



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

National Human Rights Institution Report on the South African Government's combined periodic country report under the United Nations Convention on the Rights of the Child

**Submission to the United Nations Committee on the
Rights of the child for consideration at
the pre-sessional working group**

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Introduction

The Convention on the Rights of the Child (CRC)¹ is one of the most important human rights treaties that advances the rights of children. The basic thrust of the CRC is that the child is an independent rights holder and that in all matters involving the child, the principle of “the best interests of the child” is accorded centrality.² Due to their vulnerability, children need greater and/or different protection as opposed to the protection afforded to adults. The rights in the CRC have been supplemented by:

- (i) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol on Children in Armed Conflict);³
- (ii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol on Sale of Children);⁴ and the,
- (iii) Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (Optional Protocol on a Communications Procedure).

South Africa has come a long way in recognising the rights of children since the end of apartheid in 1994. The country ratified the CRC on 16 June 1995, making the CRC the first international human rights treaty to be ratified by a democratic South Africa. In 2003, South Africa ratified the Optional Protocol on the Sale of Children. Then in 2009 it ratified the Optional Protocol on Children in Armed Conflict. South Africa is yet to ratify the Optional Protocol on a Communications Procedure.

The rights contained in the CRC are important for South Africa considering that as in 2015 the country had approximately 19,668,197 children who represent 35.8 percent of the country’s total population.⁵

¹ Adopted on 20 November 1989 and entered into force on 2 September 1990.

² See Art 3(1) to the Convention.

³ Adopted on 25 May 2000 and entered into force on 12 February 2002.

⁴ As above.

⁵ Under the age of 18. See, Statistics South Africa Mid-Year Population Estimates 2015 at <http://www.statssa.gov.za/publications/P0302/P03022015.pdf>. See pg9 and pg15 (Statistical tables)

Although South Africa's state report was overdue by several cycles, the government submitted a report which sets out the level of implementation of the CRC and the extent of enjoyment of children's rights in South Africa. In its assessment of the state report, the SAHRC notes that several challenges remain and, that in some cases, limited information is provided to the Committee. The SAHRC's report seeks to highlight challenges for consideration by the Committee's pre-sessional working group on South Africa. This report recognises progress made by South Africa in the implementation of the children's rights but also aims to provide the Committee with information on the level of implementation of children's rights as enshrined in the CRC.

Besides studying the state report, the SAHRC has had the opportunity to view the alternate report prepared by civil society organisations (CSOs) from South Africa. In light of the fact that information in the state report has further been supplemented or elaborated upon by the CSOs' report, the SAHRC is mindful of repetition and in this report will only attend to those areas where both the state report and CSOs' report were not sufficiently detailed.

In discussing the matters that arise in the state report, the SAHRC will highlight some of the work done by the SAHRC that has a bearing on children's rights. The reason for highlighting the SAHRC's work is to illustrate that the position held by the SAHRC is based on research that would have been undertaken in the area on which views are advanced. The SAHRC becomes privy to many of these issues through research, the complaints it receives and also interaction with the communities.

For ease of reference, the SAHRC has categorised the report into various clusters as recommended by the Committee during its 65th session (January 2014) regarding the form and content of periodic reports. Where applicable, the current report will make reference to the South African state report and discuss some of the issues that are raised therein. The state report covers the period 1998 to 2013. Where possible the SAHRC report will provide the most recent information that it has acquired and highlight recent developments so as to provide the Committee with comprehensive information on the protection of children's rights in South Africa. The SAHRC report further provides the Committee with recommendations that may be taken into account when the South African state report is considered by the Committee.

Section 1: General Measures of Implementation

1.1 South Africa's national human rights institution

1. The SAHRC commends the Committee for adopting General Comment No 2 (2002) on, *The role of independent national human right institutions in the promotion and protection of the rights of the child*.⁶ In terms of General Comment No 2, NHRIs are required to “contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children’s rights”.⁷ Furthermore, the SAHRC notes the recommendation for state parties to “include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee”.⁸ The South African state report in *para* 31 provides some information about the SAHRC even though the information is brief. The state report highlighted that the establishment of the national institution is in line with the Committee’s concluding observation No 13.

1.1.1 The mandate of the SAHRC

2. The SAHRC is mandated by Section 184 of the Constitution of the Republic of South Africa,⁹ which states that:

184. (1) The South African Human Rights Commission must –
 - (a) promote, respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.

⁶ United Nations (UN) Committee on the Rights of the Child General Comment No 2 *The role of independent national human right institutions in the promotion and protection of the rights of the child* (2002) CRC/GC/2002/2.

⁷ Para 20 of General Comment No 2.

⁸ As above para 21.

⁹ The Constitution of the Republic of South Africa of 1996, referred to as the “Constitution”.

In September 2014, the new South African Human Rights Commission Act 40 of 2013 (Human Rights Commission Act) came into force, repealing its predecessor, the Human Rights Commission Act 54 of 1994. The Human Rights Commission Act enjoins the SAHRC with the responsibility to assess and report on South Africa's progress in the implementation of ratified treaties.¹⁰ Section 13(1)(b)(v) of the Human Rights Commission Act mandates the Commission to review government policies relating to human rights and make appropriate recommendations.

3. As a national human rights institution (NHRI), the SAHRC is additionally guided by the Paris Principles adopted by the United Nations General Assembly in 1993.¹¹ In 2012, the SAHRC was reaccredited as an 'A status' NHRI by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The SAHRC was elected as Chair of the ICC from 2013 to 2016.

1.1.2 SAHRC's Children's Portfolio

4. Currently, South Africa does not have an independent, designated body to exclusively monitor children's rights in the country. However, since the SAHRC has the mandate to monitor all rights contained in the Bill of Rights, it has taken on the role of monitoring and advancing children's rights in South Africa. Within the parameters of its mandate and available resources, the SAHRC has largely taken up the role of advocating for policy and legislative reforms; raising awareness and advocating for children's rights; undertaking monitoring and other research initiatives; and investigating complaints of alleged violations of children's rights. In addition, the SAHRC has established an expert advisory committee on children which is provided for in terms of Section 11 of the Human Rights Commission Act. The advisory committees provide critical input and expertise to help the Commission in the execution of its mandate. The advisory committee that is advising the SAHRC on children's rights comprises experts from different disciplines and institutions who advise the SAHRC on matters related to children's rights.

¹⁰ Sec 13 (1)(a)(i) of the South African Human Rights Commission Act 40 of 2013.

