

# **Alternate Report Coalition – Children’s Rights South Africa<sup>1</sup>**

## **ARC-CRSA**

### **Supplementary submissions to the United Nations Committee on the Rights of the Child following the Government of South Africa’s written replies to the List of Issues<sup>2</sup>**

**August 2016**

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15. Childline South Africa
16. DeafSA
17. Human Sciences Research Council
18. Inclusive Education South Africa
19. Jo’burg Child Welfare
20. Quaker Peace Centre
21. Save the Children South Africa
22. Scalabrini Centre of Cape Town
23. Sign Language Education and Development (SLED)
24. Sonke Gender Justice
25. Teddy Bear Clinic
26. ThisAbility

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<sup>2</sup> The principal drafters of these final submissions are: Ann Skelton; Carol Bower; Chantell Whitten; Debbie Budlender; Diane Cooper; Haroon Saloojee; Joan Van Niekerk; Karabo Ozah; Liesl Müller; Lisa Draga, Lori Lake; Mandivavarira Mudarikwa; Sam Waterhouse; Shanaaz Mathews; Steffie Rohrs; and Sue Phillpott. Editor: Sam Waterhouse, Dullah Omar Institute, UWC. With thanks to Samantha Bath for copy editing the document.

These submissions have been endorsed by an additional 20 organisations and two individual experts without reservation.

#### **Organisations endorsing these submissions**

1. Black Sash
2. Council for the Advancement of the South African Constitution (CASAC)
3. Disabled Children’s Action Group
4. Gender Health and Justice Research Unit, University of Cape Town
5. GRIP Rape Intervention Programme
6. JWay Africa
7. Media Monitoring Africa
8. Molo Songololo
9. MOSAIC – Training, Service and Healing Centre for Women
10. Ndifuna Ukwazi
11. Networking HIV/AIDS Community of South Africa (NACOSA)
12. Parliamentary Monitoring Group
13. Public Service Accountability Monitor (PSAM)
14. Raphael Centre
15. Section 27
16. The *Shukumisa* Campaign
17. Thohoyandou Victim Empowerment Project (TVEP)
18. Umtata Child Abuse Resource Centre
19. Women on Farms Project
20. World Vision

#### **Individual child and human rights experts endorsing these submissions**

21. Ashraf Mahomed
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### **Table of Contents**

1. Introduction .....	3
2. General .....	3
3. Question 2: the mandate of the DSD in relation to the dissolution of the DWCPD .....	3
4. Question 2: resourcing children’s rights in the Department of Social Development.....	4
5. Question 3: Measures to improve budgeting and allocation of resources.....	5
6. Question 5: Birth registration.....	7
7. Question 6: Violence, child protection and criminal justice.....	8
8. Question 7: harmful social and cultural practices.....	10
9. Question 8: Alternative care and social security .....	11
10. Question 9: Rights of children with disabilities .....	13
11. Questions 10, 11 and 12: ECD, Health and the Social determinants of health.....	14
12. Question 13: Refugee, Asylum-seeking and Migrant Children.....	17
13. Education .....	19
14. ANNEXURE A: Oral statement to the UNCROc.....	20

## 1. Introduction

1. The Alternate Report Coalition – Children’s Rights South Africa (ARC-CRSA), previously referred to as the South African Alternate Report Coalition, is an alliance of organisations invested in realising children’s rights in South Africa. The alliance was formed in 2013 to draft collective alternate reports to both the African Committee of Experts on the Rights and Welfare of the Child and to the UN Committee on the Rights of the Child (the Committee). By August 2016 the alliance has received substantive inputs from 57 authors representing 45 organisations. In addition to the three consultative workshops that were held between 2013 and submission of our alternate report to the Committee in October 2015, ARC-CRSA has hosted a further two workshops in 2016 to strengthen our collective positions and consensus on current priorities for realising children’s rights in South Africa. The last of these was held in July 2016 to consult on the draft text of this, ARC-CRSA’s final submissions to the Committee.

2. These final submissions are ARC-CRSA’s responses to the written replies of the Government of South Africa (GOSA) to the Committee’s List of Issues. We have annexed the text of our oral statement – presented to the Committee in the Pre-Session early in 2016 – to the end of this submission. The brief oral statement reflects the priority issues identified by ARC-CRSA, through deliberation and consensus building over the three-year period, regarding some of the most important children’s rights issues to be addressed in South Africa.

3. As far as possible, these submissions follow the order of the questions submitted by the Committee to the GOSA in its List of Issues. We have added some contextual information to these where we hold the view that a critical point has not been addressed. We have updated information based on recent developments and we have provided alternative or additional information in cases where we consider the GOSA written replies to have been incorrect or incomplete. Where we refer to paragraphs in brackets in the text, it is to indicate the paragraph of the GOSA reply to which our points relate.

## 2. General

4. We recognise that in 2015, the GOSA ratified the International Covenant on Economic Social and Cultural Rights. Of concern is the GOSA’s reservation relating to the right to education. GOSA’s reservation supports the progressive realisation of the right to basic education. This is in conflict with the provisions of the South African Constitution, in which basic education is regarded as an immediately realisable right. The South African Constitutional Court has confirmed the unqualified nature of this right.

5. **We encourage the Committee to request that the GOSA to provide an explanation for this reservation to the ICESCR.**

### 3. Question 2: the mandate of the Department of Social Development in relation to the Dissolution of the DWCPD

#### Strengthen political leadership

6. In spite of the additional mandates of the Department of Social Development (DSD) since 2014 (para 3), and with due regard to the structures established and described (paras 4 and 5) in the GOSAs replies, the DSD does not have authority to direct or influence programmes or resourcing in the significant range of government departments responsible for implementation of the scope of rights covered by the Convention. The role of DSD as the ‘lead department’ does not translate to the necessary level of political leadership needed to improve delivery on children’s rights. Importantly, we consider the relative independence of departments from each other and their respective areas of authority to be correct and are not advocating for an increase in the DSD’s authority over these.

7. **To address the poor leadership on children’s rights, we recommend that the GOSA increase the role of the Presidency, which holds a cross-sectoral mandate, in this regard. This should be achieved**

through integrating structures to provide systemic leadership and coordination on the delivery of children's rights. This may include establishing a Department of Children within the Presidency and enhancing structures for children's rights within the Department of Planning Monitoring and Evaluation (also situated in the Presidency).

8. Similarly, the GOSA should be urged to re-prioritise the rights of children in its implementation of the National Development Plan. The National Planning Commission should promote children's rights realisation with the President and systemically through Cabinet as a critical imperative to realise Vision 2030.

9. Further we recommend that the GOSA be urged to resource and institutionalise routine CSO participation in the forums established by DSD, and by any other structures established, in order to provide cooperative leadership. This will increase partnerships and promote programmes that are appropriately targeted and evidence based.

10. With regard to measuring departmental performance, too little attention is paid to assessing the value of GOSAs investments, including those into critical services such as health, education and basic services, in terms of their development outcomes.

11. We support the current performance monitoring and evaluation systems that are based on departments' capacity to spend and manage public funds, we recommend that the Committee encourage the GOSA to integrate additional systems to measure development outcomes to the current practice. Linked to this, independent civil society oversight, conducted through credible monitoring and evaluation processes, should be integrated into GOSAs performance monitoring systems.

#### Strengthen independent complaints mechanisms for children

12. The strategic question of establishing a Children's Ombud to ensure a complaints mechanism dedicated to children's rights, as opposed to strengthening the capacity of the South African Human Rights Commission (SAHRC) for this purpose, has been debated for a number of years, but it. However it has not been resolved. The potential strength, independence, capacity and resourcing of the structure to promote and protect children's rights is central to the debate. The risk of establishing a structure that sounds the right political note, but is not enabled by corresponding authority, independence and resources must be averted.

13. We request that the Committee to press the GOSA to finalise a decision on this matter. This should be done through a consultative process, within two years. The independent child rights monitoring structure must be constitutionally mandated (as is the case with the SAHRC and other existing 'chapter 9' institutions – State institutions supporting constitutional democracy), it must be independent and its functioning and accessibility to children must be enabled through adequate resourcing.

14. In 2000 the Committee recommended in its concluding observations to GOSA, that it take measures to adequately resource the SAHRC. While the SAHRC does currently commit resources to, and includes a Commissioner dedicated to promoting and protecting children's rights, the resources allocated to children's rights by the SAHRC are insufficient to adequately reach children across the country.

