



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Concluding observations on the second periodic report of South Africa\*\*

#### I. Introduction

1. The Committee considered the second periodic report of South Africa (CRC/C/ZAF/2) at its 2141st and 2142nd meetings (see CRC/C/SR.2141 and 2142), held on 19 September 2016, and adopted the present concluding observations at its 2160th meeting (see CRC/C/SR.2160), held on 30 September 2016.

2. The Committee welcomes the submission of the second periodic report of the State party and the written replies to the list of issues (CRC/C/ZAF/Q/2/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

#### II. Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the progress achieved by the State party in various areas, including the ratification of or accession to international instruments, in particular the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2009, and the accession to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2003.

4. The Committee also welcomes the adoption of a number of new legislative acts and institutional and policy measures related to children's rights since its last review, including the Children's Act (Act No. 38 of 2005) and the Child Justice Act (Act No. 75 of 2008), which are largely in line with the Convention.

5. The Committee further welcomes the progressive application by the judiciary, in the State party's jurisprudence, of the rights and principles stipulated in the Convention, the overall reduction of infant and child mortality and of mother-to-child transmission of HIV,

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\*\* Adopted by the Committee at its seventy-third session (13-30 September 2016).



the increase in birth registration and the efforts made to develop a strong legal and policy framework to combat violence.

### **III. Main areas of concern and recommendations**

#### **A. General measures of implementation (arts. 4, 42 and 44 (6))**

##### **Committee's previous recommendations**

6. **The Committee recommends that the State party take all measures necessary to address its previous recommendations of 2000 (CRC/C/15/Add.122) that have not been implemented or have not been sufficiently implemented, in particular those related to legislation (para. 10), data collection (para. 14), budgetary allocations (para. 15), domestic violence, ill-treatment and abuse (para. 27), corporal punishment (para. 28), primary health care (para. 29), adolescent health (para. 31), education (para. 34) and juvenile justice (para. 42).**

##### **Comprehensive policy and strategy**

7. The Committee welcomes the adoption of the National Plan of Action for Children in South Africa 2012-2017. However, it is concerned that the implementation of the plan has been weak, and that no reports on progress have been issued.

8. **The Committee recommends that the State party:**

- (a) **Expedite the completion of a comprehensive midterm review of the plan;**
- (b) **Ensure timely issuance and publication of reports, as stipulated in the plan;**
- (c) **Develop a national plan of action for children for the period after 2017 that is based on the outcome of the plan currently in force, has a clear accountability mechanism and is supported by sufficient human, technical and financial resources.**

##### **Coordination**

9. The Committee notes as positive the establishment in 2015 of the National Children's Rights Intersectoral Coordination Committee. However, it is not clear whether the mandate of the Coordination Committee includes the implementation of the Convention and the Optional Protocols, and the implementation of the National Plan of Action for Children in South Africa 2012-2017, and whether the Coordination Committee has been given sufficient authority to coordinate effectively the activities of all relevant sectors within the Government.

10. **The Committee recommends that the State party ensure that an appropriate coordinating body is established at a high interministerial level — the level at which it was originally placed — with a clear mandate and sufficient authority to coordinate all activities related to the implementation, monitoring and evaluation of the Convention at cross-sectoral, national, regional and local levels, and that it is provided with the necessary human, technical and financial resources for its operation.**

##### **Allocation of resources**

11. The Committee welcomes the overall increase in public expenditure related to education, health, social protection and juvenile justice, during the period under the review. However, the Committee is concerned at:

- (a) The lack of a system to identify and track budget allocations and spending for children;
- (b) The fluctuation in the annual increase in expenditure;
- (c) The planned budget cut for personnel expenditure for the Department of Social Development, which may result in a scaling back of the human resources necessary to deliver services to children;
- (d) The lack of robust audits on public expenditure and the existence of wasteful or irregular expenditure, including corruption.

12. **With reference to its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recommends that the State party set up a budgeting process that includes a child-rights perspective, that specifies clear allocations to children, in the relevant sectors and agencies, and that includes specific indicators and a tracking system to monitor and evaluate the adequacy, efficacy and equitability of the distribution of resources allocated for implementation of the Convention, including by:**

- (a) **Setting performance targets linking child-related programme goals to budget allocations and actual expenditures, to allow monitoring of the outcomes and of the impacts on children, including those in vulnerable situations;**
- (b) **Developing detailed budget lines and codes for all planned, enacted, revised and actual expenditures that directly affect children;**
- (c) **Using budget classification systems that allow expenditures related to the rights of the child to be reported, tracked and analysed;**
- (d) **Ensuring that the fluctuation or reduction in budget allocations for the delivery of services does not reduce the existing level of enjoyment of children's rights;**
- (e) **Strengthening audits to increase transparency and accountability with regard to public expenditure across all sectors and adopting measures to eradicate corruption and to reduce irregular expenditure, in order to mobilize the maximum available resources for the implementation of the rights of the child.**

#### **Data collection**

13. While appreciating the development of a strategy for the collection of disaggregated data that covers all areas of the Convention, the Committee is concerned that publication of the data collected under this strategy has been delayed and that comprehensive and disaggregated data remains unavailable.