¹¹ United Nations *National institutions for the promotion and protection of human rights* (1993) UN General Assembly Resolution 48/134.

5. In 2009, children's rights and basic education were identified as a thematic area for the SAHRC and the theme is under the leadership and guidance of a Commissioner.
6. The SAHRC has released several reports relating to children's rights in South Africa and over the last five years the SAHRC in collaboration with the United Nations Children's Fund in South Africa (UNICEF) has published the following:
 - (i) A report titled *South Africa's Children: A Review of Equity and Child Rights* (2011) which details the inequities within South African society in relation to children and identifies the gaps in policies and service delivery programmes.
 - (ii) The *Charter of Children's Basic Education Rights* (2012) which is a common national statement indicating what a child, parent, guardian or other stakeholders should expect from the state in as far as the right to education is concerned. The report sets out the obligations of the state in as far as realising the right to education is concerned.
 - (iii) In 2014 a report in response to the South African National Development Plan was published by the SAHRC. The report was titled *Poverty Traps and Social Exclusion Among Children in South Africa*. The report explored poverty traps in South Africa and the national and societal efforts that are needed to break such traps. It drew lessons from countries that have successfully eliminated poverty traps and provided concrete policy recommendations.
 - (iii) Following the non-delivery of textbooks in the Limpopo province in 2012, the SAHRC conducted a nationwide investigation into the matter and released its findings in 2014 in a report titled *Report on the Investigation into the Delivery of Primary Learning Materials to Schools*.¹²
 - (iv) In 2015 the SAHRC has produced a report titled *Children's Rights and Business Principles*. The report looks at the rights of children within the context of mining activities.

¹² SAHRC *Report on the Investigation into the Delivery of Primary Learning Materials to Schools (SAHRC Textbook Report)*. See SAHRC website for a list of the SAHRC's reports related to children at www.sahrc.org.za

All these reports were widely disseminated to government and civil society and the SAHRC presented them to the South African Parliament (Parliament).

7. Besides raising concerns about failure for state reports to be submitted timeously in as far as the CRC is concerned, the SAHRC has also called on the South African government to ratify the CRC Optional Protocol on a Communications Procedure as such ratification would further enhance mechanisms through which children's rights issues can be advanced.

1.1.3 SAHRC collaboration with the United Nations Children's Fund in South Africa

8. UNICEF is one of the SAHRC's strategic advisory committee members and as such has been involved in preparation of a number of the reports listed above. These reports have been presented to and tabled with the relevant committees in Parliament.¹³ The SAHRC has, however, drawn Parliament's attention to the fact that the recommendations contained in some of these reports, particularly the *Poverty Traps and Social Exclusion Among Children in South Africa* report, have not been considered and that to date, even though a promise was made, there has been no further engagement by Parliament on the issues raised in the reports.
9. A range of other significant collaborative works have been undertaken by the SAHRC and UNICEF to advance the rights of children. These collaborative efforts included:
 - i. In 2012 and 2013, the SAHRC and UNICEF hosted seminars that reviewed the South African National Budget from a children's rights perspective.
 - ii. The SAHRC was acknowledged for its work on children's rights in the UNICEF global study *Championing Children's Rights: A Global Study of Independent Human Rights Institutions for Children* and was invited to address the 11th International Conference of the ICC in Amman, Jordan on 4 November 2012 during the launch of the publication.

¹³ See <https://pmg.org.za/committee-meeting/17865/> for poverty traps. See also <https://pmg.org.za/committee-meeting/15839/charter> BE.

- iii. The SAHRC and UNICEF submitted a proposal to Parliament, calling for the establishment of a multi-party children's caucus which is currently under consideration.
- iv. The SAHRC and UNICEF partnered on the theme children's rights and business in preparation for participation in the Global Child Forum that was held in South Africa in September 2015.

2. The Department of Women, Children and Persons with Disabilities

- 10. The SAHRC wishes to point out that in *paras* 18 to 25 of the state report, as well as in other instances in the report, reference is made to the role of the Department of Women Children and People with Disabilities (DWCPD), which was established in 2009 to mainstream the rights of children at all government levels. Furthermore the state report asserts that the DWCPD is "vested with the authority to coordinate, monitor implementation and report on the CRC, its Optional Protocols and the NPAC".¹⁴ Information is also provided on the role of the DWCPD and how it responded to the Committee's concluding observations, 12, 14 and 16 by playing a coordinating and leadership role in the National Action Plan for Children (NAPC)'s implementation and establishing a monitoring and evaluation (M&E) strategy capable of collecting disaggregated data covering all areas of the CRC.
- 11. However, it should be noted that the DWCPD was disbanded after South Africa's 2014 general elections and the children's portfolio was transferred to the Department of Social Development (DSD), which already has a broad mandate. The dissolution of the DWCPD resulted in the cessation of the relevant parliamentary committees whose role included holding the government to account for the realisation of children's rights in South Africa. Furthermore, at the time the DWCPD was established, Parliament's Joint Rules Committee made a decision to disband the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons as it was deemed to be no longer required.¹⁵ A Portfolio Committee on Children and a Select Committee on Women, Children and People with Disabilities was subsequently established in line with the Ministry but has also ceased to exist.. These developments

¹⁴ Para 19 of State Report.

¹⁵ See, http://www.parliament.gov.za/live/commonrepository/Processed/20110926/173852_1.pdf

have left a void as there is currently no specific government department or parliamentary committee that is charged with focussing solely on children's rights. In an effort to address the vacuum, the SAHRC collaborated with UNICEF and submitted a proposal to the Speaker of Parliament calling for the establishment of a multi-party parliamentary caucus to exclusively address children's matters in South Africa.

3. The impact of business activities on the enjoyment of children's rights

12. The state report indicates in *para* 40 that "the State regulates private entities in sectors ranging from health and media to the environment to ensure that the rights of children are not compromised."¹⁶ In that regard, reference is made to Annexure 2D which sets out the measures taken to regulate business activities impacting on children. The information provided, however, merely sets out a list of legislative initiatives and does not further expand on the nature of activities undertaken by business corporations that are likely to negatively impact on children's rights.¹⁷
13. The area of children's rights and business has been subject to the development of a number of key international initiatives, in particular General Comment No 16 adopted by the Committee, and the *Children's Rights and Business Principles* developed in 2012 by UNICEF, Save the Children and the UN Global Compact.¹⁸ At the domestic level, in line with the CRC, the South African Constitution specifically protects children against "exploitative labour practices"¹⁹ and prohibits children's involvement in any work that might negatively affect their wellbeing.²⁰ Furthermore, the Constitution extends the right of access to information to include information held by private sector entities,²¹ thereby echoing Article 17 of the CRC which promotes the dissemination of information beneficial for the social and moral growth of the child.²²
14. There is a need for effective remedial frameworks to investigate and enforce children's rights in the conduct of business activities, and to provide redress where violations

¹⁶ Initially mentioned in *para* 40 of the State report.