15. In the current context, with reference to the points in the preceding two paragraphs, it remains essential that the GOSA strengthen the resources and capacity of the Children's Commissioner in SAHRC.

#### **4. Question 2: resourcing children's rights in the Department of Social Development**

##### Financial and human resources in the DSD

16. In its reply to the second part of question 2, which asks for information on the financial and human resources allocated to children by the DSD specifically, the GOSA reply is opaque, failing to

address the proportion of the total DSD budget allocated to resourcing children's rights; or to provide any detail on how the total figures are allocated to different DSD mandates to children. Further, to assess progress of the past 20 years, and inform the trajectory of the DSDs future spending on children, information regarding how the allocations to children have changed over time would be valuable.

**17. The GOSA should provide complete information on the DSD budget allocations to children currently and over the reporting period covered.**

18. Of concern is the indication (para 7) that the employee's compensation budget will be increasingly cut over the next three years; the DSD's plans to address this are not provided. In the context of a significant shortage of social service professionals, and of the profoundly overwhelmed child protection system, it would be unacceptable if the cuts in personnel expenditure result in cuts of staff responsible for providing services to children. Preferable strategies would be to address the extremely high costs of senior staff salaries and consider cuts in the support staff bill.

**19. We request that the Committee require the GOSA to elaborate on its planned direction regarding managing the personnel expenditure cuts and how it intends to ensure that children receive the necessary services to ensure the protection of their rights in the climate of the decreasing budget.**

#### State funding to non-profit organisations

20. Non-profit organisations (NPOs) provide significant services to children; funding to NPOs includes (but is not limited to) philanthropic donor funding, private sector support, as well as subsidy allocations from the DSD. The amount and proportion of the DSD spending on services delivered to children by NPOs is not addressed in the GOSA replies. Trends in these allocations as well as the projection of these going forward are an indicator of the DSD's performance on and commitment to delivery on its children's rights mandate. The budget cuts that will affect the personnel expenditure of DSD may also have impact on NPO allocations, in which case services to children are likely to be further affected.

**21. The GOSA should be requested to provide an indication of the trends and projections in NPO subsidy allocations. Further it should demonstrate how planned expenditure on NPO subsidies relates to allocations to services to children provided directly by the department.**

### **5. Question 3: Measures to improve budgeting and allocation of resources**

#### Improving Children's Budget allocation processes and expenditure management

22. Question 3 requires information both on the measures taken to improve the budget process for accurate allocation on children's rights and on the measures taken to ensure sufficient resources are allocated to implementing legislation. The GOSA reply (paras 9 – 11) addresses allocation of budgets for DSD and the Department of Health, however it fails to describe the measures being taken to improve the processes and allocations. Furthermore, this reply doesn't address processes to ensure adequate allocations in the budgets for a wide range of departments with significant mandates to deliver on children's rights; such as education, justice, housing, sport and recreation, and police.

23. Questionable budgeting priorities and poor management of expenditure are problematic. The billions of rands spent by the GOSA on the 2010 FIFA World Cup and on the arms deal are two better-known examples of strongly contested budget and expenditure priorities by the GOSA.<sup>3</sup> Further there are a range of government expenses and budget decisions that could be allocated to provisioning children's rights. These include fruitless and wasteful expenditure and irregular expenditure (including corruption), which amounts to billions of Rand every year.<sup>4</sup> It also includes millions of rands that are spent annually on costs such as paying salaries for protracted periods to officials who have been suspended but their

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<sup>3</sup> Equal Education (undated) *15 Ways to pay for decent schools. The norms and standards for school infrastructure are affordable if government collects sufficient revenue and does not waste it.* Accessed at: <http://www.equaleducation.org.za/file/2015-02-23-15-ways-to-pay-for-decent-schools>

<sup>4</sup> Equal Education (undated) *ibid*

cases not finalised, to paying rental on unpaid property, duplicating services, legal costs, and consultant services to name but a few. Added to this, a lack of credible data bedevils budgeting processes across departments.

**24. We urge the Committee to strongly recommend that the GOSA must commit to on-going and participatory children's budgeting processes. This must be led by the National Treasury with oversight from the legislatures and should be integrated into Medium Term Expenditure Framework processes. The GOSA must further be entreated to commit to improving data management systems to inform allocations.**

25. The GOSA reply does not answer the question of the overall proportion of government spending allocated to children's rights, and the replies to question 3 are piecemeal and incomplete (paras 12 and 15 – 18). For example they only refer to a minute proportion of the allocation for education, furthermore the small figures reported regarding arts and culture and environmental affairs stand out in the absence of providing information on the significantly larger allocations to children's health or education rights.

#### Allocations for implementing the Children's Act

26. The replies regarding the allocations for implementing the Children's Act (CA) are lacking. The reply covers neither the basis on which the allocations have been determined, nor the extent to which the allocations address the profound inadequacies and inequalities in services to children.

27. We recognise the GOSAs on-going commitment to Early Childhood Development (ECD) (paras 13 and 14) as articulated in the National Development Plan. Notwithstanding this, the GOSA allocations to ECD are not yet sufficient to reach all children, particularly those living in the poorest households, and the subsidy per child for centre-based ECD is low.

**28. The GOSA should be commended for its commitment to the provision of ECD, it should be encouraged to continue to increase allocations to address the gaps articulated above.**

29. Programmes to be funded under the CA extend beyond ECD (the only programme specifically addressed in the reply), to include child protection, prevention and early intervention, and child and youth care centres amongst others. Further the CA mandates the provision of these three examples, whereas it allows discretion regarding the provision of ECD. In spite of the legal framework, allocations to these mandated programmes are insufficient, resulting in profound failures in delivery on children's rights.

#### Allocations for implementing sexual offences and child justice legislation

30. The GOSA replies fail to provide any information on funding allocations to the implementation of the Criminal Law [Sexual Offences and Related Matters] Amendment Act (SOA), and the Child Justice Act (CJA). Evidence of persistent failures in the criminal justice system, particularly in relation to child victims, nine years after the promulgation of the SOA, indicates the need for specified budget. The tendency to legislate but not allocate resources persists, for example, the GOSA recently passed legislation enabling the establishment of dedicated sexual offences courts, however the legislation neither mandates that these must be established, nor does it require any additional budget allocation.

**31. We request that the Committee enquire as to GOSA's plan to fund the full range of legislated services to children – those mandated by the CA, SOA and CJA described above, as well as all laws enabling the realisation of children's rights. The positive impact of resource allocation to ECD should not be used to obscure GOSA's failure to adequately plan and allocate funding of other essential children's rights services.**

#### Resourcing the right to basic education

32. In the context of resourcing basic education, the GOSA confines its response to its introduction of a grant for technical schools (para 15), this is woefully inadequate as South Africa's education system is failing the majority of children. The overall increase in education expenditure is praiseworthy, but continued increases to ensure the realisation of all children's rights to basic education remain essential.

33. The GOSA has overlooked the fundamental role that budgeting and expenditure management have played in entrenching and deepening inequality in education. Commentators describe South Africa's education system as "dual"; with a much larger, ailing system servicing 75-80% of learners and a smaller better one catering for the wealthier 20-25%.<sup>5</sup> Both national and some provincial departments consistently overspend in less critical areas, and underspend in areas where effective and full spending is absolutely necessary.<sup>6</sup> For example, the inability of the state to spend the funds allocated for the improvement of school infrastructure is unacceptable in South Africa where vast discrepancies in infrastructure mean that, in spite of the norms, some schools operate without electricity, with no or unreliable water supply, and don't have any toilets or are dependent on pit-latrines.

**34. We request that the Committee encourage the GOSA to continue increasing the allocation to the basic education budget, placing emphasis on addressing the inequality in the education system.**

**35. Managing spending and corruption is essential and we thus urge the Committee to recommend that the President sign a proclamation under Act 74 of 1996, authorising the Special Investigation Unit to investigate the national and provincial departments of education regarding (a) maladministration, (b) unlawful appropriation or expenditure of public funds, (c) intentional or negligent loss of public money, (d) the need for criminal or civil proceedings (e) and the need for institution of employee disciplinary proceedings in the basic education system. The GOSA must be required to take all necessary measures to address the education budgeting and expenditure management going forward.**

36. The failure to ensure that teacher distribution and funding is done on a pro-poor basis has stunted efforts to achieve quality education for all. The post provisioning model fails to take into account that privileged schools employ additional teachers (with additional resources from school fees), and thereby skew the teacher allocation in their favour. Exacerbating the problem, privileged schools offer higher salaries and attract better-qualified teachers. The result is that poor schools remain underfunded and the profound inequality in education persists.

