

South Africa's Foreign Policy under the Zuma Government

A human rights-based policy or a pragmatic approach based on political and economic considerations?

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Since 1994 human rights have emerged as a central pillar of South Africa's international relations. This paper explores the genesis of a human rights-based approach to foreign policy and international relations globally under the Mandela government, where the role and status of human rights and democracy were pivotal to South Africa's international relations. The next section moves on to an analysis of how these principles and values were applied under Mbeki's government. This is followed by an examination of the role and status of human rights in South Africa's international relations under the Zuma administration including challenges and concerns in this regard. The assessment concludes with a few recommendations on how best to ensure that human rights play a central role in South Africa's foreign policy and its international relations.

Introduction

The question posed and amplified by recent developments over the Dalai Lama's visa application to attend Archbishop Tutu's eightieth birthday, and by South Africa's position and role in the African Union (AU) and in United Nations Security Council (UNSC) debates in relation to Libya and Syria, is: To what extent do human rights considerations inform South Africa's foreign policy and how it conducts and manages its international relations?

In response to this question – and concerns in several quarters that human rights are increasingly

taking a back seat in international relations due to trade and geopolitical considerations – it is important to critically assess the extent to which human rights do (or do not) inform South Africa's foreign policy and international relations under President Zuma's government.

Emergence of Human Rights in International Relations

The concept of a human rights state – a state or government whose main focus is to advance the rights of its citizens – could be said to have

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emerged in the modern world with the adoption of the American Declaration of Independence on 4 July 1776, which acknowledged and affirmed that governments are instituted by citizens in order to secure and maximise their inalienable rights to 'life, liberty and the pursuit of happiness' (despite of course the exclusion of African slaves and the barring of women from voting). This was later followed by the 1789 French Declaration of the Rights of Man and Citizen.

The extension of human rights beyond a state level into the international arena, however, took much longer to evolve and take root, as the proceeds of slavery and colonialism made the necessary transition unattractive to those in power. It was only after the atrocities of the First and Second World War that the issue of human rights in international relations became a key concern, and this eventually led to the adoption of the United Nations (UN) Charter (1945) and the Universal Declaration of Human Rights (1948).

The maintenance of international peace and security and respect for human rights and fundamental freedoms for all human beings are central features of the UN Charter and the main purposes of the UN. The Universal Declaration of Human Rights established the centrality of human rights in international relations through the following provisions:¹

- Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.
- Human rights being essential to promote the development of friendly relations between nations.
- Pledge by states to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.
- Recognition of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations.

While resistance against decolonisation and the Cold War (including support of the *apartheid* regime by several Western powers) delayed the progress towards human rights-centred international relations, the 1993 World Conference on Human Rights held in Vienna at the end of the Cold War gave greater impetus to this necessary transition. In this regard the 1993 Vienna Declaration and Programme of Action made several important provisions pertaining to the role of human rights in international relations:

- The promotion and protection of human rights is a matter of priority for the international community.²
- Human rights and fundamental freedoms are the birthright of all human beings: their protection and promotion is the first responsibility of Governments.³
- The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation.⁴
- The international community should support the strengthening and promoting of democracy, development and respect for human rights in the entire world.

The provisions of the 1993 Vienna Declaration and Programme have influenced many other international and regional instruments and resolutions on the role of human rights in international relations. The UN Millennium Declaration,⁵ the Constitutive Act of the AU⁶ and the 2005 World Summit Outcome are all examples of this influence. The 2005 UN World Summit, in this regard, acknowledged that 'development, peace and security and human rights (pillars of the UN) are interlinked and mutually reinforcing.'⁷

Human Rights Considerations and Foreign Policy under Mandela's Government

In 1993, a few months before becoming South Africa's first democratically elected president, Nelson Mandela boldly indicated that human rights would be one of the pillars of South Africa's foreign policy. In this regard, he said that 'issues of human rights are central to international relations'; that '[h]uman rights will be the light that guides [South Africa's] foreign affairs' and, more importantly, that South Africa would be 'at the forefront of global efforts to promote and foster democratic systems of government'.⁸

Developments at the UN since 1945 on the role of human rights in international relations, the 1993 World Conference on Human Rights in particular, and the international support South Africa and Mandela received in the human rights struggle against *apartheid* certainly contributed to Mandela's position and boldness on the relationship between human rights and foreign policy.