¹⁷ As required by *para* 20 of the CRC guidelines.

¹⁸ https://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf

¹⁹ Sec 28(1)(e) of the Constitution.

²⁰ Sec 28(1)(f)(ii) of the Constitution.

²¹ Sec 32(1)(a) of the Constitution.

²² Human Rights and Business Country Guide: South Africa 2015.

occur.²³ In addition, guidance is required to assist businesses on how to ensure that children's rights are part of their policies and practices through the integration of the "best interest" principle into business processes and decisions.²⁴

Recommendations to the Committee

15. The South African government should develop a monitoring mechanism to ensure that contracts between the government and private companies are consistent with the Constitution and internationally accepted standards that advance the rights of children. In addition the government should consider the impact on children when enacting laws on gambling and on liquor; they should ensure inaccessibility of these vices to children.
16. A multi-sectoral team should be established to lead discussions on the impact of business on children's rights. The team should be charged with ensuring that a strategy that draws the business sector into the debate on children's rights is developed. Furthermore, the government should roll out a full communication and advocacy initiative on the responsibilities of businesses to promote and respect children's rights in the workplace, the market place and the community.

4. Extractive industries

17. South Africa has a robust extractive industry that provides substantial income for the country and employs a large section of the population. Mine employees often migrate with their families and set up communities in close proximity to the mines. The result of the migration has been that there is a greater need for services of a socio-economic nature for these newly established communities.
18. In many instances, mining companies have distanced themselves from their social responsibility to provide social services in areas where they operate. The SAHRC draws the Committee's attention to the widely publicised tragedy in August 2012, where 44 people, 41 of whom were miners, were killed during a protest at Lonmin's Platinum Mine

²³ As above, pg 60.

²⁴ Also see the case of *AllPay Consolidated Investments Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2)* CCT 48/13.

at Marikana. The incident highlighted among others the breakdown in the relationship between mine workers and their employers. In the communities surrounding the mine it was alleged that miners and their families lacked essential amenities such as adequate housing and healthcare facilities – all of these have an impact on children. Following the Marikana mine tragedy, discussions have been taking place on reform of the sector and how the relationship between mining companies and their stakeholders (for example, workers, local communities, government, shareholders and unions) should be configured and maintained.²⁵

19. The SAHRC expresses concern on the multiple impacts that the extractive industries in South Africa bear on children. Particular concern includes the negative effects of mining and its environmental impacts, including water shortage, compromised air quality, depletion of fish, soil erosion, unsafe management and disposal of toxic waste by the extractive industry.²⁶ There is a need to promote and protect the rights of persons affected by such activities. For instance an SAHRC investigative report on *Issues and challenges related to unregulated underground and surface mining in South Africa*²⁷ found that there were problems caused by acid mine drainage (AMD) which is the outflow into the environment with dangerous consequences of acidic water from metal or coal mines.
20. AMD poses a serious danger to the realisation of children's rights including that of access to food, sufficient water, adequate housing, healthcare services, human dignity, clean environment, freedom and security. Furthermore, within the gold and coal mining regions affected by AMD, children are exposed to a host of environmental dangers including toxic mine dust as well as acidic and radioactive water.²⁸ The lightly coloured mine dust covering mine tailings and the warm acidic water in rivers and streams in AMD affected areas appear as attractive for children who oblivious to their toxicity play and swim in them.²⁹

²⁵ Human Rights and Business Country Guide: South Africa 2015.

²⁶ See <http://www.sahrc.org.za/home/index.php?ipkArticleID=312>

²⁷ SAHRC *Issues and challenges related hearing to unregulated underground and surface mining in South Africa* available at <http://www.sahrc.org.za/home/index.php?ipkContentID=15&ipkMenuID=19>

²⁸ As above. AMD, as with other environmental problems, In South Africa's South Durban Basin, where air quality is severely compromised from activities of several refineries operating in the area, the SAHRC received complaints of children suffering from respiratory conditions such as asthma and persistent colds and coughs, and general malaise linked to the poor environmental quality in the area.

²⁹ As above.

21. Artisanal mining activities have also been identified as having a negative impact on children. Children are often involved in the processing stages of the illegally mined products by participating in breaking and grinding of the rocks or the chemical extraction of gold ore using mercury.³⁰ Children exposed to these dangerous substances can suffer serious health problems. In addition, most children involved in artisanal mining are deprived of their right to education as they leave school in order to work and financially contribute to their households.

Recommendations to the Committee

22. The South African government should supply information relating to measures taken to ameliorate the environmental impact that the extractive industries have on surrounding communities. The Committee should also request from the South African government to report on the steps it has taken to address the recommendations contained in the SAHRC's 2015 investigative report on *Issues and challenges related to unregulated underground and surface mining in South Africa* as well as report on the 2008 SAHRC report on *Mining-related observations and recommendations: Anglo Platinum, affected communities and other stakeholders, in and around the PPL Mine, Limpopo*.
23. The South African government should conduct an urgent independent epidemiological study on the impact of mine dust on human health, in particular, children. In addition the government needs to conduct education and awareness initiatives in communities about the health effects of artisanal mining, especially for children, who are likely to play in contaminated water. Furthermore, the Committee should ask the government to monitor adherence to social and labour plans and environmental management plans within the mining sector.

Section 2: Definition of the Child.

24. Under Part 2 of the state report, information is provided on the definition of a child and the age of consent for among others marriage, legal capacity and sexual consent. However, the numerous ages of consent and some of the low ages at which consent can be granted is of serious concern.

³⁰ As above.

