.⁹⁹ In doing so, South Africa is deviating from its founding values embodied in chapter two of the Constitution the *Bill of Rights* and its international pledges and commitments that it had made during its candidature to the UNHRC membership as outlined in chapter two of this paper.

Therefore, the challenges of politicization, selectivity and regionalism on thematic human rights resolutions of the UNHRC although deviating from its domestic and international human rights law that govern South African Government are inevitable and it is of greater significance to

⁹⁶ Freedman R *United Nations Human Rights Council: A Critical Critique and Early Assessment* (Unpublished PHD thesis, University of London 2011) 172.

⁹⁷ Spohr M 'United Nations Human Rights Council: Between Institution-Building Phase and Review of Status' (2010) 4 Max Planck Yearbook of United Nations Law 170.

⁹⁸ White Paper on South Africa foreign policy (11 May 2011) 20-32.

⁹⁹ Makgoba T 'New struggle to protect our human rights culture', (22 March 2015), *The Sunday Independent*, available at <http://www.iol.co.za/sundayindependent/new-struggle-to-protect-our-human-rights-culture-1.1835413#.Vk3gB9Irls0> (accessed on 24 June 2015).

investigate how they have been manifested on a case-by-case basis. This is also due to the fact that, even the sponsoring of certain resolutions by individual or groups of states in the Council are informed by ulterior motives that lead to double standards that undermine the international monitoring of human rights at large.

3.3. Methodology of the UNHRC and South African case study status

As indicated in the previous chapter, candidate countries to the UNHRC membership are required to submit voluntary pledging documents outlining what they have done and what they will do or ought to do in order to enhance the promotion, protection and fulfilment of fundamental freedoms in the international scene. Thus, as required by the GA Resolution 60/215 of March 2006, South Africa has submitted the voluntary pledging documents to the UPR of the UNHRC in 2008 and 2012 during its candidature to the Council membership as indicated in chapter two.¹⁰⁰ According to the Joint Report of the Freedom House and UN Watch this helps the Council to assess whether the candidate countries qualify to serve in the Council membership as reflected on their human rights record nationally as that will hopefully be transpired to the international stage as well.¹⁰¹ In a nutshell, the Council requires countries that will lead by example in its membership in order for it to easily be able to execute well its international human rights duties professionally.

However, despite the fact that South Africa's 1994 first democratic elections created anticipation to the international community that the democratic South African Government will play an important role in the advancement of democracy and human rights, recently in the UNHRC that seems to fade to some degree. Yet, this is different from the notion of South Africa's peaceful transition from apartheid to democracy and existence of human rights provisions in the *Bill of Rights* in the 1996 Constitution created the expectation that democratic government in South Africa will consistently respect, protect and promote human rights at

¹⁰⁰ South Africa's Report to the Human Rights Council's Universal Periodic Review Mechanism of 15 April 2008 and A/HRC/WG.6/13 'South Africa National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council\ Resolution 16/21' 07 March 2012.

¹⁰¹ Evaluation of 2008-2011 UN Human Rights Council Candidates: Joint Report by Freedom House and UN Watch Presented at the UN Headquarters, (06 May 2008), available at <https://freedomhouse.org/sites/default/files/Eval2008HRC.pdf> (accessed on 02 August 2015).

home and internationally as stipulated in Section 7(2) of the Constitution. In this regard, reflecting on the international human rights status of South Africa is of greater significance provided its unpromising history and commitment to change that post 1994.

Nevertheless, the South African Government human rights status is still “questionable”,¹⁰² perhaps because of certain human rights failures (Zimbabwe, Myanmar and China etc) at the international stage as highlighted in chapter two and assessing whether this persisted in the Council’s resolutions based on how the Government voted in the periods 2008 to 2010 and 2013 to 2015. This as a backdrop brings us to the question of how the voting is conducted in the UNHRC and in particular focus to the South African Government voting patterns as a member. In this regard, how the South African Government voted in the UNHRC will be measured on the basis of *yes* or in favour, *no* or against and *abstain or absent* when South Africa did not vote in favour or against the Council’s resolution of human rights. Therefore, this will be indicated below on the UNHRC country-specific resolutions from 2008 to 2010 as well as 2013 to 2015 separately in the following section of the chapter.

3.3.1. South Africa’s voting patterns in the UNHRC resolutions in the period 2008 to 2010

This section deals specifically with the voting patterns of the South African Government in the Council and attempts to analyse the rationale behind a particular voting behaviour on specific countries brought before the UNHRC for human rights abuses. The countries that are specific to the period of 2008 to 2010 are Israel, North Korea, Sri Lanka as well as Sudan and Democratic Republic of Congo (DRC). Therefore, how the South African Government voted and why will be analysed on a case-by-case basis below starting from the case study of Israel.

3.3.1.1. Israel

Heinze argues that since the end of World War II, human rights have gained recognition not only as legal norm, but as criteria of political legitimacy.¹⁰³ However, despite those international achievements the Government of Israel has been called before the international human rights

¹⁰² Ibid.

¹⁰³ Heinze E ‘Even-handedness and the politics of human rights’ (2008) 21 *Harvard Human Rights Journal* 7. [hereafter referred to as Heinze]

bodies because of its allegedly violation of thereof. Therefore, although it is unprofessional to be selective before the Council, it has been identified that since the 2006 Israel-Lebanon conflict, widely published reports of non-governmental organisations (NGOs) like Human Rights Watch among others only denounced the Israel Defence Forces (IDF) for cross-border strikes that have claimed lives of innocent people (civilians) without condemning the Hezbollah violations.¹⁰⁴ These alleged violations occur despite the fact that Israel undertook steps to prosecute and committed itself to punishing the abuses across ranks and seniority through adopting structural reform to reduce impunity and increase accountability.¹⁰⁵

Freedman¹⁰⁶ argued that the Council fell to the same trap of its predecessor because in its first six years of existence, it had disproportionately focused on Israel and lacked even-handedness in its treatment of Israel. Thus, whether Israel was the most targeted state by the UNHRC is determined by the number of resolutions enacted considering human rights allegations arose in the Council because according to the 2006-2008 statistics Israel has been the most targeted country compared with others countries of the similar status of human rights violations.¹⁰⁷ Therefore, since the interest of this study is on how and why South Africa voted in a particular manner during its tenure in the Council, the analysis of its voting patterns and record will be considered in relation to its ratification and human rights foreign policy objectives post 1994.

For example, since 2008 until the end of South Africa's tenure in June 2010 in the UNHRC, about 19 resolutions were sponsored before the UNHRC against Israel's human rights abuses on its occupied territories whereby 17 were adopted with a vote on which the South African Government consistently voted in *favour* of all of them.¹⁰⁸ In particular, these human resolutions emanates from Israel's military attacks and incursions in Occupied Territories of

¹⁰⁴ Human Rights Watch, *Fatal Strikes: Israel's indiscriminate attacks against civilians in Lebanon* (2006) available at <https://www.hrw.org/sites/default/files/reports/lebanon0806webwcover.pdf> (accessed on 07 October 2015).

¹⁰⁵ Israel 2014 Human Rights Report, at 2.

¹⁰⁶ Freedman *supra* note 85, at 208.

¹⁰⁷ Seligman S 'Politics and Principle at the UN Human Rights Commission and Commission (1992-2008)' (2011) 17 *Israel Affairs* 527. [hereafter referred to as Seligman]

¹⁰⁸ See *Anti-Israel Resolutions at the HRC (2007-2008, 2008-2009 and 2009-2010)*, available at <http://www.unwatch.org/site/c.bdKKISNgEmG/b.3820041/#2nd> (accessed on 23 July 2015).

Palestine, Syrian Golan and Humanitarian Boat Convoy as well as follow-up resolutions.¹⁰⁹ And they are sponsored by such countries as Pakistan, Belarus, Cuba, and Democratic Peoples' Republic of Korea (DPRK) or North Korea, Democratic Republic of Congo (DRC) and Nigeria among others in solidarity with their group members in the UNHRC and against Israel's allegedly discriminatory activities.¹¹⁰

It can therefore be argued that these countries that sponsor the UNHRC resolutions hold grudges against Israel because they are coming from states in the groups such as Arab or Islamic Groups, African Group, NAM or OIC on which South Africa has membership in some of them hence its in *favour* or vote *yes* voting patterns as will explained further below why South African Government vote in that manner on Israel. For example, in the resolution brought before the Council by Pakistan among other countries against Israel because of indiscriminate IDF attacks in the Occupied Palestinian Territory Gaza Strip; a resolution was adopted by 31 votes including South Africa against 1 rejection and 13 abstentions.¹¹¹ Therefore, the solidarity with countries experiencing the same kind of human rights violations in the same way those abuses were occurring in South Africa during apartheid and Pan-africanism is the reason why it is voting *yes* or in *favour* in the Council.

Furthermore, the democratic South African Government's bias voting patterns in the UNHRC against Israel can also be traced from its historical relationship with the apartheid regime following the visit of the then Prime Minister of South Africa Balthazar Johannes Vorster in April 1976 and recent diplomatic deterioration between these two countries because of Israel actions in Gaza Strip and Jerusalem.¹¹² Furthermore, South Africa's selective voting patterns against Israel as the result of the above reasons is also not foreign from the number of

¹⁰⁹ Ibid.

¹¹⁰ Israel 2014 Human Rights Report, at 1.

¹¹¹ A/HRC/7/1 'Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian territory, particularly the recent ones in the occupied Gaza Strip' (06 March 2006), available at http://www.unwatch.org/atf/cf/%7B6deb65da-be5b-4cae-8056-8bf0bedf4d17%7D/A_HRC_RES_7_1.PDF (accessed on 23 July 2015).

¹¹² Kane A 'Unspoken alliance: Israel's secret relationship[with apartheid South Africa]' (06 December 2013), *Mondoweiss*, available at <http://mondoweiss.net/2013/12/alliance-relationship-apartheid> (accessed on 07 October 2015) and Levitas B "Hijacking South Africa's foreign policy on Israel" (15 August 2012), *SAFPI*, available at <http://www.safpi.org/news/article/2012/hijacking-south-africa-s-foreign-policy-israel> (accessed on 07 October 2015).

resolution brought before the Council within the short space of time since 2006 as highlighted in the beginning sections of this subsection on Israel.

Therefore, South Africa's voting record on Israel and the Council's obsession with Israel in this regard equals politicization of the Israel human rights issue. This is because there are no views or complaints on the other side especially those of the occupying Israel that seemed to be taken into consideration by the Council as it was the case during the era of the Commission.¹¹³ In this regard, whether politicization or selectivity has always been the case on the side of South African Government will be assessed on other case studies.