**37. The Committee should consider recommending that the GOSA replaces the education post provisioning model with a pro-poor one.**

## **6. Question 5: Birth registration**

38. Question 5 includes two parts, the first dealing with late registration of births generally, and the second dealing specifically with the registration of children at risk of statelessness. The GOSA does not provide an adequate answer to either part of the question.

### Late registration of birth

39. The GOSA states that late registration of birth (LRB) is the process of registering children after 30 days of their birth (in para 21). This fails to engage with the problems that persist for more vulnerable groups of children (rural children, those living with extended family, orphans, and children of foreign national parents) to access birth registration in the first place, as well as LRB after 30 days. Further, the Department of Home Affairs (DHA) announced that LRB will be discontinued as of 31 December 2015.<sup>7</sup>

**40. We strongly urge the Committee to recommend that the GOSA take measures to increase the accessibility of birth registration processes to ensure the registration of all children born in South Africa within 30 days of birth and to ensure that LRB processes are accessible where their births have not been registered within 30 days. This includes ensuring that measures (such as mobile registration units**

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<sup>5</sup> South Africa's Education Crisis: The quality of education in South Africa 1994 – 2011; Nicholas Spaull, October 2013, *Report Commissioned by Centre for Development and Enterprise*.

<sup>6</sup> <http://www.equaleducation.org.za/content/2013/10/15/2013-10-11-EE-comment-on-September-2013-norms-draft-regs-FINAL.pdf> as at, 23 February 2014.

<sup>7</sup> See the brochure on the discontinuation of LRB here <http://www.dha.gov.za/files/Brochures/Mop-upCampaignBrochure.pdf>

going to prisons) are taken to guarantee that all children born to mothers in prisons are registered within 30 days.

**41.** Further it is critical that the GOSA be called on to immediately do away with the penalty fees and any punitive measures applicable to parents registering the birth of their children after 30 days as these could serve as a deterrent to registration of birth.

#### Birth registration of children born to undocumented or stateless parents

**42.** With regard to the registration of children born to undocumented or stateless parents, the GOSA notes (in para 22) that the Department of Home Affairs issues foreign nationals with a DHA 19. It should be noted that the DHA 19 is an unabridged birth certificate given to the children of all non-South Africans. For a child born to a non-South African to be issued with a DHA 19, the requirements as set out in Regulation 8 of the Births and Deaths Registration Act Regulations must be complied with. The requirements include a certified copy of the valid passport and/or visa of the mother or father or both; critically, this process makes birth registration of children born to undocumented or stateless parents impossible.

#### Amendments to the Birth and Deaths Registration Act and Regulations

**43.** The Committee should urge the GOSA to amend the Birth and Deaths Registration Act and regulations to ensure that:

- a. Children of undocumented parents and parents with expired passports or visas to have their births registered;
- b. A form is available for the application for citizenship for children born stateless in the territory;
- c. Children born at home without a South African witness have their births registered;
- d. Foreign children adopted in South Africa to obtain a birth certificate and foreign children adopted by South African parents to obtain an identity number;
- e. Single fathers are able to register their children, particularly where mothers are unavailable or undocumented;
- f. Legal guardians can register a child's birth even when the biological parents have not passed away;
- g. Foundlings can be registered as citizens when found in the territory and the identity of the parents are unknown.

### **7. Question 6: Violence, child protection and criminal justice**

**44.** To GOSA's credit, it has promulgated the Children's Act, and, as stated in paragraph 26 of its written reply, has introduced a number of programmes and measures to protect children from vulnerability and exploitation; however, these are rarely evidence-based or appropriately targeted at the children who require them the most. Further the lack of consultation with non-governmental, civil society and faith-based organisations has exacerbated inequality, and resulted in the duplication of services in some areas and few-to-no services in others.

#### Measures responding to high rates of violence against children

**45.** The GOSA replies (paras 26, 30, 31, 34, 35, 36 and 46) to the range of questions relating to measures that have been put in place to address high rates of violence and improve responses to violence against a range of children, all suffer from a failure to address the question of whether these measures have shown any evidence of success. Although some measures have been in place for a number of years, prevalence of violence seems to be little affected and unequal access to child protection and criminal justice services persists.

**46.** We recommend that the GOSA be urged to evaluate the effectiveness of existing measures and ensure that investments are made into evidence-based programmes and services with the greatest potential for impact, both on prevalence and on the provision of services.



**47. The GOSA should invest in programmes aimed at preventing and responding to violence against children, and should reflect this in national and provincial budgets.**

#### Corporal punishment in schools

48. The GOSA's response (para 29) to the issue of corporal punishment still being widely used in South African schools fails to acknowledge that implementation of the law and policy developed is patchy, with high numbers of children still being subjected to corporal punishment.

**49. We recommend that the GOSA be urged to ensure the implementation of the relevant law and policy and that the impunity of teachers who resort to corporal punishment be ended immediately.**

#### Bullying

50. Despite the implementation by the GOSA of a range of strategies and interventions to address bullying and cyber bullying (paras 30-32), 19.7% of children and young people participating in the Optimus Study reported being the victims of persistent bullying.

#### Child homicide

51. A national study on child homicide shows conclusively that children under-5 are at increased risk of being killed in the home due to fatal child abuse. A child death review pilot highlighted the need to strengthen the policy framework for child protection as children are dying due to an overburdened system; however, the challenges to appropriate implementation of law and policy remain obdurate and serious.

**52. We recommend that interagency management and review of serious and fatal cases of physical and sexual abuse be adopted to strengthen the management of child abuse. The GOSA should also develop structures and lines of accountability for interagency management.**

#### Corporal punishment in the home

53. GOSA's response (para 28) to the Committee's concerns regarding the prohibition of corporal punishment in the home seems to indicate the DSD's confidence that corporal punishment will eventually be prohibited in the home. However, it does not take into consideration that South Africa has been urged on a number of occasions to prohibit corporal punishment in the home, and that the DSD has previously supported amendments to the law to prohibit corporal punishment in the home, only to withdraw these in the face of political resistance at the eleventh hour.

54. The Committee's own concluding observation to the GOSA, issued in February 2000, recommend that the GOSA 'prohibit by law the use of corporal punishment in the family'. Most recently prohibition of corporal punishment in the home has been recommended by:

- The UN Human Rights Committee in April 2016;<sup>8</sup>
- The (SAHRC) in January 2016;<sup>9</sup>
- The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in 2015.<sup>10</sup>

**55. We thus believe that the GOSA should prioritise this issue, treat it with greater urgency, and be urged by the Committee to commit to legal prohibition within the next year.**

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<sup>8</sup> April 2016, CCPR/C/ZAF/CO/1 Advance Unedited Version, *Concluding observations on initial report*, paras. 24 and 25). Accessed at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/CCPR\\_C\\_ZAF\\_CO\\_1\\_23451\\_E.doc](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/CCPR_C_ZAF_CO_1_23451_E.doc) on 2016/05/13

<sup>9</sup> SAHRC. 2016. Investigative Report: Joshua Generation Church, 10.4, p56. Accessed at <http://www.genderjustice.org.za/publication/human-rights-commission-report-on-corporal-punishment-and-joshua-generation-church/> on 2016/05/13

<sup>10</sup> November 2015. Concluding recommendations by the ACERWC on the South Africa's Initial Report on the African Charter on the Rights and Welfare of the child, III(B)[35,36]. Accessed at <http://dullahomarinstitute.org.za/women-and-democracy/reporting-on-childrens-rights/acerwc-concluding-recommendations-to-sa-govt.pdf> on 2016/05/13

## Child protection registers

56. The intention behind the establishment of a Child Protection Register (CPR) in the Children's Act [No. 38 of 2005 as amended] is a credit to GOSA. However, evidence from service providers is that usage of the CPR is limited, ten years into its implementation, there are very few names on the register, and there are questions in terms of both the reliability and accuracy of recorded information. Firstly many government institutions, including schools and hospitals still do not screen their staff against the CPR, and secondly, when applications for screening are made there are inefficiencies which result in lost applications or excessive delays in response. The net result is a profoundly compromised system which does not contribute to the care and protection of children. It must be noted that there are two registers, the CPR and the National Register for Sex Offenders (NRSO) in the SOA (addressed in para 36 of the GOSA's written replies). We are significantly concerned regarding the appropriateness of investing in two poorly functioning paper-based resource-intensive registers, neither of which is offering the level of protections to children that is intended.