14. **The Committee recommends that the State party:**

- (a) **Expedite the publication and dissemination of data collected under the new strategy;**
- (b) **Ensure that the new data-collection system covers the collection of disaggregated data for all areas of the Convention, based on respect for human rights and for the principle of self-identification;**
- (c) **Actively utilize the data collected for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention;**
- (d) **Make the database accessible to all stakeholders, including all ministries, professionals and civil society organizations working with children, and to children themselves;**

(e) **Continue its technical cooperation with the United Nations Children's Fund (UNICEF), among others.**

**Independent monitoring**

15. The Committee welcomes the fact that there is a commissioner within the South African Human Rights Commission who specializes in child rights and education. However, the Committee is concerned that:

(a) A commissioner who focuses on children's issues is not mandatory under the law;

(b) The resources and capacity of the Commission for protecting and promoting children's rights are not sufficient;

(c) The individual complaint procedure in the Commission is not known to or accessible by children.

16. **In the light of its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee recommends that the State party:**

(a) **Legally mandate the South African Human Rights Commission to appoint a commissioner exclusively dedicated to the rights of the child;**

(b) **Provide sufficient human, technical and financial resources for such an institution and guarantee its independence, in order to effectively promote and protect the rights of the child;**

(c) **Raise the awareness of children and the general public about the mandate and work of the national human rights institutions mandated to protect the rights of the child, and improve accessibility for children to their individual complaint procedures.**

**Cooperation with civil society**

17. The Committee notes that the Constitution guarantees access by the public to central and local legislative bodies and that civil society organizations play a key role in service delivery. However, it is concerned at:

(a) The insufficient systematic involvement of civil society organizations working on children's rights in the development of laws, policies and programmes relevant to the implementation of the Convention;

(b) The limited resources made available for civil society organizations working on children's rights in service delivery.

18. **The Committee recommends that the State party:**

(a) **Establish a strategy that enhances the active and meaningful participation of civil society organizations in the development, implementation and monitoring of laws, policies, budgets and programmes relevant to the implementation of the Convention, with transparent and non-discriminatory criteria for the identification of participating organizations, clear objectives and roles for civil society participation and financial support to enable effective coordination of and participation by the organizations;**

(b) **Provide sufficient resources to civil society organizations for the delivery of services for children.**

### **Children's rights and the business sector**

19. The Committee is concerned that activities of business enterprises operating in the State party, in particular those of extractive industries, have a negative impact on the enjoyment of the rights of the child, including through environmental pollution and the exploitation of child labour.

20. **With reference to its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environmental and other standards, particularly with regard to children's rights. In particular, it recommends that the State party:**

(a) **Establish a clear regulatory framework for the business enterprises operating in the State party to ensure that their activities do not negatively affect human rights or endanger environmental and other standards, especially those relating to children's rights;**

(b) **Conduct an independent study on the impacts on children's health from environmental pollution caused by the activities of extractive industries, including the impacts from water pollution and from dust from mining;**

(c) **Ensure effective implementation by business enterprises, especially large-scale and artisanal extractive enterprises, of international and national environmental and health standards;**

(d) **Establish an effective mechanism for monitoring adherence to the above-mentioned standards by business enterprises, especially large-scale and artisanal extractive enterprises, and in case of violations, sanction appropriately, and provide remedies to child victims;**

(e) **Be guided by the United Nations "Protect, Respect and Remedy" framework of 2008.**

### **B. Definition of the child (art. 1)**

21. The Committee is deeply concerned that the Children's Act, of 2005, sets the minimum age for marriage at 12 years for girls and 14 years for boys and that the Marriage Act, of 1961, and the Recognition of Customary Marriages Act, of 1998, set different conditions for marriages for girls and boys under 18 years of age.

22. **The Committee urges the State party to harmonize all its relevant legislation in order to ensure that the minimum age for marriage is established at 18 years for both girls and boys.**

### **C. General principles (arts. 2, 3, 6 and 12)**

#### **Non-discrimination**

23. The Committee is concerned at the discrimination faced by girls, children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism in accessing basic services and child protection services, and at their heightened exposure to violence, abuse and harassment. The Committee is also concerned at the serious divide in access to basic

services and an adequate standard of living in the country on the basis of race, geography and economic status, with a disproportionate disadvantage for children living in rural areas and in urban informal settlements.

24. **The Committee recommends that the State party:**

(a) **Place strong focus on the eradication of structural inequality and discrimination in all legislative, policy and programmatic measures to advance the rights of the child, paying particular attention to children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism, and to the accumulative impact of multiple discrimination;**

(b) **Enhance its efforts to raise the awareness of children and the general public about gender equality and actively promote it in education, from early childhood education, in order to eradicate discriminatory gender stereotyping and gender discrimination.**

**Best interests of the child**

25. The Committee welcomes the explicit recognition in the legislation of the State party that a child's best interests are of paramount importance in every matter concerning the child, and the excellent jurisprudence of the judiciary on the application of this right in concrete situations. However, the Committee is concerned at the lack of procedures to evaluate the collective impact of relevant laws and policies on the realization of this right.

26. **With reference to its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party:**

(a) **Establish compulsory processes for ex ante and ex post impact assessments of all laws and policies relevant to children on the realization of the right of the child to have his or her best interests taken as a primary consideration;**

(b) **Use internationally developed tools in this regard.**

**Right to life, survival and development**

27. The Committee welcomes the reduction of infant and child mortality rates. However, the Committee notes that infant and child mortality rates remain high, due, among other things, to: (a) violence, including abuse and neglect, and injuries from firearms; and (b) malnutrition, prenatal conditions and preventable diseases.

