

SOUTH AFRICA'S HAZARDOUS BALLET WITH HUMAN RIGHTS DIPLOMACY

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EXECUTIVE SUMMARY

At its transition in 1994, South Africa emerged as an exceptional case of a rising power that would pursue the diplomacies of human rights. The history of the ANC, key policy documents and the rhetoric of its leaders, including Nelson Mandela, underscored the significance of South Africa as a human rights promoter. Although human rights are vital to South Africa's foreign policy, they have in practice been relegated to the periphery of Pretoria's diplomacy. The human rights deficits in South Africa's multilateral diplomacy have been sufficiently demonstrated through its voting patterns and positions while serving as a non-permanent member of the UN Security Council. Its record at the UN Human Rights Council (UNHRC) is more unpleasant. To reverse this downward drift, South Africa should reconceptualise its diplomacies through a series of smart actions, rehabilitating policy positions that diverge from a coherent human rights outlook.

INTRODUCTION

With freedom in 1994, South Africa was best positioned to champion human rights as an idea, and in practice. Refreshingly, the newly minted democracy's perception of human rights as the centre of its foreign policy was not just a consequence of the end of the Cold War, and the attendant triumph of human rights and democracy as foundational to human progress across the globe.

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Rather, more importantly, unlike several liberation movements in sub-Saharan Africa, the ANC had since its inception established in its DNA the value of human rights. This had spanned the entire history of the movement, from Pixley ka Isaka Seme to Mandela, and had defined what it stood for in its fight for freedom. The impulses of the internationalist and pan-Africanist ANC-led government would therefore swing in the direction of the diplomacy of human rights. An observer of South Africa frames this expectation (of diplomacies of human rights) cogently: '[South Africa] should support accountability and the fight against impunity, as it is one of the few that can do so without fear of consequence from within Africa and outside.'¹

Today, however, a growing number of observers, analysts and activists are beginning to view the actions of the South African state as controversial and inconsistent with the human rights approach it had promised as the centrepiece of its foreign policy in 1994. South Africa's shocking voting record during its two tenures on the UN Security Council (from January 2007 to December 2008 under president Thabo Mbeki, and from January 2011 to December 2012 under president Jacob Zuma), as well as its record at the Geneva-based UNHRC, are invariably brandished as evidence of normative backsliding in human rights.²

The country's positions at the UNHRC, and its struggling domestic record (excessive use of force, lack of respect for migrants' rights, corruption, inequality, poor corporate accountability resulting in the Marikana killings in 2012) have since become a target of human rights watchdogs, including Human Rights Watch and Amnesty International. In its South African roster, the Human Rights Watch World Report 2017 describes the recession in South Africa's diplomacies of human rights at the UNHRC and its fraught relationship with the International Criminal Court after a botched attempt to withdraw from the Rome Statute in October 2016.³ These are just a glimpse of what is perceived as embarrassing developments, and a growing dossier that points to South Africa's divergent path with human rights in its foreign policy.

Standard realist and pragmatic explanations, albeit insufficient, could explain why South Africa had started to 'de-norm' and choke human rights in its foreign policy. Considerations of its peace diplomacy on the African continent, and the dilution of human rights through an anti-colonialist perspective in its foreign policy, are attractive. But, this policy insights paper argues that South Africa's de-norming of human rights as a doctrine in its foreign policy has set it on a path of dangerous de-alignment, and on a slippery slope of fragility as it attempts to balance competing foreign policy interests – leadership and influence on the one hand, and norms on the other.

Human rights are attractive, and democratic states are correct to pursue these in their foreign policy. But in practice they are complex to engineer, even for the most powerful states. Taking this difficulty into consideration, this paper contends that South African foreign policy actors should reverse the decline by returning human rights to a sound equilibrium, away from the current position of fragility and potential ruin. The country should pursue positions and votes that are consistent with its constitution and the promises it made at the transition. The conclusion proposes a series of actions South Africa could pursue to reclaim its human rights identity in foreign policy.