57. **The Committee is urged to recommend that the GOSA abandon the register system entirely, and invest in an information system drawing on crime data from the South African Police Service for perpetration and Form 22 information from DSD for victimisation, to prevent unsuitable people from being employed in positions in which they have access to children. The GOSA should provide for the necessary training once a more effective and accurate process has been developed. Data produced by a unified, reliable electronic information system would also go a long way to addressing South Africa's data challenges.**

## **8. Question 7: harmful social and cultural practices**

### Male circumcision and virginity testing

58. We recognise the efforts of the GOSA to eliminate harmful social and cultural practices and to regulate initiation schools where traditional male circumcisions are conducted, as well as to address virginity testing of children. However, a number of persistent and serious problems remain unaddressed, resulting in serious violations of children's rights, including the loss of life.

59. **We request that the Committee urge the GOSA to take steps to ensure that initiation schools comply with the CA, which provides for the age of consent to such practice at 16. Importantly, the policy that is before Cabinet (paras 48, 49 and 50) must align with the Children's Act 38 of 2005 in this regard. Similarly, the GOSA must take steps to ensure compliance with the CA in respect of virginity testing; the CA provides for the age of consent at 16 years and does not allow for the testing or marking of girls as virgins.**

60. **The GOSA must further be entreated to deal with the prosecution of those responsible for the deaths and injuries of initiates, and of those responsible for the kidnapping of boys to initiations schools as a matter of priority; statistics in relation to these prosecutions must be disaggregated. The health and safety of initiates must remain a continued priority when eradicating incidences of deaths and injuries.**

### Child marriage

61. The GOSA written reply (para 53) provides an update on the South African Law Reform Commission's process to address the issue of Ukuthwala; however in addition to the Ukuthwala, it is important that certain problematic aspects in the legal framework relating to child marriage be addressed.

62. In this regard we request that the Committee encourage the GOSA to urgently implement the South African Law Reform Commission's recommendations, including fast tracking the Prohibition of Forced Marriages and Child Marriages Bill within a year.<sup>11</sup>

63. In addition to addressing the definitions, criminalising all persons involved in forcing a person into marriage and that this be aggravated when the person is under 18, the GOSA must ensure that the Bill:

- Sets the minimum age of consent to marriage under the civil and customary law at 18 years to ensure that it is aligned with international and regional treaty standards;
- Amends both the Marriage Act and Recognition of Customary Marriages Act to ensure that the minimum age for all marriages is 18 years and remove any provisions that allow children to be married with the consent of their parents; and
- Amends any current provincial legislation that may give defences to customary practices that allow children to be married, and
- Ensures that the South African Police Services (SAPS) develops practice guides, standing orders and national strategies on harmful customary practices.

## 9. Question 8: Alternative care and social security

### Foster care and kinship care

64. With regard to the questions relating to the foster care system and arrangements for kinship care, the GOSA does not explain (paras 54 - 57) that instead of opting for a solution that recognised kinship care linked to a social grant, the DSD opted in the CA to place all children in kinship care into the formal foster care system. This has failed due to a laborious court-based system in which social workers are required to renew foster care orders every two years. The system was facing collapse and over 120 000 foster care orders had lapsed when (in 2011) civil society brought a case to court. A settlement was reached allowing social workers to temporarily extend such orders administratively, and avoid returning to court. This is however temporary and the court requires a systemic solution to be found by 2017.

65. The GOSA has taken some steps toward a systemic solution that are not mentioned in the written replies. Cabinet has approved a 'top-up' to the child support grant for orphans in the care of relatives to encourage such caregivers to avoid the foster care system and to go to the social assistance agency directly for an increased grant amount. Various consultative processes, including the ARC-CRSA consultations have shown that civil society is largely in favour of this. However, in order to attract caregivers away from the formal foster system, the value of the top-up is critical. The top-up should take the grant to at least a mid-way between the child support grant (currently ZAR 350) and the foster child grant (currently ZAR 890) ie ZAR 620 per month.

66. The GOSA should therefore be asked about the value of the top-up amount to support kinship care. In addition, we recommend that the GOSA be urged to make the top-up available to relatives caring for all orphans as defined by the Children's Act and not only for double orphans, because the reach to children who require the top-up would be considerably diminished if it were available only for double orphans.

67. Unless the Children's Act is amended to distinguish between foster care and kinship care, the foster care system is likely to be swamped by relatives seeking the grant that is higher in amount. The higher administrative burden of the foster care orders and grants results in children who are in need of care and protection struggling to access child protection services because social workers' time is taken up with renewing foster care orders for children in the care of their relatives.

68. We thus request that the Committee ask the GOSA to amend the Children's Act to ensure that foster care and kinship care are appropriately distinguished.

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<sup>11</sup> This Bill is proposed as a recommendation to the Revised Discussion Paper 138, Project 138, The Practice of *Ukuthwala* available at <http://www.justice.gov.za/salrc/dpapers/dp132-UkuthwalaRevised.pdf> [Accessed on 19 June 2016].

### Undocumented children's limited access to alternative care

69. The alternative care system needs to take into consideration the needs of undocumented children (both foreign and South African children), who are at times unable to access the child protection system due to lack of identity documentation. The lack of identity or status documentation should not be an impediment to these children's access to the care and protection system, including being placed in alternative care where such placement is appropriate. Furthermore, the lack of identity or status documentation should not restrict access to social security and assistance (as stated in para 89 of the reply), where children are in the alternative care system.

**70. The GOSA should be requested to commit to addressing these problems in the alternative care system to ensure that undocumented children are not excluded on the basis of lack of documentation.**

### Data on children in alternative care

71. The GOSA replies regarding data on children in alternative care are also problematic. The reply (at para 149) furthermore shows that the GOSA lacks disaggregated data on children living with their families and children placed with foster families, including data on how many children are placed in foster care with extended family members. This is important as a large number of the children in foster care are in the care of relatives, and these figures are actually known from the General Household Survey. Furthermore, the number of children living with both parents, single parents, or no parents are also known and have been published by the Children's Institute (available at: <http://www.childrencount.org.za/indicator.php?id=1&indicator=2>). It is concerning that the GOSA has not used this data.

72. It is also concerning that the GOSA does not have disaggregated data on children placed in institutions in the care system. It is not clear how this data in the table (para 150) is captured. It is unclear whether this data is a 'snapshot' of a particular date, an average figure, or a cumulative figure over an entire year. There is no explanation of why the figure in the left hand column is described as a 'target'; why the 'actual' is lower than the 'target', and what is the meaning of having fewer children in institutions than the 'target'. Furthermore, the information provided in this table '*placed in institutions (disaggregated by the length of placement)*' (para 150) is identical to the numbers provided in the table '*number of children in need of care and protection placed in funded Child and Youth Care Centres*' (para 134). This would imply that the numbers of children in prisons are not included in the information provided in paragraph 150. Finally, no data have been provided on the length of placements of children in any form of alternative care.

**73. We strongly recommend that the GOSA be urged to provide accurate, disaggregated data on children in institutions in the care system. This information must clearly state whether it is a snapshot, an average or a cumulative total. With regard to children in the child justice system, it is essential that these numbers must be compared with other figures such as prison statistics in order to assess the relationships between the numbers of children in prison and those in child and youth care centres that receive children from the criminal justice system.**

### Social security – Child Support Grant and Care Dependency Grant

74. With regard to social security, we reiterate our concerns regarding the low take-up of the Child Support Grant (CSG). Despite the broad success in take up of the CSG, we remain concerned that nearly a quarter of eligible children were not receiving the CSG, with infants aged 0 – 1 being at highest risk of exclusion. Lack of access to documents, such as children's birth certificates and parents' identity documents, is one of the barriers preventing access for infants (and older children) to the CSG.