28. **The Committee recommends that the State party:**

(a) **Address the poverty and structural inequalities underlying the high rate of child mortality in the State party;**

(b) **Enhance its effort to reduce infant and child mortality, addressing the high levels of violence, child malnutrition, the prevention and treatment of HIV/AIDS and the promotion of children's and mothers' health taking note of target 3.2 of the Sustainable Development Goals on ending the preventable deaths of children under 5 years of age;**

(c) **Implement and apply the Office of the United Nations High Commissioner for Human Rights (OHCHR) technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to**

reduce and eliminate preventable mortality and morbidity of children under 5 years of age (A/HRC/27/31);

- (d) **Provide support to families to prevent violence against children and abuse, neglect and abandonment of children;**
- (e) **Strengthen its efforts on firearms control.**

#### **Respect for the views of the child**

29. While noting the efforts made in this area, the Committee is concerned that the participation of children in public decision-making on issues that affect children is not systematically guaranteed.

30. **The Committee recommends that the State party:**

- (a) **Ensure children's meaningful participation in public decision-making at all levels by allocating adequate technical, human and financial resources for that purpose;**
- (b) **Consider institutionalizing the Children's Parliament as a permanent forum.**

### **D. Civil rights and freedoms (arts. 7, 8 and 13-17)**

#### **Birth registration, name and nationality**

31. The Committee welcomes the substantial increase in the level of birth registration in the State party. However, the Committee is concerned that:

(a) Administrative and practical obstacles in obtaining birth registration, including punitive measures for late registration under the Births and Deaths Registration Act (Act No. 51 of 1992), may have negative and discriminatory impacts;

(b) The South African Citizenship Act (Act No. 88 of 1995) sets disproportionately strict conditions for granting the nationality of the State party to certain groups of children, and also allows for deprivation of nationality from children on the basis of the loss of nationality of their parents;

(c) There are reportedly many children, who either migrated to or were born in the State party, in child and youth care centres who are undocumented and/or whose births have not been registered;

(d) Possession of one's birth certificate is a rigid requirement for accessing social and child protection services.

32. **Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee strongly recommends that the State party:**

(a) **Review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention, including through the removal of requirements that may have punitive or discriminatory impacts on certain groups of children;**

(b) **Put in place regulations to grant nationality to all children under the jurisdiction of the State party who are stateless or are at risk of being stateless;**

(c) Carry out regular monitoring and ensure that measures adopted in such legislation, regulations and guidelines guarantee the birth registration of all children in the State party, including non-nationals;

(d) Systematically identify all undocumented children currently residing in child and youth care centres in all parts of the State party and ensure their access to a birth certificate and a nationality;

(e) Ensure that a lack of birth registration does not hinder access to child protection services and basic social services, while enhancing its efforts for universal birth registration;

(f) Consider ratifying the Convention relating to the Status of Stateless Persons, of 1954, and the Convention on the Reduction of Statelessness, of 1961;

(g) Seek technical assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNICEF, among others, for the implementation of these recommendations.

## **E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)**

### **Freedom of the child from all forms of violence**

33. The Committee is concerned at the very high prevalence of violence against children, which includes corporal punishment, gender-based violence and harmful practices.

34. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, the Committee urges the State party to develop, adopt and implement effectively a comprehensive national strategy to prevent and address all forms of violence against children and to protect and support child victims of violence. In developing such a strategy, the State party should:

(a) Ensure that policy responses to violence are developed on the basis of analysis of objective data;

(b) Ensure the meaningful participation of all stakeholders, including children and organizations working with children;

(c) Address structural causes of violence, including inequality, poverty, alcohol and drug abuse, and xenophobia;

(d) Pay due attention to groups of children at heightened risk of exposure to violence, including children living in rural areas and urban informal settlements, refugee, asylum-seeking, migrant and stateless children, children in street situations, children belonging to sexual minorities, children with disabilities, indigenous children and children with albinism.

### **Corporal punishment**

35. The Committee welcomes the prohibition of corporal punishment of children in detention and in alternative care settings under the Children's Act, of 2005. However, it is concerned that corporal punishment in the home has not been prohibited and is widely practised, and that corporal punishment in schools persists in practice despite the legal prohibition. The Committee is also concerned about the lack of data on incidents of corporal punishment in childcare facilities.



36. With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party:

- (a) Expedite the adoption of legislation to prohibit all forms of corporal punishment in the home, including “reasonable chastisement”;
- (b) Develop, adopt and implement a national strategy to prevent and eradicate all forms of corporal punishment;
- (c) Strengthen its efforts to raise the awareness and build the capacity of families, of communities and of professionals working for and with children, including teachers and caregivers, on positive, non-violent and participatory forms of child-rearing and discipline;
- (d) Regularly and systematically collect data on corporal punishment in all settings, including in the home, in schools and in childcare facilities, and use such data as a basis for effective prevention and eradication of corporal punishment;
- (e) Promote regular consultations between students and teachers on how to deal with disciplinary issues in a human rights-sensitive manner;
- (f) Ensure that those who perpetrate corporal punishment are held accountable.

#### **Gender-based violence**

37. The Committee welcomes the development of a legislative, policy and institutional framework to combat gender-based violence. However, the Committee is seriously concerned at:

- (a) The high prevalence of gender-based violence against children, in particular in rural areas and urban informal settlements, both in the home and in schools;
- (b) The high prevalence of sexual violence and the low age of the victims, the majority of whom are under 15 years of age, with reportedly an increase in the number of victims under 7 years of age;
- (c) The low rates of reporting, prosecution and conviction of perpetrators;
- (d) The Domestic Violence Act, of 1998, not defining domestic violence as a criminal offence and being insufficiently gender-sensitive;
- (e) The overall lack of and regional disparity in the provision of support services for child victims, including emergency shelters, and the heavy reliance on civil society organizations for the delivery of such services.