3.3.1.2. North Korea

According to RhetoricaNum¹¹⁴ the North Korean human rights issue has been in the UN human rights bodies (the Commission) since 2005 until 2006 when the UNHRC came into existence. Consequently, it led to the enactment of the resolution aimed at resolving the human rights situation in that country.¹¹⁵ In particular, North Korea has a bad record in the UNHRC because of its consistent human rights violations such as restriction of freedom of expression and suppression of opinion or any form of organised political opposition, independent media and free trade unions, civil society organisations or religious freedom.¹¹⁶

Subsequently, all those who assert their rights have been consistently arbitrarily arrested, detained and treated inhumanly despite the fact that DPRK had signed and ratified international human rights treaties such as ICCPR, ICESCR, the Convention on the Rights of the

¹¹³ Seligman supra note 103, at 533.

¹¹⁴ RhetoricaNum 'United Nations Human Rights Office of the Higher Commissioner: UNHRC Background Guide' (2015), available at http://rhetoricamun.weebly.com/uploads/5/3/4/7/53474781/new_study_guide_of_unhrc.pdf (accessed on 07 October 2015).

¹¹⁵ Human Rights Resolution 2005/11: Situation of Human Rights in the Democratic People's Republic of Korea (14 April 2005), *United Nations Commission on Human Rights*, available at <http://www.refworld.org/docid/45377c2dc.html> (accessed on 07 October 2015).

¹¹⁶ RhetoricaNum 'United Nations Human Rights Office of the Higher Commissioner: UNHRC Background Guide' (2015), available at http://rhetoricamun.weebly.com/uploads/5/3/4/7/53474781/new_study_guide_of_unhrc.pdf (accessed on 07 October 2015).

Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women.¹¹⁷ This is because North Korean Government has always been adamant to reform its legal processes to be aligned with those of the international community as required by the accession to the international human rights instruments in order to execute its duties effectively.¹¹⁸ Furthermore, North Korea is known as a world's secretive and in accessible country particularly because of its traditional ways of reporting and monitoring human rights because it does not give access to experts especially the UN Special Rapportuer on Human Rights and UN Higher Commissioner on Human Rights and NGOs.¹¹⁹ Hence, its controversial actions are the determination of a socialist state that is clingy about issues of sovereignty and proletarian dictatorship.¹²⁰

Thus, since 2006 in the UNHRC despite the South African Government accession to international human rights instruments its consistent *abstention* voting patterns on all resolutions against North Korea is contradictory because it a democratic state since 1994 believing on human rights and democracy.¹²¹ And most importantly, in the period 2008 to 2010 on the resolutions of the UNHRC against North Korea, the South African Government *abstained* in March 2008.¹²² In the same vein, the South Africa Government on the resolution of March 2010 adopted by the Council with 28 to 8, with 13 abstentions, South Africa including other African countries such as Angola, Cameroon and Nigeria have been noted *abstaining*.¹²³ Therefore, a variety of reasons behind the South African Government voting pattern on the case of North Korea can be provided although others do not have a direct link with the UNHRC because they are domestic in nature.

¹¹⁷Human Rights Resolution 2005/11: Situation of Human Rights in the Democratic People's Republic of Korea (14 April 2005), *United Nations Commission on Human Rights*, available at <http://www.refworld.org/docid/45377c2dc.html> (accessed on 07 October 2015).

¹¹⁸Report on Human Rights in North Korea (2014), at 30-31.

¹¹⁹Cohen R 'Human Rights in North Korea: Addressing the Challenges' (2013) 22 *International Journal of Korean Unification Studies* 32.

¹²⁰Report on Human Rights in North Korea (2014), at 4. ,

¹²¹Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 243.

¹²²In the resolution of the UNHRC of 27 March 2008 that recorded vote of 22 to 7, with 18 Abstentions, South Africa with other 6 African countries in the Council abstained on the resolution calling for Special Rapporteur as identified in the A/HRC/7/15 'Situation of human rights in the Democratic People's Republic of Korea.

¹²³A/HRC/13/14 'Situation of human rights in the Democratic People's Republic of Korea' (15 April 2010).

For example, the South African Government voting patterns regarding North Korea can be traced from recent developments in the ruling ANC that have controversially introduced the Protection of State Information Bill or Secrecy Bill in 2011 in the NA on the basis that media needs to be seized since it always criticizes the ANC government decisions.¹²⁴ However, this in turn led to the outcry or excessive criticism of the media in general by those on the left of 'tripartite alliance',¹²⁵ particularly the South African Communist Party (SACP) Secretary General and South African Government Minister of Higher Education and Training Dr Blade Nzimande among others currently in Government, calling an Independent Media Tribunal in South Africa to regulate print media.¹²⁶

Therefore, these controversial voting patterns of South Africa on human rights situation in North Korea are attached with the recent developments in the political landscape of South Africa. Likewise, the commentators confirmed the rationale behind South Africa's three *abstentions* since 2008 to 2010 in the UNHRC regarding human rights problems in North Korea since South Africa itself expressed regret for its unwillingness to cooperate with the Council and to continue the mandate of Special Rapporteur on human rights situation in that country as highlighted above.¹²⁷ This as backdrop is a clear that the South Africa is running away from its obligations as the UNHRC member because as indicated in the previous chapters it had signed and ratified international binding documents that require South Africa to honour its international and domestic duties on human rights because failure to do so would require the international community to act against such inappropriate behaviour.

¹²⁴ Human Rights Watch 'South Africa: "Secrecy Bill" Improved but Still Flawed' (29 April 2013), available at <https://www.hrw.org/news/2013/04/29/south-africa-secrecy-bill-improved-still-flawed> (accessed on 07 October 2015).

¹²⁵ Consists of ANC, SACP and COSATU.

¹²⁶ Letsoalo M 'Blade to print Media: Be a nice profession' (07 July 2015) *Mail and Guardian online*, available at <http://mg.co.za/article/2015-07-07-blade-to-print-media-be-a-nice-profession> (accessed on 07 July 2015).

¹²⁷ Jordaan E 'South Africa's first five years in the United Nations Human Rights Council' (2012) *SAFPI Policy Brief no 17*, at 2; Davies R "Analysis: What is anti-human rights game at the UN?", (29 March 2015), *Daily Maverick*, available at <http://www.dailymaverick.co.za/article/2015-03-29-analysis-whats-south-africas-anti-human-rights-game-at-the-un/#.VhU5FOyqqko> (accessed on 07 October 2015) and Davies R "Analysis: This time South Africa held its own at the UN' (06 July 2015), available at <http://www.dailymaverick.co.za/article/2015-07-06-analysis-this-time-south-africa-held-its-own-at-the-un/#.VhU6Neyqqko> (accessed on 05 September 2015).

Furthermore, these tactics by the South African democratic Government post 1994 slightly glide towards the direction of those of the apartheid regime style of controlling the media. For this reason, the controlling of the media and detention without trial by the North Korea Government are against the ICCPR provisions in Articles 7, 10, 18 and 19. And the South African Government voting record on North Korea, it is clear that South Africa had abandoned its own domestic and international laws because it has a duty to vote in a manner that confirms its obligations to respect protect, promote and fulfil as stipulated in its 1996 Constitution in the Council.¹²⁸ The rights that the North Korean Government is breaching are respected, protected, promoted and ought to be fulfilled in terms of the South African Constitution and have been domesticated by the South African Government informed by Section 231 of the Constitution governing South Africa's international agreements, although its voting patterns indicate indifference in their violations.

Accordingly, whether the South African Government consistently votes in this manner on resolutions of the UNHRC will remain to be seen on other case studies such as DRC, Sudan and Sri Lanka below. In particular, this will be seen taking into consideration the duties that South Africa has in terms of its domestic and international human rights law.

3.3.1.3. Sri Lanka

Despite the fact that Sri Lanka ratified major international human rights instruments such as ICCPR and ICESCR in 1980;¹²⁹ there were still cases of human rights violations until 2009. These include war crimes and crimes against humanity despite the fact that when the civil war ended in 2009 expectations were high regarding human rights improvement in that country.¹³⁰ In particular, these occur despite the fact that positive strides such as lifting of media restrictions ordering review of the case of political prisoners and amendment of the Constitution where

¹²⁸ Section 7(2) of the 1996 Constitution.

¹²⁹ University of Minnesota 'Ratification of International Human Rights Treaties-Sri Lanka', *Human Rights Library*, available at <https://www1.umn.edu/humanrts/research/ratification-srilanka.html> (accessed on 07 October 2015).

¹³⁰ Human Rights Watch 'Sri Lanka', available at <https://www.hrw.org/asia/sri-lanka> (accessed on 08 October 2015).

some of the presidential powers as well as restoration of independence of public service commissions were endorsed and implemented.¹³¹

Moreover, in the events leading to its election to serve in the Council, the Sri Lankan Government pledged to commit on the implementation of recommendations from UN bodies when it joined the UNHRC in 2006, although it notably failed to do so because it refused to confront the problems of torture and enforced disappearance.¹³² Despite that, when the Sri Lankan Government pledged to commit on human rights since it had ratified the major human rights documents and as per the recommendations on that country, it is inappropriate to see there is still no noticeable evidence of human rights improvement as was expected by the international community. This is because if the Sri Lankan Government campaign was successful to serve in the Council as a member that would have compromised the credibility of the Council on the basis that its participation in the UNHRC was aimed at defending itself rather than to improve its human rights situation at home.

Consequently, apart from being let down by other UN member countries, the Sri Lankan Government was “disqualified” by NGOs in 2008 to serve in the UNHRC as a member pointing specifically to its dubious human rights record domestically.¹³³ And also, shortly after the end of Sri Lanka’s bloody civil war, countries such as Mauritius and Mexico led the group of seventeen countries calling for the special session on the human rights situation on 26-27 May 2009 in the UNHRC.¹³⁴ However, if Sri Lanka managed to serve in the Council despite its human rights and humanitarian status, it was going to take the Council back to the failures of its predecessor where member states were entering the Commission to protect themselves as indicated in chapter one.¹³⁵ Despite that, the South African Government worked with the Sri Lankan

¹³¹ Ibid.

¹³² UN: Reject Sri Lanka’s Bid for Human Rights Council, (07 May 2008), available at <https://www.hrw.org/news/2008/05/07/un-reject-sri-lankas-bid-human-rights-council> (accessed on 09 August 2015).