**75. Notwithstanding the GOSAs commitment to the CSG, which should be commended, in light of the current barriers to birth registration and the GOSA's plans to discontinue late birth registration (as discussed in Question 5 above at paragraph 39 of these submissions), we request that the Committee ask the GOSA about its strategy to increase access to the CSG for infants.**

76. Assessing progress on access to the Care Dependency Grant (CDG) for children with disabilities is seriously challenged by a lack of prevalence data. Overall we are unable to ascertain the extent to which children who are eligible for the CDG are able to access the grant. This is especially critical in respect of children with severe disabilities who are under five years old. Based on the information that is available it is clear that substantial numbers of eligible children are not receiving the CDG, to some extent this is because there is no guidance for medical officers on how to assess children's disability and support needs.

**77. We urge the Committee to request that the GOSA develop an appropriate assessment form to assess children's eligibility for the CDG, and to prioritise increased access to the CDG for children under five.**

## **10. Question 9: Rights of children with disabilities**

### Framework and Strategy for Disability and Rehabilitation Services

78. In its replies, the GOSA provides information on its Framework and Strategy for Disability and Rehabilitation Services in South Africa 2015-2020 (para 58). Most concerning is that the final version of the Framework and Strategy *does not* (as stated in GOSA's reply) include a specific section on provision of assistive devices. Instead, goal 8 of the Framework and Strategy (p.19) is to "Improve access to appropriate assistive/technology and accessories" with the target being the development of guidelines on provision of assistive devices. There is no concrete plan for realising these goals and no baseline of current provision of assistive devices for children, nor is the indicator contained in the Framework and Strategy specific enough to show what progress is being made. Therefore the assurance that provision of access to assistive devices for children with disabilities, particularly optical devices, will be addressed by the Framework and Strategy is a false claim. The provision of assistive devices will only be effective if it is nested within a strong and efficient rehabilitation service, with adequate and capacitated human resources.

79. The GOSA's reply promisingly indicates its current intervention to assess the readiness of provinces to implement the Framework and Strategy (para 59). However the research is being conducted in only two districts of one province (KZN) and therefore is profoundly limited in what can be concluded about the readiness of other provinces. Further the research cannot be considered an *intervention*, because it is not delivery of services. It could be seen as a further delay before actual implementation.

### Provision of Braille and South African Sign Language

80. The replies regarding the provision of Braille and South African Sign Language (SASL) are similarly inadequate (para 60); the GOSA fails to provide any indication on the state of children's access to these in the range of settings of their lives or the progress achieved in this regard.

**81. We urge the Committee to require the GOSA to provide a more concrete indication of its plans and budget allocations with regard to the Framework and Strategy broadly and regarding assistive devices, linked to rehabilitation services specifically. The GOSA must provide the committee with an indication of the concrete measures that will be taken to increase children's access to Braille and SASL.**

### Support to caregivers of children with disabilities

82. Regarding the question of providing support to caregivers of children with disabilities (para 61) the GOSA indicates that the primary support is *information about services*, yet it fails to describe how the information is provided and by whom. With respect to the information portal the reply provides no indication of where the information portal is located or its name. It doesn't describe the nature of the information provided and the form in which it is made available, how accessible the portal is; or the extent to which caregivers are accessing the information.

83. GOSA's emphasis on information provision is inadequate; the primary means of supporting caregivers is through providing accessible services, including counselling, ECD and schooling. A much

more detailed strategy, addressing training of health personnel, social workers and others in the development sector needs to be in place if caregivers are to be effectively supported, thus information needs to be available to and through service providers in order to support caregivers.

**84. The GOSA should be required to elaborate on the information portal, but more importantly, we request the Committee to recommend that the GOSA implement a comprehensive set of programmes to provide practical support to caregivers of children with disabilities.**

#### Legislation protecting the rights of children with disabilities

85. The Committee challenges the GOSA to show what is being done to enact legislation pertaining to children with disabilities. The response, which relies heavily on the Framework and Strategy, is weak in this regard and unlikely to make any difference to the lived reality of children with disabilities. Children with disabilities face multiple discriminations and barriers to accessing health, ECD, education, social security and child protection services. This is coupled with children with disabilities being subjected to higher rates of violence than the already high rates experienced by children in South Africa generally. The current framework, including those elements described in the GOSA reply, continues to fail these children. Unacceptably, it is children with disabilities who are also poor or who live in rural areas that have the greatest need of the GOSA's support who continue to be excluded. Civil society organisations have recently decried the lack of urgency with which the GOSA is addressing the rights of children with disabilities in South Africa.<sup>12</sup>

**86. The GOSA must be urged to provide a costed strategy and plan for addressing the multiple exclusions of children with disabilities, including the potential of drafting overarching legislation that enables the allocation of appropriate resources in government departments; alternatively amendments must be considered to the full range of legislation (housing, education, transport, child justice, child protection, sexual offences etc) for this purpose. A timeframe by which this will be achieved is essential.**

### **11. Questions 10, 11 and 12: ECD, Health and the Social determinants of health**

#### Early Childhood Development

87. Although not specifically addressed in the Committee's LOI, given the multi-sectoral nature and the obligation of a range of government departments to contribute to Early Childhood Development (ECD) service delivery, we believe it important that ECD receive dedicated attention.

88. We welcome the new National Integrated Policy for Early Childhood Development, which was approved by Cabinet in December 2015 (para 13 of the GOSA reply). The policy adopts an integrated approach and prioritises a package of essential services including: health care, nutrition, social protection, parent support programmes, opportunities for early learning and childcare, and communication. This includes services targeting primary caregivers and pregnant women, which are regarded as critical for the optimal development and well-being of infants and young children.

89. South Africa has made significant strides in several areas including maternal and child health, birth registration and social security; however a number of ECD services are *not* universally available and/or of poor quality. These include: nutritional support; parenting support; early care and education; specialised ECD services for children with disabilities; and ECD information and education. Children younger than two years, and those living in poverty and in underserved areas, are currently most likely to be excluded from any existing services, and will continue to be disadvantaged if not specifically targeted.<sup>13</sup>

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<sup>12</sup> Right to Education of Children with Disabilities Campaign. March 2016. Position statement on the implementation of White Paper 6. Pp2-3

<sup>13</sup> Hall K, Sambu W, Berry L, Giese S, Almeleh C & Rosa S (2016) *South African Early Childhood Review 2016*. Cape Town: Children's Institute, University of Cape Town and Ilifa Labantwana.

90. We therefore request that the Committee call on the GOSA to prioritise the provision and resourcing of these essential ECD services, to address current gaps and ensure South Africa's children have a more equitable start in life. Effective implementation demands leadership, co-ordinated planning, and monitoring and evaluation to ensure accountability across a range of government departments. This is currently not happening.

#### Nutrition

91. Regarding the issue of nutrition, while the GOSA has made some progress in reducing Severe Acute Malnutrition case fatality rates (para 81), the progress is insufficient as the rates remain nearly double the WHO target of 5%. Additionally, a third of children (31%) who died in hospital in 2013 were severely malnourished.<sup>14</sup>

92. A quarter of children in the country are stunted (an indicator of chronic malnutrition) and one in four households experience hunger with a further quarter at risk of hunger. Growth promoting activities are mostly restricted to weighing and plotting children, with no systematic effort at supporting hungry or malnourished children, unless they require hospitalisation. Notwithstanding the measures described in the GOSAs written replies (para 82), (including that three quarters of facilities are now accredited as Mother and Baby Friendly), exclusive breastfeeding rates remain low.

93. The GOSA should be required to commit to and implement a national integrated food strategy that addresses the high levels of child hunger; and ensure that undernourished children are offered food and/or food supplements when warranted. Greater effort is needed to support sustained breastfeeding (such as community-based support and workplace facilities), and enforce regulations to prohibit the marketing of breast milk substitutes. Addressing barriers to accessing the CSG (discussed above) is an important element of a strategy to address child hunger and malnutrition.

94. Further, we request that the Committee recommend that the GOSA also needs to regulate the aggressive marketing of unhealthy foods to address the rise in child obesity rates and introduce strategies that enable poor households to access healthy food.