38. **The Committee urges the State party to:**

- (a) **Conduct studies and improve data collection on gender-based violence against children and its structural determinants and actively utilize the outcome of such studies and analysis of the data collected to develop responses to gender-based violence;**
- (b) **In the light of the extreme levels of gender-based violence against girls in informal settlements, conduct research on such violence in informal settlements and develop tailored responses to it;**
- (c) **Strengthen the 2013-2017 national programme of action to prevent and respond to violence against women and children by equipping it with strong accountability mechanisms and allocating to it sufficient technical, human and**

financial resources for its implementation, and addressing structural causes of gender-based violence;

(d) **Raise public awareness, through the media and through education programmes, and engage men and boys and women and girls, on gender equality and the rights of the child;**

(e) **Ensure that perpetrators of gender-based violence are held accountable and establish child-friendly reporting mechanisms;**

(f) **Strengthen the provision of services to child victims of such violence by allocating sufficient technical, human and financial resources in order to improve the quality, responsiveness and sustainability of such services.**

#### **Harmful practices**

39. The Committee is concerned at the high prevalence of harmful practices in the State party, which include child and forced marriage, virginity testing, witchcraft, female genital mutilation, polygamy, violent or harmful initiation rites and intersex genital mutilation. The Committee is also concerned that, although the practice of *ukuthwala* involving children is considered an “abuse of *ukuthwala*” and is a crime, as the State party noted during the dialogue, this practice still exists.

40. **In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:**

(a) **Ensure that its legislation prohibits all forms of harmful practices carried out on children in the State party, including by, among other things, criminalizing the practice of child and forced marriage and regulating initiation schools;**

(b) **Develop and adopt an effective national action plan to eliminate such practices;**

(c) **Ensure the meaningful participation of all stakeholders, including children affected by or at risk of being affected by harmful practices, and their communities, in developing, adopting, implementing and monitoring the implementation of relevant laws and policies;**

(d) **Guarantee the bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy and childhood;**

(e) **Build the capacity of all professional groups working for and with children to prevent, identify and respond to incidents of harmful practices and to eliminate customary practices and rituals that are harmful to children;**

(f) **Ensure sanctions for perpetrators of harmful practices, including perpetrators of the abuse of *ukuthwala*, and provide effective remedies to the victims of harmful practices.**

**F. Family environment and alternative care (arts. 5, 9-11, 18 (1) and (2), 20, 21, 25 and 27 (4))**

**Children deprived of a family environment**

41. The Committee welcomes the development of a legal and policy framework on children deprived of a family environment, which prioritizes preventing the separation of a child from the family, and placement in family-like alternative care if the separation is unavoidable, and also welcomes the significant progress made with regard to ensuring the enforcement of child maintenance orders. The Committee notes that the State party has been taking measures aimed at addressing the systemic challenges in foster care. However, it is concerned at:

(a) The large number of children who are deprived of a family environment, including orphans who have lost their parents to AIDS and children who have been abandoned due to their HIV/AIDS status, as well as unaccompanied or abandoned migrant children;

(b) Systemic constraints faced by the alternative care system due to the increase in foster care, including a substantial backlog and lapses of foster care orders;

(c) The increase in the number of children placed in residential care, mainly as a result of abuse, neglect or abandonment, and also because of children's HIV infection, and the prolonged stays in residential care institutions such as child and youth care centres;

(d) The low quality of care in child and youth care centres, the uneven funding for child and youth care centres across regions and the existence of unregistered child and youth care centres.

**42. The Committee recommends that the State party, while keeping its focus on family-like alternative care:**

(a) **Expedite actions to resolve systemic challenges in the foster care system and come up with sustainable arrangements for alternative care and for monitoring the arrangements, based on wide consultation with children, parents and extended families as well as with civil society organizations and professionals working on alternative care;**

(b) **Expedite the revision of the Social Assistance Act with the aim of introducing an extended support grant for families caring for orphans while ensuring an adequate and feasible monitoring mechanism;**

(c) **Shorten the time of children's placement in residential care as much as possible, through timely family reintegration and shorter periods for the placement review;**

(d) **Strengthen monitoring of the quality of care in residential institutions, including with regard to their adherence to minimum norms and standards, protection from violence and abuse, and their provision of care and of individual development plans, and provide accessible channels for reporting, monitoring and remedying maltreatment of children;**

(e) **Reduce regional disparities in the funding of child and youth care centres and ensure that all child and youth care centres are registered;**

(f) **Allocate sufficient resources and build the capacity of the relevant professionals in order to improve the responses of alternative care mechanisms to meet the needs of children deprived of a family environment;**

(g) **Consider ratifying the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.**

**G. Disability, basic health and welfare (arts. 6, 18 (3), 23, 24, 26, 27 (1)-(3) and 33)**

**Children with disabilities**

43. The Committee welcomes the ratification by the State party in 2007 of the Convention on the Rights of Persons with Disabilities as well as the adoption of the Framework and Strategy for Disability and Rehabilitation Services in South Africa 2015-2020. Nevertheless, it is concerned at the multiple layers of discrimination and exclusion faced by the majority of children with disabilities in the State party, as well as at the lack of:

- (a) Accurate and comprehensive data on children with disabilities;
- (b) A comprehensive law and policy to realize the rights of children with disabilities, with clear baselines, a clear time frame and measurable indicators for the implementation, and mechanisms for monitoring implementation;
- (c) Effective multisectoral coordination within the Government, in particular in rural areas, to provide integrated services to children with disabilities;
- (d) Effective provision of reasonable accommodation, such as through the provision of assistive devices and of services in Braille and in sign languages.