¹³³ UN: Reject Sri Lanka’s Bid for Human Rights Council, (07 May 2008), available at <https://www.hrw.org/news/2008/05/07/un-reject-sri-lankas-bid-human-rights-council> (accessed on 09 August 2015).

¹³⁴ Jordaan E South Africa and the United Nations Human Rights Council (2014) 36 *Human Rights Quarterly* 102.

¹³⁵ Edwards *et al* supra note 18, at 5.

Government by protecting it from being accountable for human rights violations through *abstaining* in the UNHRC country-specific resolution.¹³⁶

Therefore, it can be said that the South African Government actions were counterproductive. For instance, the former Higher Commissioner for Human Rights in the UN Navi Pillay pointed out three areas of concerns to be considered on the Sri Lankan human rights situation. These include “internal displacement of 200,000 people locked in camps as a result of government forces attempt to locate rebellions; having little regard for human rights of civilians and the need for humanitarian assistance because of gross disregard of international humanitarian law”.¹³⁷ Notwithstanding that, on its draft resolution Sri Lankan Government emphasized that it remains the responsibility of the Government to clampdown Liberal Tigers of Tamil Eelam (LTTE) as a sovereign state and promised to resolve the issue of internally displaced people within the space of six months.¹³⁸

In this regard, Sri Lanka’s reliance on sovereignty instead of resolving humanitarian and human rights issues by itself was rejected by Permanent Representative of Germany despite in vain because Cuba’s proposal to end the debate on Sri Lanka was adopted by 22-17, with 7 abstentions that saw South Africa voting in *favour* of closing the discussion.¹³⁹ Furthermore, it was also noted that from the African Group, Mauritius was the only country that voted *against* Cuba’s motion although Sri Lanka’s resolution was defeated with the adoption of 29 to 12, with 6 abstentions that highlighted the South African Government voting in *favour* of the most original sponsors of the special session voting against.¹⁴⁰

Provided that, it is safe to argue that the South African Government voting patterns in the Sri Lankan Government human rights issue were informed by the bilateral relations that South Africa and Sri Lanka has which mainly saw the light in 2013 when the South African President

¹³⁶ Ibid 102.

¹³⁷ Jordaan E ‘South Africa and Abusive Regimes at the UN Human Rights Council’ (2014) 20 *Global Governance* 243.

¹³⁸ Sri Lanka: Country Review, *Country Watch Website to the World*, available at <http://www.countrywatch.com/Intelligence/CountryReviews?CountryId=161> (accessed on 09 August 2015).

¹³⁹ A/HRC/S-11/L.1 Action on the draft proposal (27 May 2009).

¹⁴⁰ Para 32 of the A/HRC/S-11/2 ‘Report of the human rights council on its Eleventh special session’ (29 June 2009).

Jacob Zuma attended the Commonwealth Conference in Sri Lanka.¹⁴¹ In addition to that, it is clear that from the South African Government perspective as implied by South Africa's voting patterns in the Council, human rights and democracy are no longer that important when the sacrifice is going to be done in favour of national interests creating double standards that are not required in the formal body like UNHRC of 2006. Therefore, if that is the case, these actions undermine the role that human rights accountability could play in the enhancement of national interests while at the same time the genuine essence of the Council is undermined for short-term goals that have little regard for promotion and protection of human rights.

In contrast, whether South Africa persists with placing forward its national interests at the expense of international human rights will be measured on other case studies such as Sudan as well as DRC below. However, of paramount importance in these case studies is their geographic location in Africa. Therefore, these countries are situated where the South African Government is pushing or preaching solidarity through *African Renaissance* and Pan-Africanism, since South Africa perceives itself as a better positioned country in the continent to represent the African interests in the UNSC as highlighted elsewhere in the paper.

And most importantly, owing to how the South African Government voted on resolutions regarding human rights situations in these UN and AU member states in the UNHRC will be determined by South Africa's political, economic and social role in the African continent initiatives. These include the reform of Organisation of the African Unity (OAU) of 1963 to AU of 2002, NEPAD and its African Peer Review Mechanism (APRM).¹⁴² Central to the development of these initiatives to promote peace and security on the one hand and to enhance democracy, rule of law and human rights and development on the other in Africa generally.

¹⁴¹ Republic of South Africa, "International Relations", available at <http://www.gov.za/about-sa/international-relations> (accessed on 09 October 2015).

¹⁴² Mwanasali M 'From Non-Interference to Non-Indifference: The Emerging Doctrine of Conflict Prevention in Africa' Chapter 2 in Akokpari J, Ndinga-Muvumba A and Murithi T (eds) *African Union and its Institutions* (2008) 41 and Adedeji A 'NEPAD's African Peer Review Mechanism: Progress and Prospects' Chapter 11 in Akokpari J, Ndinga-Muvumba A and Murithi T (eds) *African Union and its Institutions* (2008) 241.

3.3.1.4. Darfur and Sudan

Despite the fact that since July 2004 strides were made to resolve the human rights situation in Sudan, many challenges have been encountered. In particular, rape or persistence of gang rape cases committed by members of the security force of Sudan and rebellions was identified as among human rights violations in the Darfur region.¹⁴³ This persisted despite the fact that the joint communiqué between Sudan Government and the then UN Secretary-General Kofi Annan agreed that Sudanese Government should establish in May 2005 the State Committee on Combating Gender Based Violence in Southern Darfur and provide technical support to improve the investigative capacity of the law enforcement agencies.¹⁴⁴ Those attempts failed to resolve the human rights situation in Darfur because violence still persisted in Sudan against women among other human rights abuses or crimes.

For instance, in the fourth periodic report of the UN High Commissioner for Human Rights of 25 July 2006 the crisis was witnessed deepening in Darfur despite Darfur's Peace Agreement.¹⁴⁵ In the same vein, on the Fifth and Sixth Reports killings of civilians by militia in Buran locality South Darfur and attack on villages around the Jubel Moon Area were observed.¹⁴⁶ Furthermore, even in the reports from the seventh to the thirteenth, no progress was witnessed because human rights violations such as sexual abuses, civilian attacks, arbitrary arrest and detention were still committed until the year 2011 despite early peace agreements.¹⁴⁷

¹⁴³ Access to Justice for Victims of Sexual Violence Report of the United Nations High Commissioner for Human Rights, (29 July 2005), 1-2.

¹⁴⁴ Ibid 1.

¹⁴⁵ Fourth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan: DEEPENING CRISIS IN DARFUR TWO MONTHS AFTER THE DARFUR PEACE AGREEMENT: AN ASSESSMENT, (25 July 2006), 1-3.

¹⁴⁶ Fifth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, 6 October 2006 ("Killings of civilians by militia in Buram locality, South Darfur") and Sixth Periodic Report of the United Nations High Commissioner for Human Rights on the human rights situation in Sudan, 3 November 2006 ("29 October 2006: Attack on Villages around the Jebel Moon Area").

¹⁴⁷ Seventh periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, 18 May 2007 ("Involvement of Sudanese security personnel in attacks on the Bulbul area of South Darfur from January to March 2007"); Eighth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, 20 August 2007 ("Women abducted, raped and kept as sex slaves following the December 2006 attacks on

Therefore, among the reasons hindering comprehensive international community intervention in the Sudanese crisis are the politics of regional organisations like AU within the UN Charter of 1945 legal framework. For instance, in the African continent the influential role players like South Africa informed by Pan-Africanist values perceive themselves as the regional voice or mediators on conflicts against imperialism.¹⁴⁸ Therefore, in turn they are consistently pushing for *African solutions to African problems* using the provisions of the UN Charter of 1945 on regional peace arrangement to maintain peace and security in that country by themselves although little progress on democracy and human rights has been noticed.¹⁴⁹

For example, the South African Government has been in many peacekeeping missions in the African continent since 1998.¹⁵⁰ In doing so, the South African Government intervened or participated on these missions informed by the African agenda that favours peaceful resolution of regional conflicts although failing to sufficiently realise the human rights issues faced by women and children on the ground.¹⁵¹ Therefore, the African agenda that is pushed by the South African Government and other African states is the determination of the stance that South Africa in the UNHRC resolutions particularly regarding countries situated in the

Deribat”); Ninth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, 20 March 2008 (“Attacks on civilians in SarafJidad, Sirba, Silea and Abu Suruj in January and February 2008”); Tenth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, 28 November 2008 (“Arbitrary arrest and detention committed by national security, military and police”); Eleventh periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, 23 January 2009 (“Killing and injuring of civilians on 25 August 2008 by government security forces: Kalma IDP camp, South Darfur, Sudan”); Twelfth periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, December 2009 (“Attacks on civilians in Western and Central Equatorial States, Southern Sudan, between 15 December 2008 and 10 March 2009 by the Lord’s Resistance Army (LRA) and Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan - Preliminary report on violations of international human rights and humanitarian law in Southern Cordovan from 5 to 30 June 2011

¹⁴⁸ White Paper on South Africa’s foreign policy, (13 May 2011) 20-23.

¹⁴⁹ Nathan L ‘African Solutions to African Problems: South African Foreign Policy’ (2013) 51 *South African Foreign Policy Initiative* 1.

¹⁵⁰ *Ibid* 1.

¹⁵¹ See Institute for Security Studies ‘Is South Africa equipped to deal with the new challenges of peacekeeping?’ (27 September 2013), available at <https://www.issafrica.org/iss-today/is-south-africa-equipped-to-deal-with-the-new-challenges-of-peacekeeping> (accessed on 6 August 2015). Also see Barber J ‘The new South Africa’s foreign policy: principles and practice’ (2005) 81 *International Affairs* 1080; Smith K ‘Soft power: The essence of South Africa’s foreign policy’, Chapter 4 in Landsberg C & Van Wyk (eds) *South African Foreign Policy Review*, (2012) 75.

geographic region of Africa although that does little to the improvement of human rights in those individual African countries.