Mandela's position was supported by the provisions of South Africa's Constitution, Act 108 of 1996, which state that human rights constitute one of the values upon which the new South Africa is founded and are an important cornerstone of its democracy.⁹ The Constitutional Court, in its interpretation of these provisions, held in *S v Makwanyane*,¹⁰ that the respect, protection and promotion of human rights should 'be demonstrated by the State in everything that it does'.¹¹

Mandela's government, notwithstanding several challenges and failures, did display a commitment to a human rights focus in South Africa's foreign policy and in its international relations,¹² and was held in high regard by the international community.¹³ This position did not, however, endear Mandela's regime to many African leaders – many of whom were despots and averse to human rights and democratic governance.¹⁴

Human Rights and Foreign Policy under Mbeki's Government

Mbeki's government did continue with the pro-human rights approach determined under Mandela's government in South Africa's international relations; it played an important role in the establishment of the AU and its Constitutive Act, with its key provisions on human rights. It played a similar role in the establishment of the New Partnership for Africa's Development (NEPAD)¹⁵ process and its African Peer Review Mechanism (APRM),¹⁶ and supported peace missions in countries like Burundi and the Democratic Republic of Congo. The hosting of the World Conference against Racism¹⁷ and the World Summit on Sustainable Development¹⁸ are other examples of this approach.

However, the need of the Mbeki administration to forge closer relations and cooperation with African leaders, in pursuit of greater influence and leadership in the African region and other geopolitical and trade considerations, led to a more 'pragmatic' approach to South Africa's foreign policy and international relations, which saw less emphasis on human rights.¹⁹ This approach saw South Africa siding with China and Russia to block resolutions on human rights violations committed by countries such as Zimbabwe,²⁰ Iran and Myanmar, and attracting criticism in the process.²¹ According to the *Economist*, this was a squandering of South Africa's reputation as a 'beacon of human rights'.²²

Human Rights and Foreign Policy under Zuma's Government

At the beginning of the term of the Zuma government in 2009 there was a lot of hope that it would halt and reverse the move away from human rights in South Africa's international relations that had begun under Nelson Mandela's government. One example in this regard was the position taken by the South African government that President Bashir, though invited, would be arrested if he arrived in the country for Zuma's presidential inauguration in 2009. This was because of South Africa's international treaty obligations, especially under the Rome statute.²³ President Thabo Mbeki had, on the other hand, opposed the indictment of the President of Sudan by the International Criminal Court (ICC).²⁴

However, two years later, worrying developments have emerged that raise concerns and questions about the role of human rights in South Africa's foreign policy and international relations, and cast doubt on South Africa's ability to regain its credibility as a beacon of human rights in global relations.²⁵ These developments include: South Africa's stand on the AU's refusal to cooperate with the ICC in its actions against a few African leaders such as Bashir of Sudan; South Africa's international human rights treaty reporting obligations and ratifications; and South Africa's position in the UN Security Council in relation to Libya and Syria.

Tensions between the AU and the ICC: Refusal to cooperate with the ICC

Tensions and disputes between the AU and the ICC arose when the AU resolved on 13 July, 2009 – at the 13th Ordinary Session of the Assembly of the AU held in Sirte, Great Socialist People's Libyan Arab Jamahiriya – not to cooperate with the Court in the arrest and surrender of the Sudanese president. The AU's decision was based on the perceived impact the indictment of President Bashir by the ICC would have on the peace process pertaining to the conflict in Darfur.²⁶

In its 16th Ordinary Session held in Addis Ababa, Ethiopia, on 30–31 January 2011, the AU again took the stand that the decision by Chad and Kenya to host the indicted Sudanese president on 21 July, 2010 and on 27 August, 2010 respectively and not assist the ICC in effecting the arrest and surrender warrant against him, was in pursuit of 'peace and stability' in the region. In the same session, the AU supported and endorsed Kenya's request to the UN Security Council for the deferral of the ICC's investigation and prosecutions (Article

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16 of the Rome Statute of the ICC) in relation to the 2008 post-election violence, citing once more the 'ongoing peace building and national reconciliation process' and the need to 'prevent the resumption of conflict and violence'.²⁷