44. **With reference to its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party:**

- (a) **Strengthen systematic and comprehensive collection of disaggregated data on children with disabilities and utilize the outcome to make policy responses more evidence-based and better suited to the needs of children with disabilities;**
- (b) **Consider developing a comprehensive law and policy based on a human rights model of disability that addresses the full range of issues relevant to the rights of children with disabilities, including access to public transport and support for caregivers;**
- (c) **Set up clear baselines, a clear time frame and clear indicators for the implementation of laws and policies relevant to children with disabilities, and ensure the sufficient allocation of technical, human and financial resources for their implementation;**
- (d) **Improve intersectoral coordination to provide integrated services to children with disabilities and their families and caregivers;**
- (e) **Establish mechanisms to monitor the implementation of laws and policies that provide for children with disabilities, with the active participation of persons with disabilities, including children, and their representative organizations;**
- (f) **Expedite the implementation of the strategies relevant to the provision of reasonable accommodation, with clear timelines and allocation of the necessary resources.**

45. The Committee welcomes the efforts made to provide inclusive education to all children, including children with disabilities, by developing full service schools. However, it is concerned at:

- (a) The lack of legislation to affirm the right to inclusive basic education for all children with disabilities;
- (b) The ineffective implementation of relevant policies due to acute shortages of staff with expertise on disabilities and insufficient allocations of financial resources;
- (c) The failure to provide free, compulsory primary education to children with disabilities;
- (d) The large number of children with disabilities who are out of school or are studying in specialized schools or classes, in particular children with psychosocial disabilities;
- (e) Discrimination and violence by teachers and by other students, against children with disabilities;
- (f) The low quality of education provided and inadequate curriculum content used for children with disabilities, particularly children with psychosocial disabilities, autism spectrum disorders and sensory disabilities, which does not equip them with the capacity to pursue higher education, employment and an autonomous life after they have completed their schooling.

46. **The Committee recommends that the State party:**

- (a) **Review *Education White Paper 6: Special Needs Education: Building an Inclusive Education and Training System*, of 2001, with a view to further developing a legal and policy framework for inclusive education, and to prioritizing the expansion of full service schools and the inclusion of children with disabilities in mainstream classes of mainstream schools;**
- (b) **Allocate sufficient technical, human and financial resources for inclusive education, including the funding necessary for guaranteeing the provision of reasonable accommodation;**
- (c) **Ensure free, compulsory primary education to all children with disabilities, provide reasonable accommodation, including personal assistants, at mainstream schools, free of charge, and prioritize enrolment in a school near to where the child concerned lives in order to avoid costly transport and boarding arrangements;**
- (d) **Develop curricula and learning and teaching materials that facilitate respect for and the dignity and inclusion of children with disabilities in order to raise the awareness of teachers and students so as to eliminate stigmatization of children with disabilities and prejudice against them;**
- (e) **Improve the quality, adequacy and adaptability of education provided to children with disabilities, in order to facilitate their fullest possible social integration and individual development.**

**Health and health services**

47. The Committee welcomes the efforts made to focus on primary health care and community health care as well as to expand child immunization coverage. However, the Committee is concerned at:

- (a) The disparity in health-care provision between rural and urban areas, as well as between the public and private sectors;
- (b) The lack of a comprehensive policy and service delivery package on child health;

- (c) The low quality of the health-care service.

48. **In the light of its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party:**

- (a) **Further strengthen its efforts to reduce disparities in health-care service provision across the country, with a strong focus on improving access to public primary health care;**

- (b) **Develop a comprehensive and multisectoral policy and a service delivery package on child health, covering neonatal to adolescent health, and addressing interventions on underlying determinants of health, with clear timelines, clear baselines, measurable indicators and sufficient budget allocation for their implementation;**

- (c) **Improve the quality of health-care services in general as well as the quality of specialist health-care services for children, allocating sufficient human, technical and financial resources and building the capacity of professionals working in the health-care system;**

- (d) **Establish mechanisms for monitoring the implementation of relevant policies and monitoring service delivery, in the area of child health, with the involvement of children, communities and civil society organizations working on child and adolescent health;**

- (e) **Seek technical assistance from the World Health Organization and UNICEF, among others, in this regard.**

#### **Adolescent health**

49. The Committee notes that the State party is developing new guidelines for youth and adolescent health in order to address adolescent health comprehensively. However, it is concerned at the heightened health risks that adolescents are exposed to, including the disproportionately high rates of:

- (a) HIV infection, in particular among adolescent girls, due to a lack of access to adolescent-friendly services, discriminatory attitudes against them on the part of health workers, and the lack of age-appropriate information on sexual and reproductive health;

- (b) Tuberculosis infection, especially among adolescents;

- (c) Suicide and depression, including among pregnant teenage girls;

- (d) Maternal death among adolescents, and the lack of accurate and comprehensive data on maternal deaths;

- (e) Alcohol and substance abuse, which leads to violence, transport-related deaths and fetal alcohol spectrum disorders.