However, despite after prompting from the then Secretary-General of the UN Kofi Annan, the Council held a special session on the human rights situation in Darfur on December 2006 which was signed by African states with the exception of South Africa and European states.¹⁵² Despite the fact that both African and European states agreed on the special session, few within the ranks of African Group and OIC defended Sudan. However, since the inception of the UNHRC in 2006 many resolutions against Sudan were adopted, until 2008 when the Council passed a soft resolution in March 2008 that was followed by the other September resolution that wanted a Special Rapportuer.¹⁵³

As a result of European states proposal of an amendments to extend the mandate of the international community by one on the human rights situation in Sudan which was adopted by 1 vote since 20-19, 8 voted in *favour*, *against* and *abstained* with the South African Government voting *against* the amendment.¹⁵⁴ However, the African states from the African Group in the Council such as Zambia and Mauritius voted in *favour* of the resolution which was then passed by 2 votes since 20 countries voted in *favour* of the resolution, compared with 18 states voting *against* the amendment resolution and 9 *abstaining* witnessed the South African Government voting *against* and 6 other African countries in the Group *abstaining*.¹⁵⁵ For and against this scattered voting behaviour between African and European countries, there are various several reasons that can be identified to give the understanding why South Africa voted in the manner in which it had voted in the Council.

African countries led by Egypt on the one hand claimed that human rights situation in Sudan was better than the state it was characterised before, whereas, the European countries based on the field research done in Sudan noted that the situation in Khartoum was still 'grim'

¹⁵² Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 236.

¹⁵³ Ibid 239.

¹⁵⁴ A/HRC/RES10/10 'Situation of human rights in the Sudan' (18 June 2009).

¹⁵⁵ Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 239.

because implementation of the expert groups recommendations was slow, therefore the mandate in Sudan should be extended by a particular period on the other.¹⁵⁶ Despite that, the South African Government never said anything on whether or not the mandate was to be extended in order to curb and improve the human rights situation in Sudan.¹⁵⁷ Therefore, South Africa's voting stance and its quietness in the UNHRC on the human rights situation in Sudan is linked with its urgency for the extension of peacekeeping mission in Sudan because the former President Thabo Mbeki held the bilateral talks with Sudanese President Al Bashir in Cape Town in 2007 where both countries agreed to have defence, economic and trade cooperation relations.¹⁵⁸

Furthermore, former President Mbeki asserted that 'Sudan is a strategic partner of South Africa' in light of NEPAD developmental initiative and African Renaissance that was championed by the South African Government without taking into full cognizance the issue of human rights in that country.¹⁵⁹ In particular, this is validated by the South African companies like PetroSA which since had been witnessed operating in the Sudanese soil.¹⁶⁰ And, more recently, the South African Government failure to effect the arrest warrant of the Sudanese President on the basis that will hinder the relations between two countries and divide African continent at large because Al Bashir is a Head of State following his attendance of the AU summit in Johannesburg in June 2015.¹⁶¹ Therefore, the presumption that Sudanese President will attend the Forum on

¹⁵⁶ See Human Rights Council 'SPECIAL RAPPORTEUR ON SITUATION OF HUMAN RIGHTS IN SUDAN PRESENTS REPORT TO HUMAN RIGHTS COUNCIL (16 September 2008), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9377&LangID=E> (accessed on 7 August 2015).

¹⁵⁷ Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 239.

¹⁵⁸ Nathan L 'Explaining South Africa's Position on Sudan and Darfur' (2008) *Africa Programme, Chatham House* 2.

¹⁵⁹ Ibid 2-5.

¹⁶⁰ Ibid 5.

¹⁶¹ See Clarke JS 'South Africa's failure to arrest Omar al-Bashir 'is betrayal of Mandela's ideals', (24 June 2015), *The Guardian*, available at <http://www.theguardian.com/global-development-professionals-network/2015/jun/24/south-africas-failure-arrest-al-bashir-not-in-keeping-mandelas-ideals> (accessed on 09 October 2015).

China Africa Co-operation (Focac) in South Africa as of December 2015 following President Zuma's international relations talk held in Pretoria.¹⁶²

Subsequently, all these examples indicated above show that the South African Government is disregarding its international obligations that are embodied in the *International Bill of Rights*, the Rome Statute that governs the ICC and its Constitution at the expense of national interests. Additionally, South Africa also undermines the doctrine separation of powers that allows the branches of the South African Government to check and balance on each others' activities in the realisation of rights and responsibilities embodied in the Constitution on domestic and international matters. Therefore, South Africa failed to observe the rule of law, democracy and human rights as well as *ubuntu* that guides the South African foreign policy diplomacy because that set a bad precedence for South Africa and is an indication of betrayal of its values that it had learned from its peaceful transition from apartheid to democracy in 1994.

Furthermore, instead of helping to improve the human rights in the international institutions particularly the Council because it has politicized and has been selective on its voting patterns in the Council resolutions pertaining to Sudan, South Africa contributed to the problems that destroyed the Commission. Hence its actions are likely to bring the international community into disrepute and undermine the role that the veneration and protection of human rights can contribute to the enhancement of all other international relations activities such as political, social and economic partnerships between countries.

Now that, South Africa voted in partly voted in solidarity with African countries as indicated above due to various reasons, it is important to see whether there is a consistency on how it is voting on other African countries like DRC in the Council as will be indicated below.

¹⁶² See Hurlted T 'Basher could return to SA in December', (15 September 2015), News24, available at <http://www.news24.com/SouthAfrica/News/Bashir-could-return-to-SA-in-December-20150915> (accessed on 23 September 2015), and Republic of South Africa 'International Relations', available at <http://www.gov.za/about-sa/international-relations> (accessed on 09 October 2015).

3.3.1.5. DRC

The Government of DRC signed and ratified major international human rights documents on the 1st of November 1976,¹⁶³ despite that human rights situation in that country is not improving although its international human rights obligations requires that. This is because following the discovery of mass graves in Eastern DRC in 2005, the international community announced its intention to send a human rights team to report on the human rights situation in that country.¹⁶⁴ As a result of that, Amnesty International proposed to the UNHRC in 2008 the special session to deal with a number of human rights issues in Eastern DRC such as internal displacement of people that rose to over a million, sexual violence and recruitment of child soldiers.¹⁶⁵ According to Amnesty International these issues amount to human rights violations and international humanitarian law issues, therefore, the government of DRC is to be blamed for failing to facilitate reforms in mining, justice and security as well as international donors for not assisting on reforms.¹⁶⁶

Therefore, it was against this backdrop that the French Government at the behest of the EU proposed in vain a draft resolution calling for nine different special procedures to investigate the problems of human rights in the Eastern DRC which was unfortunately superseded by that of the African Group.¹⁶⁷ The French Government proposal of resolution in the Council was following the continuity of the conflict and aimed at ending the riots in the Eastern province of DRC. However, despite the fact that the human rights situation was still grim in DRC, the South African Government simply acknowledged the violations although it has never taken actions aimed at improving the human rights situation in that country in the UNHRC through for

¹⁶³ OHCHR 'Ratification Status for Democratic Republic of the Congo', available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=48&Lang=EN (accessed on 07 October 2015).

¹⁶⁴ OHCHR "DRC: Mapping human rights violations 1993-2003", available at <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/RDCProjetMapping.aspx> (accessed on 07 October 2015).

¹⁶⁵ DRC: North Kivu: 'No end to war on women and children' (2008), 4-15, available https://www.amnestyusa.org/sites/default/files/pdfs/women_kivucongo.pdf (accessed on 07 August 2015).

¹⁶⁶ Ibid.

¹⁶⁷ UN Watch Written Statement UN Human Rights Council 13th Session (15 February 2010), available at <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1313923&ct=8411997> (accessed on 07 August 2015).

instance voting in a specific way that contribute to the improvement or reversing the situation.¹⁶⁸

As a result, in March 2009 human rights situation in DRC was identified as deteriorating as per seven thematic mandate holders' reports.¹⁶⁹ In particular, abuses such as arbitrary execution, sexual violence, abduction and pillaging were still found to be hot issues in the DRC despite international condemnation.¹⁷⁰ Therefore, French's proposal was a direct response to these human rights issues although it failed to restore a country mandate in the Council in order to cease human rights violations in DRC.

However, during that time the African Group tabled a resolution using a procedural vote which was adopted with 30-15, 2 abstentions where the South African Government in solidarity with African countries and other related groups as identified elsewhere above in this chapter was witnessed voting in *favour* to make its text the basis of discussion.¹⁷¹ Although the African Group's draft resolution was weak to resolve the human rights situation in the DRC because it eliminated some important EU's package of amendments that aimed to address the situation by 18-21, with 8 abstentions since five of the African states including South Africa opposing the amendments.¹⁷² Instead, the South African Government voted for a weak resolution that was adopted by 33-0, with 14 abstentions.¹⁷³ Consequently, the human rights situation in DRC deteriorated despite attempts aimed at resolving the situation were made as a result of

¹⁶⁸Jordaan E South Africa and the United Nations Human Rights Council (2014) 36 *Human Rights Quarterly* 107.

¹⁶⁹Ibid 108.

¹⁷⁰ISHR, 'Council update-Item 4, Human Rights Situation that Require the Council's Attention Human Rights Council, 10th Session, (17 AND 23 MARCH 2009), available at file:///C:/Documents%20and%20Settings/user/My%20Documents/Downloads/council_update_10_item_4.pdf (accessed on 06 August 2015).

¹⁷¹Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 241.

¹⁷²See A/HRC/13/63 'Technical Assistance and Capacity-building: Second Joint Report of Seven United Nations experts on the situation in the DRC' (08 March 2010), at 3.

¹⁷³A/HRC/RES/10/33, 'Situation of human rights in the Democratic Republic of the Congo and the strengthening of technical cooperation and consultative services' (27 March 2015).

conflicts of interests between African countries and European countries on what should be done in response to the human rights situation in DRC.¹⁷⁴

There are several reasons that can be identified as the rationale behind voting patterns of the South African Government in the UNHRC on the DRC human rights situation in the period 2008 to 2010. These include as highlighted in the Sudanese case study the South African Government participation in the peacekeeping missions since 1994; its ambitions of transforming or reformation of the UNSC as well as asserting African solidarity.¹⁷⁵ In addition to that, the South African Government has its own bilateral relations with the Government of DRC which led to South Africa contributing to the infrastructure development because these countries also agreed to work together in the areas of economics and development as there are South African mining companies that are doing business in that country particularly in the mining sector.¹⁷⁶ Therefore, in this study the author argues that South Africa's position in the UHRC regarding the DRC human rights situation is informed by its urgency to protect its national interests in that country at the expense of human rights forgetting the fact that these factors have elements of reinforcing each other.

3.4. Collective analysis of the 2008 to 2010 period

Based on the above discussions, it can argue that the South African Government is violating its responsibilities that are attached in the signing and ratification of international human rights documents through politicising UNHRC resolutions. Additionally, the South African Government made its pledges and commitments before the Council as indicated in the previous chapter a rhetoric since its selectivity has been identified from the Israel case study on its occupied territories without taking into consideration the violations of the occupied Palestine to Israel among others. However, this is against the background that in the Israeli case its voting patterns were identified as informed by its links with the Apartheid regime before 1994, now that on the DRC case study because of its national interests rather than human rights.