THE ANC'S PAST AND A RIGHTS-BASED TRANSITION AND FUTURE

The expectation that a free and democratic South Africa would promote human rights at home as a way of life, and abroad as a centrepiece of its foreign policy, was almost a *fait accompli*. Unlike many African countries whose democratic and human rights experiments were not deeply rooted in the independence vocabulary, the ANC in government would not need socialisation on human rights and democracy.⁴ Its struggle for freedom was anchored in a human rights-based political and economic order. And these would be promoted because the world expected South Africa to do so. Addressing South African ambassadors during the September 1995 heads of mission conference, then deputy president Mbeki captured these positive expectations:⁵

A distinguishing feature of South Africa is the sustained interest of the rest of the world in the future of South Africa. The depth of this interest is not only confined to government, but includes ordinary people and especially those who were involved in the anti-apartheid movement abroad. They have not disengaged themselves from South Africa since the elections. However, the strength and persistence of the international focus on South Africa puts the South African Government of National Unity under pressure to contribute positively and constructively to the global community.

Mbeki added: 'There are also expectations from Africa that South Africa should make a significant contribution towards peace and development on the continent'⁶.

In light of these expectations and potential engagements, South Africa would merely seek to institutionalise and domesticate development, democracy and human rights in a non-racial republic, signalling tectonic shifts away from an apartheid past whose architecture had been designed to de-norm human rights and majority progress.

On the external front, the promotion, if not defence, of human rights would find further traction through the explicit argument that ANC leaders were not just South African but also African leaders whose ideas and policies were to be championed and defended in the interests of the African majority on the continent. Seme in his statement 'Native Union' in the newspaper *Imvo Zabantsundu*, on 24 October 1911, affirms this pan-African instinct when he says:⁷

The South African Native Congress is the voice in the wilderness bidding all the dark races of this sub-continent to come together once or twice a year in order to review the past and reject therein all those things which have retarded our progress, the things which poison the spring of our natural life and virtue; to have and distinguish the sins of civilisation, and as members of one household to talk and think loudly on our home problems and the solution to them.

The views of Seme, Mandela and Mbeki, demonstrating a concern with rights beyond South Africa's borders, found an echo chamber abroad, and were codified in several texts of the ANC and its predecessor, the South African Native Congress. Eminent among these are the Africans' Claims in South Africa (1943), the Freedom Charter and the Women's Charter (1955). These were in part inspired by the Atlantic Charter and Africans' Claims, including the African Bill of Rights of 1923.

But the realisation that human rights could be a frustrating question in the execution of foreign policy started to emerge much earlier than many would care to admit. In a 1996 text, *Foreign Policy for South Africa: Discussion Document*, among the many issues that were discussed under the heading ‘Multilateral Policy and Objectives’, the problematique of human rights was framed in candid terms: ‘The implications of the issue of human rights as a cornerstone of South African foreign policy must be fully explored.’⁸ This suggests that there were, at least as early as 1995, reflections on potential strains in the execution of human rights as one of the cornerstones of the foreign policy of a new South Africa.

In an age of rising populism, including in South Africa, and nationalism elsewhere, challenges in consistency and realignment in the diplomacies of human rights have become widespread. This means South Africa is not an outlier in the agenda of de-norming. However, its de-norming distinguishes itself by virtue of policy confusion and the degree to which the human rights purge is starting to undermine the kernel of what South Africa promised to become – an African country with a human rights perspective in its diplomacies.

THE HUMAN RIGHTS PURGE IN PRETORIA’S MULTILATERAL DIPLOMACIES

In remarks on 25 May 1994, arguably the first by a senior member of the post-apartheid government to the UN Security Council, Mbeki concluded by describing the new South Africa as ‘a society that is determined to live up to the ideals contained in the United Nations Charter and the Universal Declaration of Human Rights’.⁹ In his final line, Mbeki went on to say: ‘Please count on us to behave as an exemplary Member of this Organization, in which the hopes of millions reside.’