25. In terms of the Marriages Act 25 of 1961, girls aged 15 to 17 years may consent to enter into a civil marriage provided they have the consent of their parents. Girls aged 12 to 14 years may marry provided the girl, her parents and the Minister of Home Affairs have consented. The same applies to boys aged 14 to 17 years. In respect of customary marriages, girls aged 12 to 17 years and boys aged 14 to 17 years may consent to marriage provided her / his parents and the Minister of Home Affairs or an officer in the public service authorised by the Minister consent to the marriage. The Children's Act 38 of 2005 prohibits the arrangement of marriages or engagement of children below the minimum age, 12 years for girls and 14 years for boys.
26. In 2014, the African Committee of Experts on the Rights and Welfare of the Child (African Committee) expressed concern about the prevailing situation in South Africa where there was absence of an explicit minimum age for customary marriage. The African Committee was also concerned about the different ages for marriage under civil, common law and customary law. In this regard, the African Committee strongly recommended that the government harmonise its civil, customary and common law definition of "the child" in line with Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC).³¹ The Committee recommended that the South African government should ensure the effective implementation of Article 21(1) of the ACRWC which prohibits child marriages and sets the minimum age for all types of marriages to be 18 years.³²

Section 3: General principles

27. The SAHRC wishes to point out that matters pertaining to this section under Articles 2, 3, 6, and 12 of the Convention³³ are accordingly incorporated under specific clusters within the state report.

³¹ As above para 17.

³² As above para 18.

³³ These are namely: (a) Non-discrimination (Art 2); (b) Best interests of the child (Art 3); (c) The right to life, survival and development (Art 6); (d) Respect for the views of the child (Art 12).

Section 4: Civil rights and freedoms

4.1 Birth registration, name and nationality

28. The SAHRC takes note of *para* 4.1 of the state report and the measures taken by the state to protect and promote children's rights to birth registration, a name, nationality and preservation of identity. The report, however, does not provide information on the right to nationality of the child in instances where one or both parents are not South African nationals.
29. The South African Citizenship Act 88 of 1995 was amended in 2010 and came into force in January 2013. Under the amended Act, "any person who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen, shall be a South African citizen by birth".³⁴
30. In addition, a child born in the country to permanent resident parents will only be considered to be a South African citizen by birth if he / she has lived in the country from birth until the age of majority and, in addition, had his / her birth registered in the country.³⁵ The amendments further provide that a child born in the country to parents who are not South African citizens or who have not been admitted into South Africa for permanent residence, qualifies to apply for South African citizenship upon becoming a major if - (a) he / she has lived in the Republic from the date of his or her birth to the date of becoming a major; and (b) his or her birth has been registered in accordance with the provisions of the Births and Deaths Registration Act 51 of 1992. The latter Act was, however, amended in 2014, thereby introducing penalties and stringent measures to register a birth after the requisite 30 day period (but before a year). The amendments have not taken into account possible reasons that can contribute to late registration, for example, poverty, access to basic services particularly in rural areas. In addition, children of non-nationals are required to produce proof of lawful residence in South Africa and a passport in order to register the birth of their child. Some foreign nationals may not be in a position to produce these documents thereby negatively impacting on the child's rights.

³⁴ Sec 2(1)(b) of the South African Citizenship Act 88 of 1995, as amended (Act 88 of 1995).

³⁵ Sec 2(3) of Act 88 of 1995.

Recommendations to the Committee

31. The South African government should review its existing legislation relating to births and deaths and amend the laws accordingly to remove the penalties and administrative burden associated with late registration of births so that disadvantaged members of society are not unfairly punished as in some cases resource constraints, lack of information and lack of access to services are the main causes for late registration. Whereas the law intends to ensure that all children are duly registered and benefit from a range of social services attention must be paid to the actual causes for late registration and efforts made to redress these. In the case of non-nationals attention should be paid to establishing alternative measures that do not unduly affect children born to non-nationals from getting requisite proof of births.

Section 5: Violence against children

32. South Africa's children experience considerably high levels of violence. According to the South African Police Services, 41,402 crimes against children were reported during 2014/2015. The breakdown of the statistics is as follows:
- i) 804 reports of murder;
 - ii) 868 reports of attempted murder;
 - iii) 8 413 reports of assault with grievous bodily harm;
 - iv) 10,140 reports of common assault; and,
 - v) 21,177 reports of sexual offences which accounted for more than 50 percent of all reported crimes against children.
33. In 2012, the National School Violence Survey highlighted the extent to which family and community factors intersect with the levels of violence occurring at schools.³⁶ The results revealed that by the time young people enter secondary school many of them have already been exposed to violence in their homes or communities, either as victims or

³⁶ Burton P & Leoschut L (2013) *School Violence in South Africa. Results of the 2012 National School Violence Survey*. Monograph Series No. 12. Cape Town: Centre for Justice and Crime Prevention, pg xiii.

witnesses.³⁷ More than a tenth of the participants had seen family members assaulting one another, one in ten learners had been assaulted at home, while less than a tenth had been sexually assaulted within their homes or had been victims of robbery.³⁸ The survey showed that exposure to these forms of violence significantly increased the child's risk for violence in the school environment.

34. The SAHRC wishes to highlight that the state report does not assign a dedicated section to address violence against children as is required by the CRC reporting guidelines. Instead the state report treats aspects related to violence against children as incidental to other rights. In keeping with the reporting format the SAHRC draws the Committee's attention to the following:

5.1 Corporal punishment in the home

35. The state report has not adequately addressed the issue of corporal punishment in the home environment despite the fact that 58 percent of parents have reported smacking their children at some point and 33 percent report using a belt or other object.³⁹ In addition, these acts were mostly inflicted on children between the ages of three and four years.
36. In a 2007 submission to Parliament in relation to clause 139 (Discipline of Children) of the Children's Act Amendment Bill [B19B-2006], the SAHRC welcomed efforts to outlaw corporal punishment in the private and public spheres stating that "parents and care-givers need support on appropriate and alternative forms of discipline that will promote healthy relationships between children and adults and ensure the realization of every child's potential."⁴⁰ The clause sought to prohibit all forms of violence against children, including acts of corporal punishment.⁴¹ Notwithstanding the support of the prohibition by

³⁷ As above.

³⁸ As above.

³⁹ Dawes A, Kafaar Z, Richter L & De Sas Kropiwnicki Z (2005) Survey examines South Africa's attitude towards corporal punishment. Published in Article 19, 1(2): 2-4.

⁴⁰ The submission was made to the Portfolio Committee on Social Development, National Assembly, 8 August 2007, pg 6.

⁴¹ The clause stated as follows:

Discipline of children

139. (1) A person who has care of a child, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by section 12(1)(c), (d), and (e) of the Constitution.

(2) No child may be subjected to corporal punishment or be punished in a cruel, inhuman, or degrading way.

the SAHRC and CSOs, the clause was deleted in its entirety from the draft legislation. At the time, the Portfolio Committee on Social Development stated that “the Committee excised clause 139, dealing with the discipline of children, from the Bill in recognition of the need for further investigation of the matter and anticipates this matter being finalised in a proposed amendment bill to be introduced in 2008.”⁴² To date the amendment Bill has not been introduced.