¹⁷⁴Jordaan E 'South Africa and Abusive Regimes at the UN Human Rights Council' (2014) 20 *Global Governance* 241.

¹⁷⁵White Paper on South Africa's foreign policy (13 May 2011) 24.

¹⁷⁶ South African Embassy Kinshasa, DRC 'SA & DRC bilateral relations', available at <http://www.dirco.gov.za/kinshasa/bilateral.html> (accessed on 10 October 2015).

In the same vein, on the North Korean and Sri Lankan Governments case studies of human rights before the Council, the South African Government voted controversially. For instance, as indicated on these case studies South Africa *abstained* on their resolutions requiring country-scrutiny by the UNHRC in defence of its bilateral relations and recent developments at home that makes the South African Government associate itself with countries those known for dubious human rights records. This is because South Africa ruled by the ANC is no longer satisfied by how the mass media particularly the printing is covering government failures alleging the inability to publish on government achievements.

And most importantly, South Africa now perceives the protection of its bilateral or multilateral arrangements vested on those countries that have been brought before the Council as superseding its international human rights obligations. Therefore, since those actions are contradictory to what South Africa stands for post 1994, they undermine the contractive role that its human rights voting patterns in the Council could assist in bringing about relief in those countries having the duck cloud of human rights abuses and unintentionally reducing the chances of reaching its foreign policy objectives like securing a permanent position in the UNSC to represent the African continent. This is because on the Sudanese and Congolese Governments human rights issues, the South African Government voting patterns in the UNHRC are aligned with African solidarity that requires *African problems to be resolved with African solutions* as highlighted above.

Thus, when these factors are combined together, they play an important role that justifies South Africa's politicization, selectivity and double standards on the UNHRC resolutions, breaching its international human rights duties vested in the *International Bill of Rights*, Constitution and *ubuntu* diplomacy in the South African foreign policy document of 2011 and Mandela's envisaged foreign policy approach centred on the international cooperation and human rights veneration. However, whether this inability to execute effectively its international obligations persisted in the period 2013 to 2015 will be a subject of debate in the following section in the UNHRC where again the South African Government voting patterns will be analysed in terms of its international pledges and commitments in the UN.

3.5. South African voting patterns in the UNHRC for the period 2013 to 2015

Following its consecutive terms since the formation of the UNHRC in 2006, the South African Government has been in the Council until 2010. Although, one term has to lapse as per the Council rule following South Africa's serving in the two consecutive terms, it was re-elected for the tenure 2013-2016. However, for the purpose of this section and paper in general, the focus will not be on the whole tenure of 2013-2016; rather the analysis will be on the period 2013 to 2015 in the Council. The aim therefore, is to evaluate whether there has been a noticeable change on the voting patterns of South Africa in this tenure as compared to the previous one(2008-2010) on particular member states and in the light of its international duties attached with its accession of international human rights instruments.

This is because in the previous one, the South African Government politicised the Council's resolutions on certain human rights issues regarding particular member states in the UNHRC. For example, the inability of the South African Government to be professional on the Israel Government because of its association with the apartheid regime prior 1994 and its allegedly human rights abuses in the occupied territories. Furthermore, it has been selective on alleged human rights abusing countries that it has national interests either bilaterally or multilaterally as well as on those situated in the geographic region of Africa for solidarity purposes. Therefore, when analysing the voting patterns of South Africa in the UNHRC for period 2013 to 2015, in the beginning subsection of this section attention the analysis will be on countries that first appeared in the previous section of 2008 to 2010 and in the subsequent subsection the analysis will be those on the new countries surfaced in the Council only in 2013-2015.

3.5.1. Countries overlapped from the term 2008-2010 to the period 2013-2015 in the UNHRC

Many countries from the previous tenure of 2008-2010 have appeared in the Council even in the term 2013-2015. These include Israel, Sri Lanka and North Korea on which the voting patterns of the South African Government in the UNHRC did not change.¹⁷⁷ For instance, the Government of Israel in its occupied territories have been brought before the Council 8 times in

¹⁷⁷ See Vote Count 'Voting record in 2014', available at <http://votescount.hrw.org/page/South%20Africa> (accessed on 16 October 2015).

the period 2013-2015 because in 2014 Israel appeared 5 times and 3 times for the year 2015.¹⁷⁸ Therefore, the South African Government has consistently voted in *favour* of all the resolutions against the Israel Government actions in its occupied territories.¹⁷⁹ The reasons as indicated in the previous section are the apartheid regime's relationship with the Israel Government and non-discrimination that is embodied in the Conventions that are against all forms of discrimination such as among others the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) that the South African Government signed and ratified on 03 October 1994 and 10 December 1998.¹⁸⁰

However, this is against the background that in its 2014 report in the UN as indicated in the previous tenure the Israel undertook measures to improve human rights, although the number of times within the space of 2013 to 2015 do not confirm with what it has said it is doing to meet its international obligations. Perhaps, Israel's actions are aligned with its non-ratifications and reservations on major international human rights and related instruments such Additional Protocols to the Geneva Conventions, Rome Statute of ICC and ICCPR.¹⁸¹ Despite that, these actions are not contributing to the human rights respect, protection, promotion and fulfilment because they are only based on its national interests of Israel as these form the central pillar of the *realpolitik* ideology of international relations rather than *social constructivism* and *idealism* to cater for the whole population of Israel irrespective of colour or race as Israel sought to claim despite WWII experience.¹⁸²

However, in the case studies of Sri Lanka and North Korea the South African Government voting record has been consistently *abstaining* for the whole period of 2014-2015 following its joining

¹⁷⁸ See A/HRC/RES/28/26 'Israel settlements in the Occupied Palestine Territory, including East Jerusalem, and in the occupied Syrian Golan' (10 April 2015); A/HRC/28/27 'Human Rights Situation in the Occupied Palestine Territory, including East Jerusalem' (13 April 2015) and A/HRC/RES/29/25 'Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem' (22 July 2015).

¹⁷⁹ Ibid.

¹⁸⁰ DIRCO 'International Agreements and/or Conferences Signed by South Africa in Relation to the Youth, Children and People with Disabilities, Particularly with Regard to the United Nations and the African Union', available at http://www.dfa.gov.za/docs/2005pq/pq2_455.htm (accessed on 16 October 2015).

¹⁸¹ Rule of Law in Armed Conflicts Project 'Israel: International treaties adherence', available at http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=113 (accessed on 17 December 2015).

¹⁸² Israel 2014 Human Rights Report, at 1.

of the Council in 2013.¹⁸³ This is because in all three resolutions enacted by the UNHRC against Sri Lanka in 2014 the South African Government has been witnessed *abstaining*.¹⁸⁴ This confirms the OHCHR that provided the dubious human rights situation of Sri Lanka hence the decision to propose a resolution to the UNHRC in order to investigate alleged serious violations and abuses of human rights as well as related crimes by government forces and rebellions.¹⁸⁵ And these actions of the establishment of facts and circumstances of such alleged violations and the crimes perpetuated were developed with the view to avoid impunity and ensure accountability, the assistance from relevant experts and special procedures mandate holders,¹⁸⁶ was placed forward in this regard.

Therefore, as indicated in the 2008-2010 tenure South Africa's voting patterns are driven by the national interests irrespective of human rights violations in Sri Lanka that include intolerance on the basis of race or ethnicity, nationality and class although the South African Government itself is still grappling with those challenges post 1994. For example, the Sri Lankan Government is still facing human rights challenges of discrimination or perpetual inequality along racial lines, xenophobia and related intolerance as well as the comprehensive implementation of and follow-up on Durban Declaration and Programme of Action as highlighted by the Sri Lankan Government statement in the UNHRC.¹⁸⁷

Likewise, the South African Government itself despite its voting patterns on human rights situation in Sri Lanka in the UNHRC does not reflect urgency to curb the same challenges that it still faces notwithstanding the fact that decades have passed in the democratic dispensation. This is because in South Africa there are still issues of race, class and xenophobia among others that are felt or experienced even today although hope were high before the 1994 political

¹⁸³ Vote Count 'Voting record in 2014', available at <http://votescount.hrw.org/page/South%20Africa> (accessed on 16 October 2015).

¹⁸⁴ Ibid.

¹⁸⁵ See A/HRC/30/CRP.2 'Report of the OHCHR Investigation on Sri Lanka (OISL)', (16 September 2015) paras 1, 209-1112.

¹⁸⁶ Ibid paras 14-16.

¹⁸⁷ Statement by Sri Lanka 12th session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, 7 April 2014, available at <http://www.ohchr.org/Documents/Issues/Racism/IWG/session12/SriLanka.docx> (accessed on 16 October 2015).

referendum. According to some commentators these comes from the developmental challenges that the South African society still faces such as poverty, inequality and underdevelopment among others that lead to issues of intolerance like xenophobia among others in May 2008 and April this year as reflected in the previous chapter.¹⁸⁸

In addition to that, the issue of xenophobia in particular in the South African society is coming from the antagonistic immigration policy that is in contradiction to the *Bill of Rights* in chapter two of the South African Constitution. In particular, several rights of foreign nationals are being violated from all walks of life although it is the South African Government responsibility to protect those rights by the citizens or third parties and state itself as stipulated in section 7(2) of the Constitution. Despite that, the South African Government showed commitment to resolve issues related to xenophobia particularly with the affected foreign nationals of particular countries following the xenophobic outbreak in several major cities of South Africa in various provinces.¹⁸⁹

Moreover, in the case study of North Korea and similar to the case study of Sri Lanka, the South African Government has been identified consistently *abstaining* on all resolutions against Korea in the UNHRC regarding human rights. This voting style by the South African Government has been noted in the 2014 and 2015 resolutions by the UNHRC against that country after it was re-elected to serve in the Council in the year 2013.¹⁹⁰ In particular, the voting patterns of South African regarding the Korean Government human rights resolutions by the Council relate to recent developments in South Africa. These are threats to seize the media by the ruling party

¹⁸⁸ See Reties, M. (2009). Xenophobic triggers situated in the history and legal provisions of domestic and international migration policies in South Africa. Synopsis, 10(3) 13; Strumpet T 'Xenophobic Violence against migrants in South Africa: A discussion of the causes, its link to development in South Africa and potential solutions' (2013) *International Public Management-The Hague University of Applied Sciences* 7-11 and Wilkinson K South Africa's xenophobic attacks: are migrants really stealing jobs? (20 April 2015), *The Guardian*, available at <http://www.theguardian.com/world/2015/apr/20/south-africa-xenophobic-violence-migrants-workforce> (accessed on 10 October 2015).