50. **With reference to its general comment No. 4 (2003) on adolescent health and development in the context of the Convention, the Committee recommends that the State party:**

- (a) **Expedite the completion of new guidelines for youth and adolescent health, covering sexual and reproductive health, mental health, violence, and alcohol and substance abuse;**

- (b) **Strengthen its efforts to ensure the full and meaningful participation of adolescents in the development, monitoring and evaluation of laws, policies and**

**programmes on child and adolescent health, in order to ensure the responsiveness of interventions and an accurate reflection of the lived reality of adolescents;**

- (c) **Enhance effective implementation of sexual and reproductive health policies and programmes for adolescents, ensuring access by adolescents to health-related goods and services in confidentiality;**
- (d) **Consider ensuring free and discreet access to contraceptives, including in schools;**
- (e) **Raise the awareness and build the capacity of health professionals to enable them to deliver child-friendly, non-judgmental and respectful health services to adolescents;**
- (f) **Improve data collection on maternal deaths, including those that occur outside of health facilities;**
- (g) **Obtain guidance from the OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22 and Corr.1 and Corr.2);**
- (h) **Reduce drug use by children by, inter alia, providing them with accurate and objective information, as well as life skills education, on preventing substance abuse.**

#### **HIV/AIDS**

51. The Committee welcomes the significant progress made in reducing the mother-to-child transmission of HIV and increasing the coverage of antiretroviral treatment for children. Nevertheless, the Committee is concerned at:

- (a) The number of new HIV infections among children, which remains high;
- (b) The significant proportion of maternal deaths attributed to AIDS;
- (c) The structural causes of HIV infection, which include gender inequality and violence against women;
- (d) The disproportionately higher prevalence of HIV/AIDS among girls;
- (e) The lack of adherence to antiretroviral therapy by HIV-infected mothers and for HIV-infected infants, and the lack of systematic identification of HIV infection in children older than 18 months;
- (f) The high prevalence of tuberculosis, including multidrug-resistant tuberculosis, combined with HIV infection;
- (g) Medication for HIV/AIDS and tuberculosis frequently being out of stock;
- (h) The weak representation of children, and of institutions and organizations working on children, in the South African National AIDS Council.

52. **With reference to its general comment No. 3 (2003) on HIV/AIDS and the rights of the child, the Committee recommends that the State party:**

- (a) **Sustain the measures in place to prevent mother-to-child transmission of HIV and develop a road map to ensure their implementation;**
- (b) **Develop policies aimed at addressing the multiple discrimination and violence faced by girls, based on the intersection between violence and HIV/AIDS;**

- (c) **Improve follow-up treatment for HIV-infected mothers and their infants to ensure early diagnosis, including for children more than 18 months old, and to ensure early initiation of treatment, as well as adherence to the treatment;**
- (d) **Expedite the adoption and implementation of the National Policy on HIV, Sexually Transmitted Infections and Tuberculosis and improve access to quality, age-appropriate HIV/AIDS and sexual and reproductive health services;**
- (e) **Take effective measures to prevent essential medicines being out of stock, including medication for HIV/AIDS and tuberculosis;**
- (f) **Facilitate an adequate representation of government departments and civil society organizations working on children on the South African National AIDS Council, and the active involvement of children in the development, implementation and monitoring of the national strategic plans on HIV/AIDS and sexually transmitted infections;**
- (g) **Seek technical assistance from, inter alia, the Joint United Nations Programme on HIV/AIDS and UNICEF.**

#### **Nutrition**

53. The Committee welcomes the adoption of the Roadmap for Nutrition in South Africa 2013-2017, as well as the efforts made to facilitate breastfeeding. Nevertheless, the Committee is concerned at:

- (a) Child malnutrition, including undernutrition, micronutrient deficiencies and overnutrition, as key contributing factors for child mortality and child morbidity;
- (b) Child food insecurity caused by, among other things, poverty, food price increases, demographic changes, energy costs and climate change;
- (c) The persistently low rate of exclusive breastfeeding of infants aged up to 6 months;
- (d) The inadequate nutritiousness of food provided in the school meal programme;
- (e) The increase in the prevalence of obesity among children and the aggressive marketing of unhealthy food targeting children.

54. **Taking note of target 2.2 of the Sustainable Development Goals on ending all forms of malnutrition, the Committee recommends that the State party:**

- (a) **Develop and implement a framework law on the right to food, as envisaged in the National Policy on Food and Nutrition Security for the Republic of South Africa, of 2014, paying due attention to the eradication of child food insecurity and malnutrition;**
- (b) **Take all measures necessary to promote exclusive breastfeeding for at least six months, with appropriate guidance and support for breastfeeding by HIV-infected mothers, and to regulate the promotion of breast milk substitutes;**
- (c) **Strengthen the monitoring of the National School Nutrition Programme, including of the frequency, quality and nutritional value of the food supplied through the programme;**
- (d) **Regulate the marketing of unhealthy foods to children in order to address the rise in child obesity, and introduce strategies that enable poor households to access healthy food;**



(e) **Seek technical assistance from UNICEF and the Food and Agriculture Organization of the United Nations in this regard.**

#### **Standard of living**

55. The Committee welcomes the substantial expansion in social security coverage for children in the State party, which has resulted in an overall decline in child poverty. Nevertheless, the Committee is concerned that:

(a) The poverty rate in the 1-17 years age group is the highest out of all age groups;

(b) Access to social security benefits for children is hampered by administrative barriers, such as the strict requirement for identity documentation, the lack of clarity around eligibility criteria and the assessment of those criteria, the lack of accessible information on social security benefits, inadequate arrangements for children who have childcare responsibilities, and discrimination and stigma against certain groups of children, such as refugee children and teenage mothers;

(c) The amount of the Child Support Grant falls below the actual cost of meeting the needs of a child living in poverty.

56. **The Committee recommends that the State party:**

(a) **Remove barriers for accessing social security benefits and ensure that all children, in particular infants, adolescents and children with disabilities, and their caregivers eligible for the benefits, can access the benefits in a timely manner;**

(b) **Establish complaint procedures that allow children and their caregivers to file claims, in cases of rejection;**

(c) **Review the amount of the Child Support Grant based on an objective assessment of the actual cost of meeting the needs of children living in poverty;**

(d) **Facilitate the active and meaningful participation of children and their caregivers in the development, review, implementation, monitoring and evaluation of social security schemes relevant to children.**

57. The Committee welcomes the progress made in improving access to water and sanitation, and the State party's progressive legal framework on the right to adequate housing. However, the Committee is concerned that:

(a) Despite a substantial increase in the number of people who have access to water and sanitation, many children still do not have access to water and sanitation and are therefore exposed to a heightened risk of ill-health and of sexual violence;

(b) The lack of affordable and adequate housing is resulting in the creation of informal settlements, and the practice of forced evictions from such settlements persists.