#### Adolescent health

95. Regarding adolescent health, South Africa has made dramatic progress over the past 8 years in addressing the HIV epidemic, yet, adolescent adherence and retention to antiretroviral therapy is among the poorest.<sup>15</sup> Youth between 15-24 years old remain at greatest HIV risk: 64% of new infections occur in young women between 15-19 years old;<sup>16</sup> who are 8 times more likely to contract HIV than similarly aged young men. Young people's condom use is also on the decline - so prevention efforts need to be strengthened. Limited service access, low quality and poor staff attitudes are perennial constraints, these result, at times, in hostile services to adolescents with questionable levels of confidentiality; taken together these factors act as significant barriers to adolescents accessing health, specifically sexual and reproductive health (SRH) services.

96. Both the Integrated School Health Programme and Youth Friendly Services have a role to play in increasing youth's access to SRH services. We request that the Committee encourage the GOSA to strengthen and enhance the quality of both of these programmes. This includes revising the school life orientation curriculum to speak more directly to youth's lived experiences, to challenge dominant masculinities and femininities, and address gender-based violence, which remains at epidemic proportions.<sup>17</sup> Solutions must extend beyond training, and should include adolescents in the development and monitoring of programmes to ensure services are accessible, acceptable and responsive to the needs of both learners and out-of-school youth.

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<sup>14</sup> Child Health Problem Identification Programme, unpublished data 2015

<sup>15</sup> Nglazi MD, Kranzer K, Holele P, et al. (2012) Treatment outcomes in HIV-infected adolescents attending a community-based antiretroviral therapy clinic in South Africa. *BMC Infectious Diseases*, 12:21.

<sup>16</sup> Shisana O, Rehle T, Simbayi LC, et al. (2014) *South African national HIV prevalence, incidence and behaviour survey, 2012*. Cape Town; HSRC Press.

<sup>17</sup> Vetten L. (2014) *Rape and other forms of sexual violence in South Africa. Policy Brief 72*. Institute for Security Studies.

97. The GOSA states that the Department of Basic Education is finalising the review of the Draft National Policy on HIV/STIs and TB (para 71). While introducing a policy of this nature is laudable, the draft currently falls short. It is vague on how distribution of condoms in schools will take place. The draft fails to make provision for all learners to access condoms uninhibitedly.

**98. We entreat the Committee to urge the GOSA, through the proposed policy and its implementation, to ensure learners have unqualified, easy and discreet access to condoms in schools.**

99. The GOSA cites its review of the draft policy on the Prevention and Management of Learner Pregnancy (para 65) when discussing its response to pregnancy in schools. The GOSA indicates that the 2007 policy on learner pregnancy sanctioned the exclusion of pregnant learners from school for up to 2 years. It is concerning that three years have already passed since the Department of Basic Education acknowledged that the 2007 policy is unconstitutional. The need for a new policy is urgent as schools (often for a lack of knowledge) continue to apply the unconstitutional one.

**100. We implore the Committee to press the GOSA to ensure that a new policy is established as a matter of urgency and that this policy is brought to the attention of provincial and district officials and the public.**

**101. Given the intersections between poverty, mental health and risk behaviour, it is critical that the GOSA be called on to express how it will strengthen links between schools, clinics, NGOs and social services, and ensure services extend to out-of-school youth.<sup>18</sup>**

#### Introduce an essential package of care

102. The above challenges speak to broader challenges in the health care system. Despite government's commitment to universal coverage, there is little evidence of progress. Child and adolescent health remains compromised by unequal access, poor coverage of key prevention programmes, poor quality of care at both clinics and hospitals, and a failure to explicitly acknowledge children's needs in the setting of national core standards and the drafting of the National Health Insurance White Paper.<sup>19</sup>

103. Government's failure to define a package of health care services for children makes it extremely difficult to hold government accountable, safeguard children's right to basic health care services, and ensure that children receive their fair share of resources.

**104. The Committee must urge GOSA, as a matter of priority, to design an Essential Package of Care that outlines a package of essential services for children from birth through to adolescence, with strong emphasis on prevention and promotion, as recommended by one of its own Ministerial committees. This should specify norms and minimum standards for child health services, staffing and resource needs and include an implementation strategy with clear targets and a dedicated budget in order to enhance planning and accountability.**

#### Address the broader social determinants of child health

105. The GOSA will need to pay greater attention to children's living conditions, if we are to make further progress in reducing under-five mortality and achieve the SDG target of 25 deaths/1000 live births in 2030. Yet child-centred analyses of national survey data<sup>20</sup> indicate that children continue to be disproportionately affected by poverty and that their access to basic services lags behind their adult counterparts in ways that compromise their health and nutritional status.

**106. We urge the Committee to call on the Department of Health (DoH) and the Presidency to jointly play a proactive leadership role in addressing these broader social determinants of child health. Critical**

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<sup>18</sup> Cooper, D. De Lannoy, A. & Rule, C. (2015) Youth health and well-being: why it matter. In: De Lannoy A., Swartz S., Lake L. & Smith C. (Eds) *South African Child Gauge 2015*. Cape Town, South Africa: Children's Institute, University of Cape Town.

<sup>19</sup> Department of Paediatrics and Child Health, University of Cape Town (2016) *National Health Insurance White Paper and Child Health: Comment from the Department of Paediatrics and Child Health, University of Cape Town*. Cape Town: DPCH, UCT.

<sup>20</sup> See: [www.childrencount.net](http://www.childrencount.net)



to this is that other government departments must be called to account for gaps in children's access to adequate housing, water and sanitation, social assistance and child protection services. The proposed National Health Commission, which is envisaged to promote inter-sectoral collaboration on the social determinants of health, may add further weight to any efforts of the Presidency and DoH.

## **12. Question 13: Refugee, Asylum-seeking and Migrant Children**

107. The GOSA's written replies (para 86 – 89) do not adequately address the measures required and those being taken by the state in respect of refugee, asylum-seeking and migrant children. For example, in respect of awareness programmes (para 86) the reply deals with the issue of refugees and asylum seekers in general and does not address the question as to whether special measures are taken to protect unaccompanied or separated children seeking asylum. Presently, protections for unaccompanied migrant children who do not have asylum claims are seriously inadequate.

**108. The GOSA should be urged to prioritise protection measures for unaccompanied and separated children by creating policies that clearly state how these children should be received and placed within the care and protection system. Such policies should clearly distinguish between categories of unaccompanied and separated minors to ensure that those who have asylum claims are able to apply for asylum, and that migrant children receive adequate protection.**

109. Further, to increase protection, the GOSA should establish policies that clearly state that these children cannot be arrested and detained on account of their lack of legal status.

110. Finally, the GOSA must be required to create a mechanism in law granting legal immigrant status and documentation to foreign-born children who cannot be repatriated or re-united with relatives or families in the country of origin.

### Section 22 permits for asylum-seeking children

111. The GOSA's reply (para 86) claims that asylum-seeking children are granted a section 22 permit. However, this is not efficiently implemented due to Section 32 of the Refugees Act, which prescribes that unaccompanied asylum seeking children must first be referred to the Children's Court through processes undertaken by the DSD before they can be given a section 22 asylum permit by the DHA. This can take up to six months to complete, resulting in these children being vulnerable to arrest and possible deportation, rather than immediately providing children with the protection that asylum seeker status provides.

**112. We recommend that the Committee enquire of the GOSA what its commitment is to ensure the implementation of section 21A of the Refugee Amendment Act 33 of 2008 which requires that the child 'must' be issued with an asylum seeker permit AND be brought before the Children's Court.**

### Naturalisation

113. We recognise that in 2013 the South African Citizenship Act was amended to allow for people who were born to non-South Africans, whose birth was registered in South Africa, and who have lived in South Africa all of their lives to apply for naturalisation after they turn 18 years old. However this provision does not offer the necessary level of protection to children living in these circumstances.

**114. We strongly recommend that the GOSA be required to amend the Citizenship Act to allow children born to non-citizens, who are unaccompanied, to apply for naturalisation before they reach 18 years of age. Linked to this, the GOSA must ensure that section 4(3) of the Citizenship Act is applied retrospectively to people who turned 18 years old before 2013 and not only to those who turned 18 after it came into force in 2013.**

## Undocumented children's access to socio-economic services

115. Currently, access to socio-economic services, including social security (as discussed above) and also health care and education, is restricted for undocumented children; we disagree with the assertion in the GOSA reply at para 89, in which it states that refugee, asylum seeking and migrant children are provided with health, education and social services irrespective of documentation. In fact, legal documentation is mandatory to benefit from the socio-economic services.