¹⁸⁹ City Press 'State's plan to fight xenophobic attacks' (26 April 2015), *News24*, available at <http://www.news24.com/Archives/City-Press/States-plan-to-fight-xenophobic-attacks-20150430> (accessed on 10 October 2015).

¹⁹⁰ See Vote Count 'Voting record in 2014', available at <http://votescount.hrw.org/page/South%20Africa> (accessed on 16 October 2015) and A/HRC/RES/28/22 'Situation of Human Rights in the Democratic People's Republic of Korea' (08 April 2015).

and its alliance partners as highlighted in the previous section, intolerance of the independent trade unions among others such as Association of Mineworkers and Construction Union (AMCU) in the major sectors of the South African economy that led to the Marikana Massacre in 2012 as well as protection of elite interests with little regard to human rights of the poor and previously disadvantaged populations.¹⁹¹

However, despite the fact that these issues are of domestic nature, they also have international human rights image of the South African context post 1994. As highlighted in the opening paragraph of chapter one, these human rights abuses occur despite the fact that human rights promotion and protection were perceived as the drive of all South African Government domestic and international relations.¹⁹² Therefore, the realities of domestic and international politics see the South African Government slightly changing its stance towards *realpolitik*¹⁹³ while defending human rights abusers at the same time.

In this regard, if South Africa persists in its actions its interests directly or indirectly will be indicated below on the cases only specific to 2013-2015 period of membership of UNHRC where its voting patterns highlighted double-standards and selectivity on certain BRICs members' interests. In particular, these are specific to the case studies of Ukraine and Syria where China and Russia as permanent members of the Security Council used their veto rights in defence of their interests in the mentioned countries. And also, in the same vein the South African Government has been noticed following-suit to its BRICs allies, but in this regard in the UNHRC through consistently *abstaining* on human rights resolutions that requires the Council intervention in those countries and in defence of its interests in the BRICs multilateral initiative as will be highlighted below.

¹⁹¹ Davies N 'The savage truth behind the Marikana massacre' (22 May 2015), *Mail & Guardian*, available at <http://mg.co.za/article/2015-05-21-the-savage-truth-behind-the-marikana-massacre> (accessed on 14 October 2015).

¹⁹² Mandela supra note 2, at 87.

¹⁹³ Bohle-Muller supra note 1, at 5.

3.5.2. South African Government voting patterns on countries specific to the 2013-2015 period of the Council

There are four case studies in the Council in which the South African Government voted in a specific way in the Council for the period 2013-2015. These are Iran, Syria, Belarus and Ukraine. Therefore, below they will be analysed one-by-one in order to determine how the South African Government voted in the UNHRC and the rationale behind that particular way of voting.

3.5.2.1. Iran

Despite the fact that UN Secretary-General was tasked to report on the human rights situation in Iran following the resolution of the GA,¹⁹⁴ there is no noticeable progress on the ground. This is due to the fact that human rights issue such as death penalty, including in relation to political and juvenile offenders are still persist in Iran despite international community intervention.¹⁹⁵ According to Human Rights Watch these human rights abuses follow the presidential and local elections of June 2013 that saw executions particularly related to drug offences, detention of civil society activists, media seizure and several others increasing in Iran.¹⁹⁶ As a result of that, the UNHRC adopted a resolution pending the latest report of the Secretary General to resolve the human rights situation in that Country.¹⁹⁷

Therefore, in response to the scourge of human rights violations in Iran, the UNHRC enacted resolutions that require country-specific intervention to resolve human rights issues in Iran on which the South African Government in the UNHRC *abstained* in the voting. For instance, on the single resolution passed in 2014 and the one on April 2015, the South African Government has been noted *abstaining*.¹⁹⁸ It did so, in solidarity with countries on Groups such as African and Arabic member states such as Algeria, Congo, Côte d'Ivoire, Ghana, Morocco, and Namibia

¹⁹⁴ A/RES/68/184 'Situation of human rights in the Islamic Republic of Iran' (04 February 2014).

¹⁹⁵ A/69/306 'Situation of human rights in the Islamic Republic of Iran: Report of the Secretary-General' (12 August 2014) paras 3, 5-51.

¹⁹⁶ World Report 2014: Iran, available at <https://www.hrw.org/world-report/2014/country-chapters/iran> (accessed on 15 October 2015).

¹⁹⁷ A/69/306 'Situation of human rights in the Islamic Republic of Iran: Report of the Secretary-General' (12 August 2014) para 3.

¹⁹⁸ See A/HRC/RES/25/24 'Situation of human rights in the Islamic Republic of Iran' (10 April 2014) and A/HRC/28/21 'Situation of human rights in the Islamic Republic of Iran' (08 April 2015).

among others in the African Group as well as from the Arabic Group or OIC Saudi Arabia, United Arab Emirates among others in the Council.¹⁹⁹ In addition to that, Brazil and India among others from the BRICs, IBSA and NAM multilateral institutions where the South African Government is a member or partner in the 2014 and 2015 resolutions both voted *yes*, *no* and *abstained* in the Council.

In this regard, it is difficult to simply argue that whenever the voting records are occurring in the UNHRC are informed by group or partnership or even membership solidarity. This is because the mentioned countries from different multilateral institutions highlighted signs of disunity in their voting patterns in the Council on the Iran case in the periods 2014 and 2015 on which the South African Government started voting in the Council. This happens although many commentators as indicated in the literature review section of chapter one favours group solidarity as the rationale behind every particular way of voting in the UNHRC. However, arguing in this manner cannot be separated from the fact that in one way or another group or 'bloc'²⁰⁰ solidarities do play an important part when member countries are voting in the Council as will be indicated in the following case studies of Belarus, Ukraine and Syria how the South African Government voted in the UNHRC.

3.5.2.2. Belarus

Despite the fact that Belarus signed and ratified major international human rights instruments,²⁰¹ it is still among countries in Europe characterised by many human rights violations when compared with its regional counterparts.²⁰² This is because such human rights violations as restriction of freedom of expression and association, restrictive legislations on NGOs undermining their ability to operate as well as arbitrary detention of activists and discrimination against LGBT are still issues in Belarus.²⁰³ However, in response to the human

¹⁹⁹ Ibid.

²⁰⁰ Hug and Lukács supra note 15, at 84.

²⁰¹ OHCHR 'Ratification status for Belarus', available http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=16&Lang=EN (accessed on 17 October 2015).

²⁰² Human Rights Watch 'Belarus', available at <https://www.hrw.org/europe/central-asia/belarus> (accessed on 17 October 2015).

²⁰³ Ibid.

rights situation in Belarus, the UNHRC on 12 June 2012 appointed a Special Rapporteur informed by resolution 20/13 of the Council to monitor human rights situation in that country, help to implement recommendation of the OHCHR of June 2012 as well as to help the government of Belarus to fulfil its human rights obligations among other things.²⁰⁴

Therefore, as the member of the UNHRC in the period 2013 to 2015, the South African Government has been *abstaining* on both resolutions of 2014 and 2015 adopted to curb the human rights situation in Belarus.²⁰⁵ The 2014 resolution was adopted by a recorded vote of 24 to 7, with 15 abstentions whereby South Africa, Algeria, Burkina Faso, Côte d'Ivoire and Namibia among others from the African Group and Arabia among others *abstained*. In the same vein, for the 2015 resolution that was adopted by recorded vote of 21 to 8, with 18 abstentions, the South African Government and other African countries as well as Arabic states *abstained* in the Council against Belarus.

Provided that, the South African Government voting patterns in the Council can be traced on its bilateral ties that existed between South Africa and Belarus since early 1990s when the democratic South Africa was still being negotiated.²⁰⁶ Therefore, these relations between these two countries in 2014 led to the South African delegation of DIRCO and Belarus delegation led by Maite Nkoana-Mashabane and Vladimir Makei meeting in Pretoria to build a mutual beneficial partnership that will contribute to national and regional development priorities such as trade and economic relations, as well as cooperation in education, agriculture and rural development.²⁰⁷

²⁰⁴ OHCHR 'Special Rapporteur on the human rights situation in Belarus', available at <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/BY/Pages/SRBelarus.aspx> (accessed on 18 October 2015).

²⁰⁵ See A/HRC/RES/26/25 'Situation of human rights in Belarus' (16 July 2014) and A/HRC/RES/29/17 'Situation of human rights in Belarus' (22 July 2015).

²⁰⁶ Embassy of the Republic of Belarus in the Republic of South Africa 'Political Dialogue with the Republic of South Africa' (04 March 1993), available at http://rsa.mfa.gov.by/en/bilateral_relations/political/belarus_rsa/ (accessed 18 October 2015).

²⁰⁷ South Africa 'SA, Belarus build bilateral ties' (12 September 2014), *South African Government New Agency*, available at <http://www.sanews.gov.za/south-africa/sa-belarus-build-bilateral-ties> (accessed on 18 October 2015).

In addition to that, South Africa's voting patterns are indirect contradiction to its visible role at the Council regarding thematic issues of racism and discrimination.²⁰⁸ This is because as indicated above, it *abstained* on the Council resolutions against Belarus in the same way it has been consistently *abstaining* on the case studies of North Korea, Sri Lanka, and Iran. Therefore, as South Africa abstained on the mentioned case studies across the periods of 2008 to 2010 and 2013 to 2015 it had not changed irrespective of its guiding international and domestic documents on human rights issues globally. In doing so, it shows signs of selectivity, double standard and politicization of UNHRC decisions despite the fact that its voting patterns are unprofessional because the Council is not the political body like GA and UNSC since the demolition of the Commission that was known for several problems undermining human rights protection.

However, continuing in this manner of voting by the South African Government hinder the progressive work of the Council on human rights because South Africa instead of helping the UNHRC to fulfil its agenda, it is taking the Council backwards. Therefore, for that reason the attention goes to the analysis of the voting patterns of the South African Government on other case studies such as Syria and Ukraine before the Council. Specific to these case studies there is an important dimension of politics of the UNSC that are tied with the politics of bilateral and multilateral politics embodied in the BRICs or South-South relations as South Africa is an active member in the African continent in the Council. In this regard, although it is beyond the scope of this paper, the dimension of the Security Council or BRICs politics will seem to prevail even in the non-political body of the UN called UNHRC and informing the South African Government voting patterns on human rights solutions involving Syria and Ukraine as the result of previous dissatisfactions caused by the international force intervention in Libya under the pretext of the "responsibility to protect" principle informed by the UN Charter provisions regarding international peace and security.²⁰⁹

²⁰⁸ Vote Count 'Voting record in 2014', available at <http://votescount.hrw.org/page/South%20Africa> (accessed on 16 October 2015).