58. **The Committee recommends that the State party:**

(a) **Continue to advance its efforts to ensure access to safe water and sanitation for all households, schools and health facilities;**

(b) **Take effective measures to ensure access by all children to adequate and affordable housing;**

(c) **Take effective measures to prevent forced evictions and provide effective remedies to the victims, taking guidance from the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I) in this regard.**

## H. Education, leisure and cultural activities (arts. 28-31)

### Education

59. The Committee welcomes the statement made by the State party during the dialogue that access to education remains a high priority, as well as the significant progress made in improving access to basic education. It also notes the efforts aimed at improving school infrastructure and the quality of education. However, the Committee is concerned at:

(a) The persistence of wide disparities in access to quality education, according to economic status, race and geography;

(b) The persistence of the uneven distribution of public resources, resources being allocated to address less critical issues rather than the most urgent ones, and the lack of transparency in the management of funding in the education system;

(c) The persistence of poor school infrastructure, the shortage of educational materials and the insufficient numbers and low capacity of teaching staff, including the shortage of “home language” teachers;

(d) The continuing lack of safety and security at school due to the high prevalence of violence, which includes bullying, sexual abuse and harassment, by students as well as educators;

(e) The continuing high dropout rate of pregnant students and their exclusion from schools, which still occur in practice.

60. **With reference to its general comment No. 1 (2001) on the aims of education and taking note of target 4.1 of the Sustainable Development Goals on free, equitable and quality primary and secondary education for all, the Committee recommends that the State party:**

(a) **Further enhance its efforts to provide access to free and quality basic education for all children, prioritizing access to education by children facing multiple discrimination;**

(b) **Improve the transparency, efficiency and accountability of the management of the budget for education, including through active and meaningful participation by children and civil society organizations in the development of the budget and through monitoring and evaluation of its implementation;**

(c) **Improve the quality of education, including the quality and availability of school facilities, educational materials, teaching staff and curricula, with priority for the most disadvantaged schools;**

(d) **Take effective measures to prevent and eliminate school violence, committed both by students and educators;**

(e) **Expedite the adoption of a new policy on pregnancy among learners and ensure that pregnant teenagers and adolescent mothers are supported and assisted in continuing their education;**

(f) **Prevent early pregnancy among students through mandatory sexual and reproductive health education at school, for girls and boys.**

## **I. Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40)**

### **Migrant, asylum-seeking and refugee children**

61. The Committee welcomes the development of a legal and policy framework to protect asylum-seeking and refugee children in the State party. However, it is concerned at:

(a) The increasing number of unaccompanied children migrating into the State party and the heightened risk of destitution, exploitation, violence and abuse faced by unaccompanied children;

(b) The lack of accurate and disaggregated data on migrant, asylum-seeking and refugee children, including those who are unaccompanied and/or undocumented, as well as on child victims of trafficking;

(c) The ineffective implementation of relevant laws and policies;

(d) The definition of “dependents” and “family” under the Refugees Amendment Bill (notice No. 806 of 2015), which may not fully protect the right to family unification that is provided in the Convention;

(e) The risk of deportation that is faced by migrant, asylum-seeking and refugee children due to the lack of legislation to allow permanent settlement in the State party as a durable solution;

(f) The arrests and detention of children on account of their immigration status.

62. **With reference to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin and to the conclusion of the day of general discussion held in 2012 on the rights of all children in the context of international migration, the Committee recommends that the State party:**

(a) **Strengthen systematic and disaggregated data collection on migrant, asylum-seeking and refugee children, in particular unaccompanied and/or undocumented children, as well as on child victims of human trafficking, and conduct a study on their situation as a basis for effective responses;**

(b) **Expedite the development and implementation of a protocol to streamline the delivery of timely child-protection services to migrant, asylum-seeking and refugee children, including services for (i) registration and issuance of identity documents; (ii) protection from violence and abuse; (iii) family unification or the provision of alternative care; and (iv) access to basic services; and apply the protocol consistently throughout the State party;**

(c) **Ensure that the Refugees Amendment Bill (notice No. 806 of 2015) is fully consistent with the Convention;**

(d) **Consider providing migrant, asylum-seeking and refugee children with an option of permanent settlement in the State party, in order to avoid the deportation of children;**

(e) **Expediently and completely cease the detention of children in irregular migration situations.**

### **Children in armed conflict**

63. The Committee notes the large number of children who arrive in the State party as unaccompanied asylum-seeking or refugee children from countries recently affected by

armed conflicts and is concerned at the lack of procedures to identify children affected by and/or involved in armed conflicts, including children being recruited as child soldiers.

64. **The Committee recommends that the State party:**

(a) **Put in place mechanisms to identify at an early stage children, among refugees and asylum seekers coming from countries where armed conflicts exist, who may have been involved in armed conflict;**

(b) **Train staff of border control services on children's rights, child protection and interviewing skills;**

(c) **Develop protocols and specialized services to ensure that former child soldiers and child victims of armed conflict are provided with appropriate assistance for their physical and psychological recovery and social reintegration;**

(d) **Seek technical assistance from UNHCR and UNICEF in this regard.**

#### **Indigenous children**

65. The Committee is concerned that indigenous children, including children belonging to Khoisan peoples, face marginalization and discrimination. In particular, the Committee is concerned at:

(a) The lack of legal recognition of indigenous peoples and their rights in the State party, including Khoisan peoples;

(b) Negative impacts on indigenous children of the historical dispossession of traditional land, which is resulting in, among others, food insecurity, lack of access to water, and extreme poverty;

(c) Inability of indigenous children to fully enjoy the right to use their own languages, including in education.