37. The SAHRC is in the process of finalising a matter involving the issue of corporal punishment within the home.⁴³ When the matter is finalised the findings will be made public.

Recommendation to the Committee

38. The South African government should actively implement policies that will ensure complete eradication of corporal punishment. Greater efforts to educate society as a whole would help ensure that issues of violence in the private sphere are more actively addressed.

5.2 Corporal punishment in schools

39. Notwithstanding the prohibition on corporal punishment in schools, learners still face this form of disciplinary measure in the school environment. According to the 2012 National School Violence Survey, a total of 49,8 per cent of learners claimed to have been caned

(3) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceeding is hereby abolished.

(4) No person may administer corporal punishment to a child or subject a child to any form of cruel, inhuman, or degrading punishment at a [any] child and youth care centre, partial care facility or shelter or drop-in centre.

(5) The Department must take all reasonable steps to ensure that—

(a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented throughout the Republic; and

(b) programmes promoting appropriate discipline are available throughout the Republic.

(6) A parent, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144

(7) Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if the punishment constitutes abuse of the child.

⁴² See, <http://www.ngopulse.org/press-release/guide-childrens-act-no-38-2005>.

⁴³ SAHRC *Investigative Report: Matter between A Mostert and three others v the Joshua Generation Church*, October 2015.

or spanked by an educator or school principal.⁴⁴ The study further highlighted that 60,5 percent of learners who experienced violence at school indicated that crime was a problem in their neighbourhood and that 63,7 percent witnessed a fight in the neighbourhood.⁴⁵

40. The SAHRC voiced its concern over the prevalence of corporal punishment both within schools and in the home and has over the years, released several reports that refer to this phenomenon.⁴⁶ In the past five years, approximately 5 percent of the SAHRC's workload has focussed on corporal punishment. The cases ranged from those involving relatively mild forms of corporal punishment to ones that led to serious disabilities and in some instances even death of learners. The SAHRC notes that most complainants are reluctant to engage with the justice system due to barriers in accessing justice. In 2013, the SAHRC hosted a roundtable meeting with key mandate-holders to discuss corporal punishment in schools. Participants, which included government departments, trade unions, school governing bodies and principals, acknowledged the need to eradicate corporal punishment in schools. As a result, the SAHRC took the matter further and convened a national conference in 2014 on *Ending Corporal Punishment in Schools*.⁴⁷ The conference was premised on "developing a just, meaningful and equitable solution for making schools safer and more child-friendly".⁴⁸ In addition, the conference sought to clarify the respective roles of stakeholders and, in particular, raise awareness of the criminal nature of corporal punishment, the duty that exists to report it, and the procedures which are available to provide protection to children.⁴⁹ It further explored measures the SAHRC could employ in its continued monitoring of children's rights.⁵⁰ Although several recommendations were proposed,⁵¹ the key outcome of the conference

⁴⁴ Burton P & Leoschut L (2013) *School Violence in South Africa. Results of the 2012 National School Violence Survey*. Monograph Series No. 12. Cape Town: Centre for Justice and Crime Prevention pg 44. The survey comprised of 5,939 learners, 121 principals and 239 educators.

⁴⁵ Ibid, pg xiii.

⁴⁶ These reports include: Porteus P, Vally S and Ruth T, 'Alternatives to Corporal Punishment: Growing discipline and respect in our classrooms', Wits Education Policy Unity and SAHRC, 2001; Govender K, "The Educator & Constitution", Published by the South African Human Rights Commission, 2004; *Report on the Public Hearing on the Right to Basic Education*, 2005 and a *Report of the Public Hearing on School-Based Violence 2006*; *South Africa's Children: A Review of Equity and Child Rights*, SAHRC; SAHRC's *Charter of Children's Basic Education Rights*.

⁴⁷ SAHRC Conference Report: Ending Corporal Punishment in Schools, Johannesburg, 29-30 May 2014" (Hereafter referred to as SAHRC 2014 Conference Report).

⁴⁸ As above.

⁴⁹ As above.

⁵⁰ As above. It should be noted that shortly after the Conference, the SAHRC was requested by the DoBE to sit on the national task team on school discipline.

⁵¹ SAHRC 2014 Conference Report, pg 5.

was the need for the establishment of a national protocol to enforce the statutory ban on corporal punishment and to: i) address the shortcomings in the current legislative and policy frameworks; and ii) provide for the prosecution of teachers who administer corporal punishment. The SAHRC has called on the government to establish a protocol to enforce the statutory prohibition of corporal punishment and has extended its willingness to assist in this regard.

Recommendations to the Committee

41. As a matter of urgency, the South African government should expedite the establishment of a national protocol on the elimination of corporal punishment in schools as the use of corporal punishment normalises violence in a society that already has high levels of violence. The South African government should be asked to ensure that schools regularly hold sessions with both learners and educators on the rights and responsibilities within the school environment and engage in constructive dialogue on alternative practical strategies for dealing with disciplinary issues. Measures should be put in place to ensure that persons who perpetrate corporal punishment against children are appropriately dealt with under the criminal justice system.

5.3 Bullying in schools

42. The state report does not provide any detail on the prevalence of bullying in South African schools, except to reference the fact that there is no statistical data available on the number of incidents of bullying in schools.⁵² Over the years, however, there have been several reports around bullying incidents, many of which caused widespread public concern. Examples include cases of the bully being fatally wounded or the victims of bullying committing suicide. It should be noted that South Africa does not have legislation that specifically addresses bullying and therefore relies on other existing legalisation to provide protection and remedies in cases where bullying takes place.

⁵² State Report, table on pg 97.