²⁰⁹ Nuruzzaman M 'Human Security and the Arab Spring' (2013) 37 *Strategic Studies* 61.

3.5.2.3. Syria

There is a lot of controversy surrounding the Syrian human rights issue in the UNHRC and how the South African Government voted in the Council's resolutions in this regard as will be indicated below. In particular, it relates to the outbreak of Arab Spring early in 2011 and dissatisfactions that arose after external intervention in Libya by the North Atlantic Organisation Treaty Organisation (NATO) forces to enforce regime change in that country while diverting from UNSC Resolution 1973.²¹⁰ Therefore, in the African region South Africa was one of the countries that were not satisfied by the NATO actions as well as BRICs countries such as Russia and China in the UNSC despite the fact that their voting patterns in that resolution were divided because South Africa voted in *favour* while the others *abstained*.

However, that dissatisfaction despite divergent voting patterns in the Security Council re-emerged in the UNHRC making the BRICs allies voting in a manner that undermines the credibility of the Council on the Syrian case study of human rights. Thus, as the permanent members of the Security Council from the Eastern bloc of Soviet Union before 1989 consistently voted *against* the resolution of the Council against Syria, the South African Government consistently *abstained* in the period 2013 to 2015.²¹¹ In this regard, the South African Government voting patterns on the Syrian human rights issue in the Council can be linked with its dissatisfaction with the external intervention that undermines the sovereign integrity principle of member states and the double standards that are consistently shown by western countries in the Middle East and African countries internal conflicts.

²¹⁰ See Payandeh M 'The United Nations, Military Intervention, and Regime Change in Libya' (2012) 52, *Virginia Journal of International Law* 357 and Ulfestein G and Christiansen HF 'The Legality of the NATO Bombing in Libya' (2013) 62 *International and Comparative Law Quarterly* 166.

²¹¹See A/HRC/25/23 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (09 April 2014); A/HRC/RES/26/23 "The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (17 July 2014) and A/HRC/27/16 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (03 October 2014) as well as A/HRC/RES/28/20 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (08 April 2015); A/HRC/RES/28/24 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (13 April 2015); A/HRC/RES/29/16 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (22 July 2015) and A/HRC/RES/30/10 'The continuing grave deterioration in the human rights and humanitarian situation in the Syrian Arab Republic' (01 October 2015).

Therefore, the dissatisfaction of the South African Government with the NATO interventions in Libya caused it to be reluctant to allow international intervention in Syria through a diplomatic voting style in the Council. This is because the South African Government was pushing for an AU agenda to curb the Libyan Government conflict with rebelling groups.²¹² However, in the Syrian case study the South African voting patterns can be said to imply the regional organisation in the Middle East as it wished in the Libyan case study in 2011 should resolve the conflict in that country without external intervention with ulterior motives like in Libya. In doing so, negotiations as occurred in South Africa in the early 1990s to facilitate peaceful transition from apartheid to democracy as was envisaged in the Interim Constitution of 1993 could be regarded as a reason that informs South Africa's voting record in the Council on the one hand.²¹³ Therefore, for South Africa doing so favours its national interests, yet in terms of its obligations it is illegal to do so because the South African Government in this regard is politicizing human rights issues at the expense of international human rights law and its Constitution that draws from *International Bill of Rights*.

However, since there is no evidence of bilateral relations that exists between South Africa and Syria, it can be argued that its voting patterns in the Council are informed by the involvement of Russia and China in the UNSC which are South African Government allies in the BRICs now undermining the credibility of the Council through politicizing its resolutions aimed at resolving human rights issues in that country on the other hand. Thus, in this regard, the South African Government is breaching its obligations in the UNHRC because South Africa politicizes or indicates signs of double standard on the human rights situation in Syria instead of voting in a manner that would assist the Council to resolve the human rights issue in that country. Therefore, it is up to the international community to hold accountable all member countries that failed or are unable to honour their responsibilities either directly or indirectly as these actions are problematic on other instances.

²¹²Liebenberg I 'War in disguise: the responsibility to protect (R2P) as a new means to armed aggression' Chapter 15, in Potgieter T and Liebenberg I *Reflections on War: Preparedness and Consequences* (2012) 276.

²¹³White Paper on South Africa's foreign policy (13 May 2011) 10.

This is because in so doing credible institutions like the UNHRC tasked with monitoring universal promotion and protection of human rights can be saved given the fact that they are being undermined by member countries like South Africa forgetting the huge impact that universal veneration of human rights could have on the enhancement of international relations between world countries. Thus, when such actions occurs it is advisable of the institutions like Council or UN in general to make every particular way of voting by member states especially the one that is not contributing to the respect, protection and promotion of human rights internationally questioned or shamed and seek the assistance from domestic institutions within member states to assist where there is a necessity. In doing so, what member states pledged and committed to fulfil should be used as a yardstick for the benefit of the powerless especially in the wake of forced migration because of persistent conflict in Syria.

3.5.2.4. Ukraine

For South African Government, the Ukraine human rights issue in the UNHRC is complex similar to the Syrian case study above. This is because in the Ukraine conflict there is South African Government ally in the BRICs called Russia which in one way or another impacts on how South Africa voted in the Council for the period 2013 to 2015. Additionally, since BRICs countries are regarded as a culmination of the good-global-citizens that are situated in the middle of world powers between superpowers and small powers.²¹⁴ At least if they can use their stance and ideological belief of not being interested to confront or challenge the superpowers like South Africa sought to do in the UNSC for unrelated human rights purpose should be deterred.

However, despite their interest in the peacekeeping role where the South African Government is a robust player in the African continent post 1994 as per the mandate of Article 42 of the UN Charter of 1945 especially on international peace and security in the UNSC mandate, South Africa with that middle powers tag seems to be doing little in the UNHRC. Furthermore, this also extends to other regions of the world and the existence of Russia in the case studies of Syria and most importantly in this subsection in Ukraine. Thus, it is safe to say that the South African Government voting patterns in the Ukraine case study are informed by the bilateral and

²¹⁴Gilboa E 'The Public Diplomacy of Middle Powers' (2009) *Publicdiplomacy.org* 26.

multilateral relations with Russia and China in the Council. And for that matters, its particular way of voting in the UNHRC is the true reflection of that and its hope to be backed by these two permanent members of the Eastern bloc in the UNSC to reach its goal of being a UNSC member with a veto right as reflected by its actions in the Council below.

For instance, provided the mentioned complexities South Africa in the UNHRC *abstained* in period 2013 to 2015 on all resolutions aimed at resolving human rights situation in Ukraine.²¹⁵ Similar to the above assertion in the previous case study, the voting patterns of BRICs countries have been fractured along the lines of voting *against* and *abstaining* particularly Russia, China and South Africa similar to the case study of Syria as well as it was in the case study of Libya in the UNSC although beyond the scope of this paper. Therefore, in the UNHRC resolution against Ukraine South Africa opted for *abstention* which at this particular juncture had been joined Brazil from the BRICs side as well as Algeria from the African Group in the Council.²¹⁶

However, the perseverance of the South African Government to abstain on all resolutions regarding Ukraine as also surfaced in the case study of Syria indicates the selectivity or politicization of the UNHRC's resolutions aimed at resolving human rights in that country. This happens despite the fact that South Africa believes on the values of *ubuntu* or human rights that should guide all its relations in the global stage post 1994. In addition to that, the South African Government actions are in direct contrast with its duties attached with the signing and ratification of international human rights documents. Therefore, the South African Government is counterproductive in the UNHRC although South Africa participated in the form of the Commission to the Council in 2006.

²¹⁵ See A/HRC/26/30 'Cooperation and assistance to Ukraine in the field of human rights' (15 July 2014) which was adopted by recorded vote of 23 to 4, with 19 abstentions that included South Africa, Algeria, and Brazil among others from the BRICS, African Group and Arab Group. Also see A/HRC/RES/29/23 Cooperation and assistance to Ukraine in the field of human rights (21 July 2015) on which the South African Government voting record did not changed as well as Russia and China from BRICS voting against the resolution in the Council.

²¹⁶*ibid.*

3.6. Conclusion

In this chapter, many factors have been identified that impacted on the voting patterns of the South African Government in the UNHRC for the period 2008 to 2010 and 2013 to 2015. In the first part of the chapter regional, economic and political groupings constituting the Council such as African Group, OIC, NAM and others. However, despite the brief mentioning of the methodology that is used in the UNHRC to determine the rationale behind voting patterns of countries including South Africa before going to its country-specific voting patterns in the given period; it has been identified as problematic in the analysis these *yes*, *no* and *abstain* options of voting in the Council can be problematic. They allow member states the space to breach their obligations in the international stage because there is no mechanism that is being used to make countries account for every specific way of voting that is not productive towards the enhancement of human rights promotion and protection.

As a result, the voting patterns of the South African Government in the periods 2008 to 2010 as well as 2013 to 2015 were identified as fluctuating between *yes*, *no* and *abstain* varying from one country to the next because of differing reasons. For instance, understandably so the case study Israel's relationship with the apartheid regime as well as its actions in its occupied territories have determined the voting patterns of the South African Government to be consistent to human rights regardless of Israel's submission of reports in the Council that indicate its commitment and achievement to its human rights obligations. However, what also emerged exceptionally in the South African Government actions against Israel its threat to revoke the "dual-citizenship" issue to indicate its dissatisfaction with Israel's actions in its occupied territories and the involvement of both South African and Israel citizens in the caring of the Israel human rights abuse agenda.²¹⁷

In contrast, such actions on the case studies of North Korea and Sri Lanka did not surfaced as tools by South Africa to deter or discourage the human rights abuses. Instead domestic as well as South African bilateral relations with the mentioned countries informed its voting patterns in

²¹⁷Shoba S 'ANC threat to ban dual citizenship' (06 September 2015), *Sunday Times*, available at <http://www.timeslive.co.za/sundaytimes/stnews/2015/09/06/ANC-threat-to-ban-dual-citizenship> (accessed on 05 October 2015).

the UNHRC despite serious or the abundance of evidence that indicate these countries has abused human rights considering their obligations internationally. This is because evidence indicates they have signed and ratified international documents, but their actions on the ground contradicted those efforts because many violations have occurred. Therefore, despite that the South African Government *abstained* in the Council when their alleged cases were brought for international attention and actions by the international community.