**116. For this reason the GOSA must be urged to create policies that ensure access to all socio-economic services regardless of children's legal status and documentation. This is most pressing in respect of access to healthcare and basic education. Complementing this strategy, the GOSA must take measures to ensure that these children are documented without delay upon arrival in South Africa.**

## Green Paper on International Migration

117. We wish to draw the Committee's attention to the recently published Department of Home Affairs Green Paper on International Migration (July 2016).<sup>21</sup> In our assessment of the draft green paper, children are not adequately protected. Children are referred to only twice and it is unclear how proposed mechanisms such as administrative centres, will be operated in a manner that is child friendly and/or geared towards ensuring that the best interests of all foreign children are catered for.

**118. We urge the Committee to recommend that the GOSA address these gaps in the green paper in order to ensure that the rights of foreign children in South Africa are protected, respected and fulfilled.**

## Refugees Amendment Bill

119. In question 13 of the LoI, the Committee requested the GOSA to provide an update on the main changes proposed in the Refugees Amendment Bill (806 of 2015). The GOSA did not respond to this request. The main changes that could impact on the rights of children, are that the proposed new definition of a dependant in an asylum application specifically includes the words "*and who is included by the asylum seeker in the application for asylum*". This is problematic as it implies that a dependent under this new definition excludes children born to asylum seekers or refugees after they have already applied for asylum. It unjustifiably limits the ability of children born to asylum seekers or refugees that have already applied for asylum to receive documentation that regularises their stay in South Africa. In direct contradiction to the proposed definition, Section 14 of the Bill states that children born to an asylum seeker in South Africa obtain the status of their parents. However, to access this status they would have to be recognised as a dependant.

**120. We thus recommend that the GOSA be required to ensure that the definition of dependant includes both children born to refugees/asylum seekers by the time the application for asylum is made and those born in South Africa after the application.**

121. The Refugee Bill also seeks to restrict the ability of asylum seekers to work and/or study once in South Africa. The need to work and study has already been decided by the Supreme Court of Appeal, which mandated the GOSA to allow asylum seekers and refugees to work and study in South Africa.<sup>22</sup>

**122. The GOSA must thus be urged to comply with the decision in the *Watchenuka* case as well as international and regional laws relating to the right of all children to access education as well as allow refugees and asylum seekers to work in South Africa.**

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<sup>21</sup> <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160624greenpaperoninternationalmigration.pdf> [Accessed on 1 August 2016].

<sup>22</sup> *Minister of Home Affairs and Others v Watchenuka and Others* [2004] 1 All SA 21 (SCA).

### 13. Education

123. Although education is dealt with as an aspect of some of the questions to the GOSA, the overall issue of access to and the quality of education is not adequately addressed by the Lol or by the GOSA's replies. In our view the poor state of delivery on education in South Africa is serious. Although much progress has been made by the GOSA in respect of education for some children, the education system is profoundly unequal and this inequality appears to be deepening over time. We have addressed some of our most pressing concerns in this regard in our submissions relating to the GOSA's replies to question 3 above, dealing with resourcing children's right to education.

#### Quality of education, learner retention and drop-out

124. Regarding the quality of education, learner retention and drop out, South Africa has been described as having high levels of drop-outs post age 16. White and Indian learners are more likely to attain matric certification than coloured and African learners. Matric pass rates must be measured against the fact that almost half of learners who start school do not complete matric. The quality of education provision is drastically unequal, mainly disadvantaging poor, and mostly black South African learners. In the 2013 school year, 1 407 schools were labelled as 'underperforming' due to having matric pass rates of below 60%; 86% of these schools are the poorest and most under-resourced.

**125. We thus reassert the urgency for the GOSA to pay increased policy attention to addressing learner retention and quality of learning and request that the Committee address this in its engagement with the GOSA.**

#### Inclusive education

126. The Lol and the GOSA replies are also silent on the issue of inclusive education. In spite of the introduction of White Paper 6 on inclusive education in 2001, progress on addressing barriers to learning, including on the provision of education for children with disabilities has been dismal. Implementation is beleaguered by a lack of senior political leadership, absence of data and failure to commit resources to the policy. South Africa's Constitution states that basic education is a right that is immediately realisable, this applies equally to children with disabilities. Profound numbers of children, however, remain out of school. While we recognise that special schools are at times appropriate, GOSA's emphasis on special schools is at the expense of proper attention to the goal of inclusivity in education and in society more broadly; very little has been done by the GOSA to increase inclusivity in mainstream schools. Further, progress in improving access to South African Sign Language in Deaf education, and providing Braille textbooks to visually impaired/blind learners remains seriously inadequate to meet equal education outcomes. Failures in inclusive education in basic education translate into and relate to further failures in tertiary education. This further limits the life choices of many children with disabilities or barriers to learning.

**127. The GOSA should be urged to prioritise the implementation of inclusive education, importantly through planning adequate budget allocations, furthermore the transformation of the education system and standards provided in White Paper 6 should be articulated in legislation.**

## 14. ANNEXURE A: Oral statement to the UNCRC

### **The South African Alternate Report Coalition initial statement to the United Nations Committee on the Rights of the Child Working Group at the Committee's 73<sup>rd</sup> pre-session February 2016**

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#### **1. Introductory comments, poverty, inequality and exclusion.**

We thank the Committee for this opportunity to present on behalf of a Coalition of civil society organisations on children's rights in South Africa.

At the outset we recognise the progress that has been made by the South African Government (GOSA) towards realising children's rights. Chiefly we note: the development of the robust legal framework for children's rights; the positive impacts of the modest child support grant on children's lives; the measures taken to improve access to education; programmes to increase access to ECD services; and the overall reduction of child mortality rates since 2006.

This progress must, however, be considered in light of South Africa's apartheid history and the scale of the task of transformation to realise children's rights equally. South Africa's middle-income status belies the high levels of poverty and inequality that persist and result in the very different lived realities for children, depending on the circumstances into which they are born. **We request that the Committee call on GOSA to report on what they will do to accelerate transformation and to ensure measures to implement the laws equitably, through effective planning, budgeting and service delivery for all children, while prioritising marginalised groups of children.**

The Coalition has highlighted the situation of children with disabilities and migrant and refugee children throughout our report. Children with disabilities face additional exclusions in accessing health, education and social security, and reportedly, are subjected to higher rates of violence, with less access to protection. **We recommend that GOSA be called on to draft overarching legislation to specify, coordinate and govern services for children with disabilities.**

In respect of migrant children we support the oral submissions of XXXXX and XXXXX.<sup>23</sup>

#### **2. Governance, institutional arrangements and general measures of implementation**

Regarding the general measures of implementation, we note that in spite of tremendous commitment to children's rights in the first decade of South Africa's democracy, overall, political leadership on children's rights has waned. As a result, the legal framework has not been adequately supported by strong institutional arrangements; and it is not sufficiently resourced; effective planning and monitoring systems are not in place and accountability mechanisms are weak or ignored. **The South African Government must provide a clear indication of its plans to ensure high-level leadership, coordination and accountability across departments and at all levels.**

The overall shift in the prominence of children's rights, is evident in South Africa's delay in reporting on the Convention; in the failure of GOSA to ratify the third Optional Protocol on communications procedures – or to indicate its intentions in this regard; and in its failure to sponsor a number of recent Human Rights Council and General Assembly resolutions on children's rights. Further GOSA's reservation to the ICESCR relating to the immediate realisation of basic education is problematic. **The GOSA should be asked to account for these omissions and urged to correct them.**

#### **3. Minimum age of criminal responsibility**

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<sup>23</sup> Due to the UN Committee on the Rights of the Child's request for confidentiality regarding the identities of organisations and individuals that attended the pre-session these details have been removed from this version of the statement.