43. In 2013, a national survey on bullying was conducted using the social media platform *Mxit* to gather data.⁵³ The survey polled 2064 learners between the ages of 13 and 21 as well as 1015 parents / family members of the learners. The survey revealed the following:
- i) 56.8 percent of learners felt bullied at school;
 - ii) 53 percent of learners are worried about being attacked at school, for example, through being pushed, hit, punched or threatened with a firearm or knife;
 - iii) 44.7 percent of learners bring firearms, knives and other dangerous weapons to school. In this regard the survey further questioned why learners bring weapons to school and in response 39.82 percent of learners were of the view that the weapons were for self-defence; 64.57 percent of learners were of the view that weapons are used to bully other learners; and 68.94 percent reported that learners who bring weapons to school are part of a gang.
44. The prevalence of bullying in South African schools demonstrates the extent to which violence and abuse have infiltrated the classroom. Furthermore, all acts of bullying, whether perpetrated through cyberspace or in the real world compromise the rights of the child to human dignity, equality, freedom, security, privacy and education.
45. The SAHRC is acutely aware of the pervasive nature of bullying and has investigated several complaints related to alleged bullying at school. During its 2006 public hearings on school-based violence, the SAHRC found that:
- i) Violence perpetrated by educators and other school staff includes corporal punishment, cruel and humiliating forms of psychological punishment, sexual and gender-based violence and bullying;
 - ii) Violence in schools also occurs in the form of playground fighting and bullying among learners. In some communities aggressive behaviour,

⁵³ A copy of the official study released by market research company, Pondering Panda, is available upon request. For general information, see, <http://www.ponderingpanda.com/>.

including fighting, is perceived as a minor disciplinary problem not requiring too much attention;

- iii) Bullying is frequently associated with discrimination against students from poor families, racially marginalised groups, or those with particular personal characteristics, for example, appearance, or a physical or mental disability;
- iv) Bullying is mostly verbal, but physical violence also occurs;
- v) Schools are also affected by events in the wider community, such as the prevalence of gang culture, gang-related criminal activity and the abuse of drugs;
- vi) Bullying is one of the more common and well-known manifestation of school-based violence. Furthermore, the levels and intensity of bullying have increased with time;⁵⁴
- vii) Bullying can be a precursor to aggression and, if not addressed early, may lead to more serious acts of violence in the future;⁵⁵
- viii) Psychological bullying of learners by educators occurs when a learner is made to feel excluded, vulnerable or distressed by an educator in the classroom. It was found that this form of bullying can have long-lasting effects on the performance and willingness of a learner to actively participate in the classroom. It may also result in a learner displaying provocative and disruptive behaviour in the classroom.⁵⁶

⁵⁴ During the hearings the SAHRC understood bullying as referring to 'both repetitive physical and non-physical acts. Physical bullying includes pushing, hitting, kicking, biting, spitting, intentional damage to property, theft and even extortion. Non-physical bullying includes teasing, name-calling, whispering campaigns, exclusion and threats of harm. Bullying can also be malign or non-malign. Malign bullying is that which occurs when the perpetrator has the intention to cause harm to another. Non-malign bullying is unintentional'.

⁵⁵ SBV Report pg 7.

⁵⁶ SBV Report pg 10.

46. After analysing the testimonies and inputs made during the public hearing process, the SAHRC made several recommendations to the South African government on measures to address school-based violence.⁵⁷

Recommendations to the Committee

47. The South African government should provide information on the measures it has taken to address school-based violence with disaggregated data to show whether this type of violence is decline. Bullying in schools must be more effectively addressed to ensure that schools are safer for all children.
48. The Committee should inquire about the steps taken by the state to address violence and abuse perpetrated on children in schools to ensure that schools are places in which all children's safety is guaranteed and protected.

5.4 Child neglect

49. The state report has not dealt adequately with the issue of emotional and physical neglect of children. In a case reported to the SAHRC, four children died of exhaustion and hunger.⁵⁸ The SAHRC made provisional findings indicating that besides failings on the part of government departments, there was also an aspect of emotional and physical neglect as the children had been abandoned and left alone with no food. Numerous recommendations have been made to a number of government departments to ensure that the situation does not recur.

⁵⁷ In summary: i) The creation of safe spaces and identifying areas in the school where learners feel vulnerable; ii) Creation of accessible and child-friendly reporting systems for learners who are victims of violence; iii) Provision of accessible and child-friendly treatment services such as counselling; iv) Enhance the capacity of educators to deal with violent conflicts; v) Promote non-violent values and awareness-raising within the school curriculum that includes peace education, citizenship education, anti-bullying, human rights education, anger management, conflict resolution and mediation; vi) Develop local school codes of conduct that address violent activities and; train both learners and educators on the code.

⁵⁸ Martha Mumpole and Department of Home Affairs NW/2011/0212

Recommendation to the Committee

50. The Committee should inquire from the South African government whether there are clear mechanisms to ensure that assistance both in terms of financial support and social and government services can reach the poorest people who live in the most remote areas of the country. The Committee should also request the government to provide statistical information on children who face emotional and physical neglect.

5.5 Measures to prohibit and eliminate all forms of harmful practices

51. Section 6.7 of the state report relates to measures undertaken by government to prohibit and eliminate harmful cultural practices. The SAHRC, however, expands hereon with the following additional information.

5.5.1 Customary practice of *ukuthwala*

52. The traditional cultural practice of *ukuthwala*, whereby young women are abducted for purposes of marrying them to older men, is inconsistent with South Africa's commitment to the CRC and the provisions in the country's Constitution. Many young girls are abducted, often on their way to school and married to older men. When the girl's family objects to the abduction, they are offered "damages" in the form of money, cows and blankets.⁵⁹ Since many of these families live in extreme poverty and are largely rural based, these gifts are accepted as part of the *ukuthwala* transaction.
53. The SAHRC wishes to bring to the Committee's attention the case of *Jezile v S and Others*,⁶⁰ wherein a 28 year old man was convicted of various charges related to the trafficking and rape of a 14 year old girl. On appeal, the Western Cape High Court confirmed the decision of the lower court and further stated that "it cannot be countenanced that practices associated with the aberrant form of *ukuthwala* could secure protection under our law...we cannot therefore, even on the rather precarious ground of the assertion by the appellant of a belief in the aberrant form of *ukuthwala* as constituting the 'traditional' customs of his community, which led to a 'putative customary

⁵⁹ <http://www.iol.co.za/news/crime-courts/man-jailed-for-marrying-raping-girl-14-1.1646973#.Vh2clvmqqko>.

⁶⁰ Citation for the appeal case: *Jezile v S and Others* (A 127/2014) [2015] ZAWCHC 31; Court a quo: [2013] 4 All South Africa (ECG) 372.

marriage,' find that he had neither trafficked the complainant for sexual purposes (as defined) nor committed the rapes without the necessary intention."⁶¹ The court upheld the convictions of rape and trafficking, as well as the sentence of 22 years of imprisonment.