Nevertheless, on the case studies of Sudan and DRC, the South African Government voting patterns in the Council varied between *against* and in *favour* in contrast to that of in *favour* and *abstain* in those cases of Israel, Sri Lanka and North Korea due to various reasons. For example, as had been indicated above, South Africa in the case study of Sudan consistently voted *no* in the Council resolutions particularly the ones sponsored by European States requiring extension of the UN mandate in that country, but *yes* on those aimed at ceasing the mandate despite continual human rights violations by African States like Egypt in the African Group. Central to these, is the South African bilateral and multilateral relationship with Sudan and African unity as presented in the notion of *African solutions to African problems*.

Likewise, in the DRC case the South African Government remained voting *against* the UNHRC resolutions for the period 2008 to 2010 in order to promote and protect African solidarity and protect its national interests that are situated in DRC despite paying little regard for human rights violations that are persisting in that country. However, this differed in the case studies where it has bilateral and allies also in the form of either bilateral or multilateral arrangements like BRICs where there is Russia and China that are involved been noticed voting completely different on all human rights resolutions requiring country-scrutiny in Iran, Belarus, Syria and Ukraine compared to the mix of voting on African states in the Council for 2013-2015 period.

For example in the case studies of Iran and Belarus Government of South Africa in the Council consistently *abstained* because it has bilateral arrangements with these two countries as well and there are also domestic developments that are supporting that such as slight moving towards clamping down media freedom and other things. In contrast, in the Syrian and Ukraine case studies, South Africa has been *abstaining* on the basis that it has bilateral and multilateral

arrangements with China and Russia. While, at the same time its voting patterns had been informed in the Council by the dissatisfaction in the UNSC resolution that it voted in *favour* on the 'no-fly zone' in Libya in 2011 and fearing to threaten its relations with the Security Council permanent member states such as Russia and China because it also has ambitions of representing the African continent in the UNSC using these two close allies in order to create a multi-polar system.

In this regard, all these voting patterns of the South African Government when they are collected together in the light of the regional, economic and political groupings that have constituted the Council indicate South Africa's failure to consistently adhere to its international responsibilities as stipulated in the Constitution (*Bill of Rights*), foreign policy as well as international human rights instruments it has signed and ratified post 1994. Thus, South Africa's voting patterns or record in the UNHRC undermine the existence or essence of the Council itself because although ideals of the Post WW II era were envisaged in favour of universal human rights veneration; the *realpolitik* agenda always seems to prevail. Therefore, these brings to question whether the foreign policy of South Africa as a guiding document is explicit enough about human rights or 'humanity' as expressed in the notion of *ubuntu* and what should be done in the light of international community and South African structures that are better positioned to hold South Africa accountable for failing to abide by its obligations of respecting, protecting, promoting and fulfilling human rights in the global stage particularly in the UNHRC.

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Chapter 4

4. Conclusion and recommendations

This chapter aims to summarise the main arguments reached in all the preceding chapters in an effort to respond to the research questions and achieve the principal objectives of the study. Chapter one of this paper provided the background of the study that relates in particular with the background of human rights in international relations since the end of WW II and how that has been encompassed in the foreign policy of the democratic South Africa post 1994. Therefore, this paper has done so by reflecting on the values that govern the international relations of South Africa such as *ubuntu*, and the 1996 Constitution with particular reference to the *Bill of Rights* and its relationship with the *International Bill of Rights* to effect positively on the human rights internationally as envisaged domestically post 1994.

However, it had been noted that the democratic Government of South African although signed and ratified the mentioned international human rights treaties, in practice its national interests emerged to supersede human rights as reflected by some of its actions in the international human rights bodies such as UNHRC and related bodies like UNSC although beyond the scope of this paper. This as backdrop, brought into question what is the voting record and pattern of South Africa in the UNHRC? Does South Africa's voting record comply with its international and regional human rights obligations? And does the South African Government voting patterns comply with its foreign policy objectives or principles of democracy and human rights? Therefore, this study asserts that the South African Government voting record or patterns in the UNHRC were inconsistent in order to comply fully with the values of *ubuntu*, its Constitution and international human rights law as embodied in the ICCPR, ICESCR and ACHPR in the Council for the periods 2008 to 2010 and 2013 to 2015 have been discussed.

In particular, as presented in chapter two of this paper, there are a number of notable occasions where the South African Government drifted away from its international human rights obligations and pledges as was envisaged by the Government in waiting of the ANC before 1994 and now by the democratic Government. For example, in the Myanmar and Zimbabwe case studies despite in the UNSC as well as in the Dalai Lama case of visa refusal to

enter South Africa more than once proved that the democratic South Africa failed to honour its duties that are related to human rights, democracy and as well as peace and security implications in the international stage. Hence those actions show that South Africa's deviated from the *ubuntu* and Constitutional values of democracy and human rights as well as rule of law that were envisaged to be a guide of South Africa's international relations post 1994. It is the responsibility of the South African Government to adhere to the international and human rights law. In this regard, these cases constitute South Africa's failure to adhere to its international duties in the name of its national interests vested in the African solidarity and bilateral or multilateral interests at the expense of democracy and human rights.

Specifically, the voting records of South Africa in the UNHRC for the periods 2008 to 2010 and 2013 to 2015 have at times been *inconsistent* with its international human rights law obligations and the Constitution. This has been noted in several case studies such as Israel, North Korea, Sri Lanka, Iran, Belarus, Syria and Ukraine. For instance, in the Israel case study, it was indicated that due to the historical association of Israel with the previous apartheid regime and also because of its human rights actions in Palestine, the South African government consistently voted *yes* in the UNHRC resolutions aimed at country-specific scrutiny of Israel. However, on all other case studies that are not situated in the geographical region of Africa and where there is China or Russia involved South Africa's voting has been to consistently *abstain* across the periods 2008 to 2010 and 2013 to 2015.

Conversely, on case studies pertaining to resolutions against countries that are situated in the geographical region of Africa such as DRC and Sudan, the Government of South Africa voted *against* interventions proposed before the UNHRC in the period of 2008 to 2010. In doing so, South Africa's voting patterns were informed by who or which countries (either European or African) have sponsored a particular resolution towards a certain country (such as DRC or Sudan) and what its aim is, because those resolutions aimed at extending the period of investigation and resolving human rights in Sudan for instance were voted *against* by South Africa. Despite that, those resolutions that aimed at ending a mission or investigation were

voted in *favour* presumably because of the consideration of African solidarity and South Africa's national interests in the mentioned African countries.

In that process of *inconsistency* in its voting patterns, the South African Government is shying away from its international responsibilities regarding human rights because there is no clear-cut in the South African foreign policy because its national interests seem to supersede human rights. This is an approach that ignores the fact that national interests can be enhanced and strengthened where there is peace and security, democracy and human rights veneration in the world in general. Therefore, it would not be an exaggeration to argue that *pragmatism* in the foreign policy document of South Africa post 1994 is costing if not taxing on the human rights of the innocent people such as women and children and requires an unfathomable or high international community intervention especially in the human rights sector.

Moreover, there is nothing inherently wrong to pursue national interests and being obsessed on the UNHRC about human rights abuses in specific countries, but it is unacceptable or illegal, when along the way of achieving self-interests human rights are being violated and the world institution to focus is mainly on one country than on others. However, despite the Israeli Government justification of its actions in the Occupied Territories on the basis self-interests that justifies its reservations and declarations as mentioned elsewhere in the paper, it is the responsibility of the international community to assess to what extent that has been abused at the expense of human rights. Hence now when considering the Council and South Africa's obsession with Israel the blame can be shifted on both sides that is the formation of the UNHRC as indicated in the second section of chapter three and South African exploiting that to its own advantage.

Likewise, *abstaining* on other case studies because of bilateral or multilateral arrangements and domestic developments indicate double standards on the South African Government stance in the UNHRC and could constitute a violation of its international human rights law obligations. For instance, in the North Korean human rights there is no proven record of bilateral or indirect multilateral relations between these two countries, except for the fact that, there are reported domestic developments that are aimed at seizing the print media and limit constitutional right

of the freedom of association because of ANC's government dissatisfactions because of alleged media negative publicity²¹⁸ and squeezing the space for the option towards dictatorship rather letting the democracy thrive. This also applies to the countries situated in the African continent in the name of African solidarity.

Therefore, since the South African Government voting patterns in the UNHRC reflected the fracture of *yes*, *no* and *abstain* because of selectivity, politicisation and double standards at the expense of international human rights law and South African Constitution, this paper recommends that:

- The South African Government should consider reviewing its foreign policy to be more human rights friendly in order to contribute further to the issues of peace and security as well as human rights and democracy in order to maximise its international relations objectives.
- The international community working together with the South African Constitutional Court could assist in holding the South African Government accountable not only on domestic human rights challenges but also international human rights issues where the Government has deviated from the *Bill of Rights* and *International Bill of Rights*.
- To the South African Government leaders, Pan-Africanism does not necessarily mean only Heads of States should be protected from imperialism as it is used to fight that, but it means human rights and other related matters of peace and security of the African people particular the vulnerable should take precedence at all costs.

Notwithstanding that, the consistency in the voting patterns of South Africa on the Council resolutions could assist the Government of South Africa in many ways. For instance, it can help the Government in its efforts to earn a permanent membership in the UNSC and lead the African continent. In this regard, the South African Government has to take into cognizance that whatever happens in the UNHRC sphere in Geneva actually has implications in what happens in

²¹⁸Letsoalo M 'Blade to print Media: Be a nice profession' (07 July 2015) *Mail and Guardian online*, available at <http://mg.co.za/article/2015-07-07-blade-to-print-media-be-a-nice-profession> (accessed on 07 July 2015).

the UNSC in New York because of its capacity to either limit or increase South Africa's chances in the international stage.

Furthermore, it could enhance the South African Government international image in multilateral institutions like BRICs because of bringing a complete different perspective in that sector in the light of some human rights unfriendly partners in the bloc. Therefore, in doing so, the Government must also allow civil society organisations a space to advocate for human rights issues as well as hold the South African Government accountable when the state failed to abide by its responsibilities. This is because that would help the South African Government to avoid being seen as a country that is backtracking from its founding values of promoting democracy and human rights protection in the international stage as was envisaged by the likes of Mandela.



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