The AU further, in its 17th Summit held in Malabo, Equatorial Guinea, from 30 June to 2 July, 2011 – while reiterating its commitment to fight impunity – once again restated its request to the UN Security Council for the deferral of proceedings by the ICC against President Bashir of Sudan and the six Kenyan leaders. The Assembly of the Heads of State and Government of Member States of the AU also supported the position taken by Chad, Kenya and Djibouti to receive, and not execute the warrant of arrest against President Bashir while he was in their respective territories.²⁸

In the same vein and in response to the warrant of arrest issued by the ICC against Colonel Gaddafi, the AU decided that 'AU Member States shall not cooperate in the execution of the arrest warrant' and further requested the UN Security Council to defer the prosecution of the Libyan leader 'in the interest of justice as well as peace'.

These decisions of the AU have been taken notwithstanding the fact that the ICC was responding to referrals by the UN Security Council in the case of President Bashir and Colonel Gaddafi (South Africa and Nigeria supported the UN Security Council resolutions 1970 and 1973 on Libya), while the action against the Kenyan leaders was a consequence of Kenya's ratification of the Rome Statute in 2005.

The position taken by African states raises several concerns in relation to the commitment to fight injustice and impunity in a continent that is the most ridden and torn apart by incidents of armed conflict and disregard for international agreements and obligations. The silence by South Africa on all these developments is of particular concern, as the position of the AU in this regard constitutes a violation of ICC treaty obligations which South Africa is party to – South Africa has even transformed the ICC treaty into national law.²⁹

Some government officials argue that South Africa has in the past made its position clear: that its foreign policy is bound by its national laws and that South Africa cannot therefore take positions that are contrary to its constitutional provisions in particular. They also indicate that decisions in the AU are by sufficient consensus, and that South Africa's silence should therefore not be seen as support for decisions that are contrary to South Africa's constitution. This silence, however, shows

a desire by South Africa to appease the Africa bloc even at a heavy price to its international standing in relation to international agreements like the Rome Statute.

Arab Spring: Libya and Syria

While South Africa supported resolutions of the Security Council on Libya (1970 and 1973) and was commended for its actions, its refusal to support a resolution on Syria does not make sense and is puzzling. It is not clear whether this was because South Africa did not want to aggravate China and Russia, which are both against the resolution, or, as suggested by the Director-General of the Department of International Relations and Cooperation (DIRCO), in his address to a parliamentary committee, that this was to protect investments of a South African mobile phone company – MTN.³⁰ Lindiwe Zulu, President Zuma's special adviser on foreign relations, was reported to have cited 'global politics' as the motivation for South Africa's position, while the spokesperson of DIRCO is reported to have referred to South Africa's concerns that the sponsors of the resolution 'would opt for military intervention',³¹ as they did with Libya. The Zuma presidency made it clear that it did not support North Atlantic Treaty Organization (NATO) action in Libya, despite having voted in favour of a no-fly zone.

Swazi Loan

The R2 billion loan that the South African Reserve Bank (SARB) was prepared to extend to Swaziland in September 2011, guaranteed by the South African government, highlights a lack of adequate and consistent focus on human rights in its foreign policy and international relations, especially in relation to its neighbours in the South African region. The concern here is that the conditions upon which the South African government has agreed to guarantee the loan include human rights and democracy provisions based on a 2004 bilateral agreement³² between the two countries that was never really implemented. This raises questions as to why this was allowed to happen when the inadequacy of human rights, democratic governance and respect for the rule of law has contributed to much of Swaziland's current economic challenges that now require financial support from the South African government. There are also doubts as to whether these human rights conditions would be effectively implemented and monitored this time around or even be accepted by the government of Swaziland.³³

In addition to these concerns, the Minister of DIRCO is reported to have said that South African

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would not intervene in Swaziland because of the government's policy of 'non-interference in the internal affairs of a sovereign state, and especially a neighbouring state, [which] would not make it possible for South Africa to attempt to bring about political change in any country unilaterally.'⁵⁴ This attitude, if indeed correct, gives mixed signals on government's approach to human rights considerations in its foreign policy. It also raises questions on what were the real reasons and intentions behind the loan to Swaziland that the South African government agreed to support and guarantee.