54. Whilst the state report indeed indicates that there are several legislative measures in place to protect children from such practices, the practice is still prevalent in many traditional / rural communities of South Africa and often goes unreported. The vulnerable position of the girl child, particularly in rural areas in South Africa requires the government to take immediate action and introduce interventions that will safeguard children from harmful practices such as *ukuthwala*.
55. The SAHRC also draws the Committee's attention to the CEDAW Committee's recommendation to South Africa in 2010 wherein it specifically urged the state to address harmful cultural practices such as *ukuthwala*.⁶² In addition, the ACRWC has also called on the South African government to combat this practice.⁶³

Recommendations to the Committee

56. Greater attention needs to be focussed on eradicating the current abhorrent practice of *ukuthwala* in order to safeguard children's lives. There should be increased public awareness campaigns in the affected parts of the country and greater attention to educating traditional leaders on the unlawfulness of the practice. Where individuals are prosecuted such prosecutions should be widely publicised to ensure deterrence. The South African government should also provide additional information on the progress made by the South African Law Reform Commission (SALRC) in respect of *ukuthwala*, as noted in *para* 233 of the state report.

⁶¹ *Para* 95 in *Jezile v S and Others*.

⁶² CEDAW Recommendations to the South African government, CEDAW/C/ZAF/2-4 *para* 21(b).

⁶³ *Para* 65 ACRWC Concluding Observations on South Africa at <http://acerwc.org/?wpdmdl=8754>.

5.6 Customary practice of initiation

57. It is concerning that South Africa's state report does not fully address the traditional rite of passage from childhood to adulthood, known as *initiation*, particularly in light of the prevalence of death and injury that occur annually during the "initiation season."⁶⁴ There are positive aspects associated with initiation schools which act as centres of learning where initiates (usually males), are taught the importance of self-respect, self-consciousness, dispute resolution and respect towards other people, especially, women.⁶⁵ However, the high number of illegal initiation schools which capitalise on the demand has resulted in undermining the tradition.⁶⁶ Initiation which also includes circumcision, often occurs in an environment that exposes initiates to unhygienic living conditions, inadequate healthcare, food, water and sanitation, and maltreatment. In addition to botched circumcision, the factors identified contribute to the high number of injuries and fatalities at initiation schools.
58. Section 12(8) of the Children's Act prohibits the circumcision of male children under the age of 16 years, unless it conforms to prescribed religious practices or is medically necessary.⁶⁷ The Children's Act goes further, stating that the circumcision of boys of 16 years and older must be carried out in a prescribed manner, subject to the boy's consent and after appropriate counselling has been provided. The Children's Act and its regulations also provide for health standards and safeguards to be observed during the circumcision process. These health standards include the use of sterile surgical instruments (to prevent the transmission of HIV or sexually transmitted illnesses), safe disposal of instruments and gloves after each circumcision, prevention of direct blood contact or contact with any other bodily fluids and the disposal of any human tissue in

⁶⁴ It is merely referenced as incidental under section 2.5 *Ages impacting on customary law*.

⁶⁵ Page 29, SAHRC 2001 Report on Initiation.

⁶⁶ In 2001, the SAHRC was requested by the then Minister of Education to investigate initiation practices at educational institutions (particularly at higher education institutions). During this process, the SAHRC also investigated the cultural practice of initiation in traditional societies and provided several recommendations in this regard. In 2006, the SAHRC continued its focus on cultural initiation and collaborated with the CRL Commission and the National House of Traditional Leaders to investigate the prevalence of initiation. Subsequently, between 2007 and 2011 a series of public hearings were conducted throughout the provinces to establish the extent of cultural initiation and its associated health and safety concerns. The outcome of the national hearings indicated that there was a need for clear legislation at a national and provincial level to "streamline the current practices in all parts of the provinces"

⁶⁷ Circumcision for religious or medical purposes may only be carried out after a regulatory form has been signed by a parent or guardian. Circumcision on a boy aged 16 or over for social and cultural reasons requires both the boy and his parents to sign the form.

accordance with appropriate medical standards.⁶⁸ The Children's Act and regulations clearly state that "social and cultural circumcision may only be performed in accordance with the social and cultural practices of the child concerned."⁶⁹ In addition, such circumcision can only be performed "by a medical practitioner or a person with knowledge of the social and cultural practices concerned and who has been properly trained to perform circumcisions".⁷⁰

59. The SAHRC draws the Committee's attention to the initiation statistics shared by South Africa's Minister of Cooperative Governance and Traditional Affairs, during his response to parliamentary questions posed in 2013.⁷¹ The statistics, which cover the period 2008 to 2012 provide insight into the annual numbers of initiates deaths and injuries, and indicate the following:

- a. Admission to initiation schools increased from 29 230 persons in 2008/09 to 82 426 in 2012. A cumulative number indicates that in the last five years, 289 834 persons underwent initiation.⁷²
- b. The annual increase in the number of boys and girls who have been admitted for initiation during the period 2008 to 2012 have in turn resulted in the establishment of additional initiation schools and illegal initiation schools which have sought to capitalise on the high demand for initiation.
- c. The numbers of deaths of initiates have increased from six deaths in 2008 to 87 deaths in 2012. Between the period 2008 to 2012, 313 deaths were reported. The SAHRC notes that it is unclear whether these statistics include deaths at both authorised and unauthorised initiation schools. In addition, the statistics do not provide information on the exact cause of death.
- d. Over the five year period, 1 865 initiates were injured although it is unclear what the nature and extent of these injuries were.

⁶⁸ Professor Julia Sloth-Nielsen, *A foreskin too far? Religious, "medical" and customary circumcision and the Children's Act 38 of 2005 in the context of HIV/Aids, Law Democracy and Development* Vol. 16 (2012) available at <http://www.saflii.org/za/journals/LDD/2012/4.pdf>

⁶⁹ Children's Act Regulation 5(1)(c).

⁷⁰ Children's Act Regulation 5(1)(d).

⁷¹ Although responded to by the new Minister, Lechesa Tsenoli, the question on statistics was posed to the previous Minister of COGTA. The questions were raised by Mr G Boinamo from the Democratic Alliance. See, <http://www.pmg.org.za/node/36627>

⁷² The statistics are cumulative and do not reflect separate information for boys and girls.

- e. There are no records of charges and convictions of perpetrators responsible for injuries or deaths of initiates during 2008 to 2012. The SAHRC is particularly concerned by the Minister's response that in the five years that the statistics cover records were not kept of the prosecution of the perpetrators.
60. Despite these statistics and the increase in the number of initiation-related deaths and injuries, the government has not instituted stricter measures to prevent such tragedies from recurring. The SAHRC also wishes to inform the Committee that the ACRWC recommended to the South African government to "address the issue of death and mutilation of boys as a result of botched circumcisions."