With this spectacular entry into the preeminent body charged with peace and security, South Africa confirmed its credentials as a human rights promoter. This is why actions contrary to that path would be met with incomprehension. It should be emphasised that alongside the African agenda of peace and security on the continent, human rights as a doctrine has over the years struggled to co-exist in South Africa’s foreign policy practice.

In the past decade, South Africa’s record of multilateral underachievement on questions of human rights found explicit expression in its conduct when it served as a non-permanent member of the UN Security Council. In its first stint, South Africa (alongside China and Russia) voted against the draft resolution demanding an end to human rights abuses and political oppression in Myanmar under the military junta. In July 2008 it voted against a UK-sponsored resolution seeking to sanction the regime of Robert Mugabe after the flawed 2008 elections. While its second stint on the UN Security Council generated less controversy, its shilly-shallying regarding Resolution 1973 on the situation in Libya, which saw widespread human rights abuses in Benghazi, attests to policy confusion emerging as a default position on questions of human rights.

South Africa’s record at the UNHRC is even more ominous, with the country having found itself in the voting company of states with dubious human rights records. When South Africa was serving on the UN Security Council in 2007 as a non-permanent member, UN Watch Analysis published an exposé of the country’s negative voting patterns on the UNHRC. In fact, its vote against the failed

draft resolution on Myanmar and its abstention from the vote on setting up an international tribunal to try the suspects in the assassination of former Lebanese prime minister Rafiq Hariri could not be considered to materially constitute the national interests of South Africa. The results were based on a survey that concluded that South Africa's score was at the bottom – along with countries such as Russia, Saudi Arabia and Cuba.¹⁰

Shocking many, in July 2016 South Africa voted against a UNHRC resolution on the protection of human rights on the Internet. Moreover, going against its own laudable domestic protection framework on gender identity and sexual orientation, South Africa abstained from a UNHRC vote to appoint an independent expert on these matters. Further demonstrating its lack of leadership and policy coherence, a few months later, in November 2016, South Africa voted in favour of the appointment of an independent expert in the UN General Assembly. It thus went against the resolution that had been put forward by the Africa Group to halt the process, and its own abstention at the UNHRC.¹¹

Notwithstanding the noted difficulties in execution, specifically on second-generation rights, South Africa has an impressive domestic catalogue of institutionalisation of human rights in governance. Its Chapter 9 institutions, an independent judiciary and open political system make South Africa a go-to country on human rights. In addition, as a permanent standing item on the agenda of the cluster meetings of directors-general (the chief administrative officers) human rights are underscored as a planning tool. More important, South Africa presented a fairly decent third cycle national report in May 2017 to the Universal Periodic Review of the UNHRC.¹²

However, this degree of domestication runs contrary to the thickening dossier accentuating the purging and de-norming of a human rights perspective in South Africa's multilateral diplomacies. De-alignment is no longer only a perception that can be ignored or denied by South Africa's Department of International Relations and Cooperation (DIRCO). The crisis in its human rights diplomacies undermines its real and perceived normative leadership in Africa and the Global South, as well as its role as a bridge-builder.

To avert deflation, a series of smart actions on the part of the South African government and different domestic constituencies working on human rights should be set in motion to reverse the downward spiral.

CONCLUSION

It is apparent that the South African government, once in power, considered human rights a means to protect rights-holders elsewhere from potential state abuse and negligence. However, over the years it has started to de-norm human rights, relegating what emerged at the transition in 1994 as a pillar of its foreign policy to the unfortunate status of a doctrine in its peripheral diplomacy. South Africa should now pursue a policy of norming, and reclaim lost ground on human rights in its foreign policy along a three-point action plan.