66. **With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention and in line with the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party:**

(a) **Consider legally recognizing the rights of indigenous peoples, including Khoisan peoples, with full recognition of the rights of indigenous children;**

(b) **Develop a national action plan to respect, protect and promote the rights of indigenous children and to eliminate their food insecurity, poverty and vulnerabilities to violence and exploitation, with their full and effective participation;**

(c) **Prevent evictions and the displacement of indigenous peoples, including pastoralists, hunter-gatherers and forest people, and provide redress to those evicted or displaced from their lands;**

(d) **Take effective measures to promote indigenous languages, including through the provision of bilingual education to indigenous children in their own indigenous languages as well as in the official languages of the State party;**

(e) **Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO).**

### **Economic exploitation, including child labour**

67. The Committee welcomes the ratification by the State party in the year 2000 of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). However, the Committee is concerned at:

- (a) The persistent wide engagement of children in child labour, particularly in agriculture;
- (b) The practice of the worst forms of child labour, and the lack of disaggregated data on children engaged in the worst forms of child labour.

68. **The Committee recommends that the State party:**

- (a) **Collect disaggregated data on child labour, including the worst forms of child labour;**
- (b) **Ensure the effective implementation of laws and policies on child labour;**
- (c) **Strengthen the inspection of child labour and impose penalties that are commensurate with the gravity of the crime on those who economically exploit and abuse children.**

### **Children in street situations**

69. The Committee notes as positive the development of the National Strategy for Children Living and Working on the Streets. However, it is concerned about the large number of children living and working in the streets in the State party and being highly vulnerable to violence, abuse and exploitation, and about their physical and mental ill-health and their alcohol and substance abuse. The Committee also notes with concern that many children who have entered the State party unaccompanied end up in street situations.

70. **The Committee recommends that the State party:**

- (a) **Assess the number of children living and/or working in the streets, and update studies on the root causes of their situations;**
- (b) **Implement, monitor and evaluate the National Strategy for Children Living and Working on the Streets with the active involvement of children in street situations, while respecting their autonomy and diversity;**
- (c) **Ensure that supports under the Strategy, particularly reintegration with family or placement in alternative care, are provided with full respect for the child's best interests and giving due weight to their autonomous views in accordance with their age and maturity.**

### **Administration of juvenile justice**

71. The Committee notes that the Child Justice Act, of 2008, raised the minimum age of criminal responsibility to 10 years. However, it is concerned that:

- (a) A legal minimum age of 10 years is still low;
- (b) A large number of children are held in pretrial detention, some for unduly long periods of time;
- (c) There is a lack of access to educational, health and other services, especially for those in pretrial detention;
- (d) Detention facilities are overcrowded.

72. With reference to its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee recommends that the State party provide effective implementation of national legislation, in line with international standards, and in particular that it:

- (a) Expedite the review of the minimum age of criminal responsibility with a view to raising it to an internationally acceptable level;
- (b) Reduce the number of children held in pretrial detention and ensure, by explicit legal provisions, that the competent court makes a final decision on the charges not later than six months after children are presented;
- (c) Guarantee access to education, health care and other benefits for all children in detention, including those who are awaiting trial or have not been sentenced;
- (d) Immediately take the measures necessary to reduce overcrowding.

#### **Child victims and witnesses of crimes**

73. The Committee is concerned at the lack of a legal framework to protect the rights of child victims and witnesses of crimes and at the lack of quality support and rehabilitation services for them.

74. The Committee recommends that the State party:

- (a) Consider developing legislation to protect and empower child victims and witnesses of crimes, including, among other measures, the provision of services for the physical, psychological and social rehabilitation of victims;
- (b) Allocate adequate human, technical and financial resources for the provision of rehabilitation and support services for child victims and witnesses of crimes in order to make the services more sustainable and to improve their quality.

#### **J. Ratification of the Optional Protocol to the Convention on a communications procedure**

75. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

#### **K. Ratification of international human rights instruments**

76. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, consider ratifying the core human rights instruments to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

77. The Committee urges the State party to fulfil its reporting obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, overdue as of 25 October 2011.

## **L. Cooperation with regional bodies**

78. The Committee recommends that the State party cooperate with the African Committee of Experts on the Rights and Welfare of the Child, of the African Union, on the implementation of the Convention and other human rights instruments, both in the State party and in other States members of the African Union.

## **IV. Implementation and reporting**

### **A. Follow-up and dissemination**

79. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the second periodic report, the written replies to the list of issues and the present concluding observations be made widely available in the languages of the country.

### **B. Next report**

80. The Committee invites the State party to submit its combined third to sixth periodic reports by 15 January 2022 and to include therein information on the follow-up to the present concluding observations. The report should be in compliance with the Committee's harmonized treaty-specific reporting guidelines adopted on 31 January 2014 (CRC/C/58/Rev.3) and should not exceed 21,200 words (see General Assembly resolution 68/268, para. 16). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned resolution. If the State party is not in a position to review and resubmit the report, translation thereof for the purposes of consideration by the treaty body cannot be guaranteed.

81. The Committee also invites the State party to submit an updated core document, not exceeding 42,400 words, in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I) and paragraph 16 of General Assembly resolution 68/268.