International human rights treaties – ratifications and reporting obligations – and the Universal Periodic Review Process

South Africa's continued failure to ratify key international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocol of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) is inexplicable. The same applies to South Africa's unsatisfactory human rights treaty reporting, which suggests a worrying disregard for South Africa's international human rights obligations.³⁵ The following reports to international human rights treaties are overdue and have not been submitted: Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment (CAT) – due on 31 December 2009; International Covenant on Civil and Political Rights (ICCPR) – due on 09 March 2000; International Convention on the Elimination of All forms of Racial Discrimination (ICERD) – due on 09 January 2010; Convention on the Rights of Persons with Disabilities (CPD) – due On 03 June 2010 and the Convention on the Rights of the Child (CRC) – due on 15 July 2002.³⁶

The manner in which the South African government engaged in the Universal Periodic Review process of the UN Human Rights Council³⁷ without consultation with civil society organisations and even the South African Human Rights Commission (SAHRC) as expected is not satisfactory and does not promote or encourage participatory democracy.

The Dalai Lama visa application

Delays in granting the Dalai Lama a visa to attend Archbishop Emeritus Desmond Tutu's eightieth birthday, due to suspected pressure from China or fear of displeasing China – its biggest trading partner (after China's disapproval

and response to visits of the Dalai Lama to the United States and other countries),³⁸ highlights the challenge South Africa faces in maintaining human rights as the pillar of its foreign policy and international relations in the face of competing and more pragmatic economic and geopolitical considerations.

The cancellation of the trip of the Dalai Lama drew a sharp response from Archbishop Tutu, who said the government was 'worse than the apartheid government' and warned that South Africans might one day find themselves having to pray for the downfall of the ANC government.³⁹

Implications of these developments

These developments illustrate an inconsistent application of human rights by the Zuma government and the low premium it places on human rights in relation to South Africa's foreign policy and international relations. This could be attributed to several factors such as the lack of a cohesive foreign policy anchored on human rights, an inadequate appreciation of the role, relevance and importance of human rights in foreign policy and international relations; and the relegation of human rights to the back seat in international relations because of an improper balancing of trade and geopolitical considerations with human rights. These developments have also led to perceptions and concerns that the Zuma government is moving further from the position established by Mandela with respect to South Africa's foreign policy.

The Way Forward

While human rights cannot be the only consideration in any country's foreign policy and that there are indeed other considerations such as trade and geopolitical issues that also need to be taken into account, an appropriate balance between these considerations and human rights obligations needs to be determined – and such a balance should generally favour human rights concerns.

Past and current events have and continue to show that a country's foreign policy and international relations informed by human rights considerations do give good returns and pay long-term and sustainable dividends in terms of peace, security and development. This is in contrast to short-term gains often associated with non-human-rights approaches. The United States support for Hosni Mubarak in Egypt and its consequences are, in this regard, an example of a

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foreign policy that was not adequately informed by human rights considerations.⁴⁰

Comprehensive and cohesive policy

A comprehensive and cohesive foreign policy document that clearly sets out human rights considerations is therefore necessary to address many of the concerns reflected in the recent developments in South Africa's foreign policy and international relations.

The draft White Paper on South Africa's foreign policy and international relations⁴¹ is thus a good start, but needs more clarity on the role and centrality of human rights. One commentator, Dr. Mzukisi Qobo, however, refers to this draft White Paper as 'old wine in new bottles'.⁴² His opinion is given credence by President Zuma's address on 13 October 2011 on the four pillars of South Africa's foreign policy,⁴³ which did not say much about the role and centrality of human rights in South Africa's foreign policy and international relations – a missed opportunity, and a significant contrast to Mandela's 1993 address on the same issue.

A comprehensive foreign policy document should highlight, in response to recent inconsistent and wavering approaches to human rights in South Africa's foreign policy and international relations, a clear vision and a genuine commitment to the advancement of human rights at regional and international levels and an appreciation of the significance and benefits of human rights in this regard. Such a policy should also address the following issues:

• Public participation and involvement

A greater involvement of the public in matters of international relations is important in holding government and bureaucrats, who formulate and implement foreign policy, accountable and in allowing for meaningful input in its content and implementation. Unfortunately, foreign policy and international relations have largely been the preserve of a few. Public awareness and knowledge of how the South African government is handling its foreign policy and international relations, including its international human rights treaty obligations and activities, would increase accountability and improve the management of these issues to the benefit of South Africa and its people.