First, grounded in a realisation that human rights are highly political and complex in the practice and execution of foreign policy, the South African government should open a new indaba seeking the re-conceptualisation and balancing of human

rights in diplomacy. This is an indispensable strategic option of detoxification, as opposed to the current path of backsliding driven by the declining interest of great power diplomacy in human rights, pitting the old world against the emerging world. The indaba should culminate in policy re-adjustments, assessments of positions in multilateral platforms, and the senior-level appointment by the president of a human rights envoy in DIRCO. The latter should refurbish and coordinate South Africa's rhetoric and actions on human rights at the highest level of the state and multilateral institutions.

Second, South Africa should work bilaterally, investing supplementary top-level energy in leveraging and reconstructing its relationships with human rights-promoting countries in the traditional Western core, but also with rising powers such as India, Brazil, Argentina and South Korea. Such an approach, aimed at leveraging policy consistency and voting convergence, should include building trust, erecting bridges and mobilising a charm offensive towards the external constituency of non-state actors championing human rights.

Last, human rights in the diplomacy of the South African government should become the responsibility of a public that demands more accountability. Human rights in foreign policy are not just the business of experts in think tanks and academia, and fringe interests in the activities of Western non-governmental organisations (NGOs). National NGOs working on domestic human rights protection, and broader civil society in South Africa, including trade unions and political parties, should increase pressure on the South African government to pivot back to positions in multilateral and bilateral forums that are consistent with domestic values and the promises of the transition in 1994.

ENDNOTES

- 1 Interview with an international affairs expert, Paris, October 2017.
- 2 Graham S, 'South Africa's voting behaviour at the United Nations Security Council: A case of boxing Mbeki and unpacking Zuma?', in Masters L *et al.*, (eds), *South African Foreign Policy Review*, 2. Pretoria Africa Institute of South Africa, 2015.
- 3 Human Rights Watch, 'World Report 2017, South Africa: Events of 2017', <https://www.hrw.org/world-report/2017/country-chapters/south-africa>, accessed 12 September 2017.
- 4 For the majority of liberation movements in Southern Africa, and broadly speaking Africa's independence movements, the overriding concern was self-rule and political emancipation from colonialism. The ANC distinguishes itself by having developed rich traditions and texts with human rights at the centre of the struggle for majority rule.
- 5 South Africa, DIRCO (Department of International Relations and Cooperation), 'Address by Deputy Minister Pahad to the Heads of Missions Conference', 18 January 1999, <http://www.dirco.gov.za/docs/speeches/1999/paha0118.htm>, accessed 12 August 2017.
- 6 *Ibid.*
- 7 Seme PKI, 'Native Union, Imvo Zabanstundu, 24 October 1911', in Asmal K, Chidester D & C Lubisi (eds.), *Legacy of Freedom: The ANC's Human Rights Tradition*. Johannesburg: Jonathan Ball Publishers, 2005.
- 8 South African Government, 'Foreign Policy for South Africa: Discussion Document', 1996, <https://www.gov.za/documents/foreign-policy-south-africa-discussion-document>, accessed 14 September 2017.

- 9 South Africa, DIRCO, 'Statement by Mr. Thabo Mbeki, First Deputy President of South Africa, at the 3379th meeting of the United Nations Security Council S/PV.3379, 25 May 1994', <http://www.dirco.gov.za/docs/speeches/1994/mbek0525.htm>, accessed 12 August 2017.
- 10 UN Watch, 'South Africa's UN votes against human rights', 19 November 2007, <https://www.unwatch.org/south-africas-un-votes-against-human-rights/>, accessed 8 November 2017.
- 11 *The Independent*, 'Singapore voted against UN's sexual orientation and gender identity (SOGI) mandate safeguard', 22 November 2016 <http://www.theindependent.sg/singapore-voted-against-uns-sexual-orientation-and-gender-identity-sogi-mandate-safeguard/>, accessed 8 November 2017.
- 12 United Nations Human Rights Office of the High Commissioner, 'Universal periodic review: South Africa', <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZAindex.aspx>, accessed 8 November 2017.

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