We'd like to briefly address the minimum age of criminal capacity, which is set at 10 years old and thus falls short of the 12 years required by General Comment 10. We note that there is some level of protection for 10 to 14 year old children provided by the *doli incapax* presumption. The South African government set a deadline in law, to review the age of criminal capacity by April 2015. Yet, in spite of some steps taken towards this, it has not yet been done. **The GOSA must recommend to Parliament that the age of criminal capacity be raised to 14 years, and the *doli incapax* presumption removed. The Government of South Africa must ensure that whatever steps are taken, the current rights of 12 and 13 year olds under the Child Justice Act are not eroded.**

#### 4. Education

The state of education is arguably one of the most pressing issues to address; despite considerable financial allocations, the Department of Education fails to provide equal access to quality education. Although the school funding system is based on a pro-poor spending policy, it has not had the desired impact. The public education system is very unequal, with the wealthiest 20-25 percent of learners achieving much higher scores than the poorest 75-80 percent. **GOSA must be asked how they intend to create a more equal system of education through increased allocation to education but also improve the impact of the pro-poor funding policy.**

Poor infrastructure continues to negatively affect learners, particularly in rural areas. A 6 years old child, Michael Komape, drowned in a pit toilet at school on his first day of attendance in 2014. The improvements in the regulatory framework and the actual improvements in buildings, goods and services such as sanitation and electricity can be directly attributed to sustained pressure from civil society, including learners themselves.

But even more worrying than the lack of adequate school environments is the low quality of the education system. The government trumpets the improvements in the matric (final exam) pass rate, but overlooks the major problem with drop out in the later years of schooling. Almost half of the learners that enter the schooling system never complete their education. **GOSA must be asked to explain their strategy for improving the quality of education and for improving learner retention rates.**

Violence and sexual abuse of learners by teachers in South African schools is deeply worrying. Corporal punishment was abolished in 1996, nevertheless in 2011, almost 2 million children reported in a General Household Survey that they had been hit in school during the previous year. **GOSA must indicate what concrete actions it will take to deal with the scourge of violence and sexual abuse affecting SA schools, particularly through holding teachers accountable.**

The Constitutional Court has pronounced that girls should not be excluded from school for reasons of pregnancy or birth. However, **the Minister of Basic Education has not yet issued a revised school pregnancy policy. The Minister should be asked when she intends to do so. GOSA should also indicate when the Minister will amend the Admissions Policy to specify that asylum seeker and refugee children can access education.** Finally, the Coalition agrees with the XXXXXXXX report on the multiple barriers to education that children with disabilities experience, and **GOSA should be asked how it intends to urgently action its inclusive education policy.**

#### 5. Health

##### Primary healthcare

On the issue of healthcare, in 2011, the SA government committed itself to re-engineering healthcare through three mechanisms: 1) providing specialist clinical teams to address maternal and child health at district level; 2) expanding school health services; and 3) introducing community health workers.

Four years later, there is little evidence of progress. Only about 600 school nurses, service the needs of 27 000 schools. Although 75 000 community health workers have been employed, few of these services are offered to children. The district clinical teams have yet to show impact. Low coverage of services such as immunisation and antiretroviral therapy are of concern. The situation reflects government's inadequate planning of services, lack of commitment to extending coverage, particularly to the poorest and most vulnerable, and absence of accountability from its own staff. Mismanagement, corruption, unprofessional and uncaring conduct should no longer be tolerated. **The GOSA should be asked to actively address the mismanagement of health resources, with better planning and support of district and community based activities.**

#### Quality of services

Despite the Integrated Management of Childhood Illness strategy being adopted almost 20 years ago, the delivery of primary healthcare services is idiosyncratic with individual clinics deciding what services to offer, and when. The result is often a low quality of care to children, with limited attention to preventive and promotive aspects. Multiple audits and investigation of hospital services have revealed the dismal state of state hospitals and the serious deficiencies in the quality of care offered, resulting in much preventable morbidity and mortality. Shortages of staff, essential drugs and equipment, and emergency medical services undermine any attempt to deliver quality care.

**The GOSA should be asked to design an Essential Package of Care for children including norms and minimum standards for child health services, as recommended by one of its own Ministerial committees. This should specify staffing and resource needs and include an implementation strategy with clear targets and a dedicated budget.**

#### Malnutrition

A quarter of children in the country are stunted and a third of children who die in hospital are severely malnourished. One in four households experience hunger with a further quarter at risk of hunger. Growth promoting activities are mostly restricted to weighing and plotting children, with no systematic effort at supporting hungry or malnourished children, unless they require hospitalisation. **The GOSA must commit to and implement a national integrated food strategy that addresses the high levels of child hunger; and ensure that undernourished children are offered food and/or food supplements when warranted.**

## **6. Violence and child protection**

#### Prevalence of Violence

Despite a strong legal framework, violence against children continues to be widespread. South Africa has one of the highest reported rates of sexual violence, with approximately 60 cases of child sexual assault reported to the police daily. Further, one third of South Africa's children report physical violence. Violence also kills. With just over a 1000 children murdered annually, of which nearly half are the result of fatal child abuse.

**The GOSA should prioritise and invest in a co-ordinated response to prevent violence against children, including developing a national action plan to meet this objective. This plan should be evidence-based and foster inter-sectoral collaboration to mitigate the long-term impact of violence.**

#### Corporal punishment

While South Africa has prohibited corporal and humiliating punishment in public spheres, it is still largely socially accepted and legally permitted in the home. Evidence indicates that physical punishment in this setting is widespread.

**We request the committee to ask the GOSA what steps will be taken to legislate the prohibition of corporal punishment in the home, we believe that the upcoming amendments to the Children's Act present a critical window of opportunity in this regard. In addition the GOSA should be urged to provide large-scale programmes to support non-violent parenting and shift social norms that support violent discipline.**

### Child protection and criminal justice systems

Given the prevalence of violence, large numbers of children are referred for child protection services, and numerous crimes against children are reported to the police daily; however few children receive the required protection from either the child protection or the criminal justice systems, and widespread secondary victimisation of many of these children persists. Of additional concern is that few therapeutic services are available to support children's recovery from trauma, leading to long term health, psychological and social consequences.

**The GOSA must take urgent steps to adequately resource the child protection and criminal justice systems. It should also commit in law to resource therapeutic services to child victims, including legislating for minimum funding norms to ensure adequate funding of NPO's that provide these essential services.**

### Harmful Cultural Practices: Male Circumcision, Virginitv Testing and Ukuthwala

On the issue of harmful social and cultural practices; traditional male circumcision and the regulation of initiation schools is of serious concern due the number of deaths and male genital mutilations annually. Between 2008 and 2012; 313 boy's deaths were reported. In that same period, 1 865 initiates were injured, including young boys losing their genitals. Lack of accountability and low conviction statistics in this regard are extremely concerning. **The GOSA must be asked what is being done in practice to protect children at initiation schools; and what steps are being taken against those who violate the rights of children at initiation schools.**

Anecdotal evidence suggests that girls under the age of 16 years are subjected to virginitv testing in contravention of the Children's Act, and girls who have been sexually abused and are then identified as non-virgins face additional risks. **The GOSA must indicate what steps it will take to ensure that virginitv testing is only practiced in accordance with the Children's Act and to ensure that girls do not suffer negative consequences if they 'fail' these tests.**

The Coalition supports the submissions of the XXXXXX relating to the practice of Ukuthwala and regarding the minimum age of marriage.

**Overall the GOSA must be asked what steps it is taking to eradicate harmful practices as required under the General Comment No. 18**

## **7. Foster care**

Finally we must address the arrangements relating to foster care, which are highly problematic, impacting in two significant ways. Firstly, classic foster care has proven to be an ineffective way of delivering social grants and services to South Africa's uniquely large number of orphans. The formal foster care system has been over-utilised to deliver social assistance to relatives caring for orphans, and yet there are 1.4 million orphans still to be reached. The system is in a state of collapse and is being supported through a court order that provides a temporary administrative solution. The government missed the first 3-year court-ordered deadline to provide a systemic solution. Secondly, the reliance of the foster care system for orphan care by relatives is placing inordinate strain on the already compromised care and protection system, and leaving children who are abused or neglected (or at risk thereof) without adequate services.

**GOSA, specifically, the Minister of Social Development, should be encouraged to design and implement a comprehensive legal solution to the foster care crisis by December 2017 (as required by the extended High Court order). Such solution should (a) adequately recognise and support kinship carers looking after orphaned children; (b) free up the scarce resources of social workers and courts to provide quality protection services and (c) deliver increased social assistance to relatives caring for children through a simpler procedure.**

## **8. Conclusion**

In conclusion, we recognise that the nature of this statement requires a focus on problematic areas and presents a highly critical picture; we wish to reiterate our acknowledgement and support of the many positive efforts of the GOSA to address children's rights over the past two decades and at present.

We thank you