• Greater awareness of human rights amongst officials and bureaucrats

A greater awareness and training of foreign policy government officials and bureaucrats in human

rights issues and their role in international relations would certainly help to ensure that human rights issues are not regarded as a low priority.

• National human rights institutions

National human rights institutions, like the SAHRC, which has observer status in the UN Human Rights Council, should play a greater role in matters of foreign policy and international relations and should be supported and capacitated by the state.

• Members of the legislature

Members of Parliament and legislatures, especially those in committees that deal with foreign policy and international relations, should be more knowledgeable on human rights issues and international relations in general in order to ensure that government and bureaucrats maintain a proper balance between human rights and other considerations in South Africa's international relations.

• State institutions on foreign policy and international relations

The establishment of a state institution, even within the DIRCO, that would advise government on international relations issues and ensure the centrality of human rights in South Africa's foreign policy, should be considered.

• Other issues

Transparency regarding, and even prohibition of, foreign political funding, to avoid South Africa's foreign policy and international relations being unduly influenced by foreigners with deep financial pockets and agendas that might not be in the long-term interests of the country and its commitment to human rights should also be considered.

Conclusion

Human rights, as envisaged by Mandela in 1993 and supported by international developments, should be at the core of South Africa's foreign policy and international relations. South Africa should indeed, as desired by Mandela and as required of all states by international and regional instruments, be 'at the forefront of global efforts to promote and foster democratic systems of government' – this, as experience has shown, would have long-term benefits for South Africa in

terms of its international and regional standing and its economic, social and national security interests.

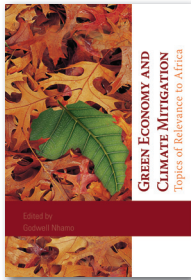
This approach, however, needs a long-term vision infused with a real commitment to democracy and human rights in government and in DIRCO. Human rights should thus be a major component of the actual training of all officials and diplomats in the department and should not be largely confined to a human rights unit within the department.

The credibility of post-apartheid South Africa in global affairs and its long-term economic, social and political interests will to a large extent depend on how it conducts itself as a democracy and a champion of human rights in the international community – the involvement and participation of South African citizens will be crucial in this regard.

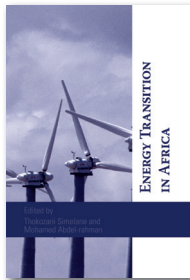
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- 3 Ibid., Part 1, para 1.
- 4 Ibid., Part 1, para 4.
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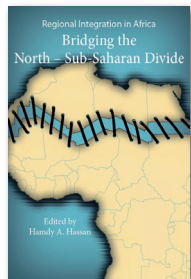
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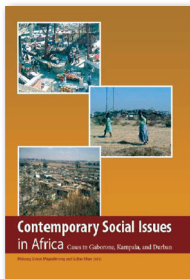
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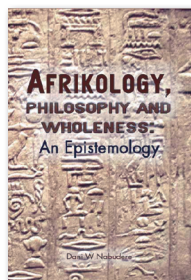
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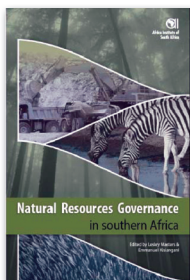
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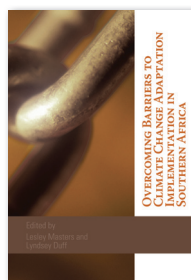
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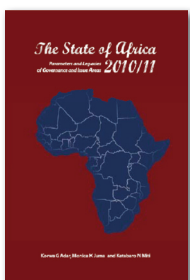
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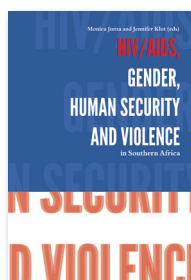
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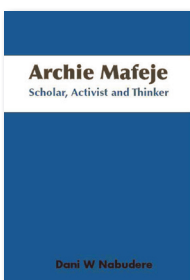
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