Recommendations to the Committee

61. As a matter of urgency, the South African government must establish stringent legal/regulatory frameworks to safeguard children from deaths and injuries during initiation processes. There should be enactment of legislation that will create a uniform regulatory approach across all the provinces and ensure that only legally registered and regulated schools, that are consistently monitored, are in operation.
62. In addition to adopting legislation, there is a need to train individuals responsible for performing circumcisions as well as the need to furnish authentic information relating to the qualifications / experience of such persons to be eligible to perform circumcision. The Committee is urged to inquire from the state whether it intends to roll-out training initiatives and sensitise communities about the potential health hazards related to initiation, particularly the circumcision aspects.
63. The government should provide information on the prevalence of initiation; the number of initiation schools; the proximity of these schools to a health clinic, hygiene standards, access to food, average age of the initiates, numbers of deaths and injuries, exact causes of such deaths and injuries, records of charges proffered against persons responsible and information on convictions of such persons. This information is intended to ensure that initiation schools are better monitored with a view to reducing the negative impacts that some may have.

5.7 Violence against non-nationals

64. The state report does not include any reference to xenophobia despite the attitudes towards non-nationals in some sections of South Africa's society. The SAHRC therefore wishes to draw the Committee's attention to this phenomenon insofar as it relates to children.
65. In 2008, South Africa experienced unprecedented violent attacks against non-nationals, in which over 60 people were killed. The attacks were accompanied by looting and the subsequent displacement of a large number of people including children.⁷³ In the wake of the xenophobia incidents the SAHRC conducted an investigation and released a report titled *Investigation into issues of rule of law, justice and impunity arising out of the 2008 public violence against non-nationals* which contained several recommendations to the government. The recommendations included the need to put in place measures to prevent a recurrence of the violence. Between January and April 2015, once again the country experienced incidents of xenophobia related violence particularly in Kwa-Zulu Natal and Gauteng provinces and once again displacement of people, included children.
66. The SAHRC notes with concern that the xenophobia attacks which place children in a vulnerable position and have resulted in interruption of schooling by children of non-nationals and their uprooting from communities they considered home.⁷⁴ In addition, it has been reported that due to displacement, several children have lost their school books and uniforms either through looting of their homes or fleeing their homes and leaving their belongings behind. Children were unable to attend their school due to the threat of violence against non-nationals, thereby compromising their right to education.
67. The SAHRC further notes that the emotional and psychological trauma was inflicted on the children particularly in cases where children were forcibly displaced and / or witnessed a parent / caregiver or they themselves being physically assaulted during an attack. Furthermore, additional strain is placed on children when their families are uprooted and who then have to start life in a new environment which is unfamiliar to the child.

⁷³ See SAHRC Report on Report on Investigation into issues of Rule of Law, Justice and Impunity arising out of the 2008 public violence against non-nationals (hereinafter the SAHRC Non-Nationals Report).

⁷⁴ DSD, DWCPD and UNICEF (2012) *Violence against Children in South Africa* Pretoria: Department of Social Development/ Department of Women, Children and People with Disabilities/ UNICEF 13.

Recommendations to the Committee

68. The South African government should indicate the measures it has put in place to ensure that xenophobia attacks do not recur in the future and that children in particular will be better protected to ensure that their lives are not negatively impacted. There should also be greater awareness raising in the communities affected to ensure that these attacks do not recur.

5.8 Women Empowerment and Gender Equity Draft Bill

69. The SAHRC notes that *para* 235 of the state report makes a general reference to the Women Empowerment and Gender Equality Draft Bill which was released for public comment. The Bill sought to provide the then Ministry of Women, Children and People with Disabilities with the authority to monitor, review and oversee gender mainstreaming and promotion of the advancement of women.
70. The Bill further sought to give effect to Section 9 (equality clause) of the Constitution insofar as it relates to the empowerment of women and gender equality.⁷⁵ Some of the Bill's key provisions included, imposing a legal duty on both the public and the private sectors to report regularly to the Minister of Women, Children and People with Disabilities on how they have mainstreamed gender into all policies, programmes and activities.⁷⁶
71. The Bill was introduced in Parliament. Subsequently, in March 2014, Parliament's National Assembly approved the Bill and referred it to the National Council of Provinces for approval, although it was returned to the National Assembly with several proposed amendments.⁷⁷ By the end of the fourth Parliament (May 2014), there was no further action on the proposed legislation and the Bill subsequently lapsed.⁷⁸

⁷⁵ Preamble to the Bill, [B 50B-2013] See Bill at, http://pmg-assets.s3-website-eu-west-1.amazonaws.com/bill50b_2013_1_1.pdf

⁷⁶ Lisa Vetten, "Gender Bill fails to offer women anything new", <http://mg.co.za/article/2014-01-30-g>

⁷⁷ As above.

⁷⁸ Also see, National Assembly Rules no. 298. <https://pmg.org.za/page/narules>

Section 6: Family environment and alternative care

72. Matters pertaining to this section have been addressed under related clusters within this report.

Section 7: Disability, basic health and welfare

7.1 Children with disabilities

73. The SAHRC notes the progress and commitment to the realisation of rights for persons with disabilities, through government's adoption of various legal instruments as well as the ratification of the Convention on the Rights of Persons with Disabilities (CRPD). However, much still needs to be done to accommodate people living with disabilities and in particular, children with disabilities. As mentioned above, the dissolution of the DWCPD has resulted in a vacuum in both children's rights and disability rights. Both these categories are now assigned to the DSD.
74. As the state report accurately notes in *para* 198, "despite strong political commitment to address inequities and discrimination affecting people with disabilities, a large gap still exists between policy and practice."⁷⁹ Furthermore, the state report points out that "challenges to policy implementation include capacity constraints at programmatic level, confusion over disability definitions, procedural bottlenecks and lack of resources."⁸⁰
75. The state report aptly captures the challenges faced by children with disabilities in terms of their right to education by indicating that "lack of, or long waiting-period for, assistive devices for children with disabilities, especially in rural areas; the lack of *braille* and sign language services; lack of access to public transport; the need for support programmes for caregivers of children with disabilities; and the lack of adequate protection of the sexual and reproductive health rights of children with disabilities".⁸¹
76. During a meeting in 2012 with the Portfolio Committee and Select Committee on Women, Children and People with Disabilities relating to South Africa's implementation of the Convention on the Rights of Persons with Disabilities (CRPD), the SAHRC

⁷⁹ *Para* 198 state report.

⁸⁰ As above.

⁸¹ As above.

indicated that severely disabled children are denied access to education in both mainstream and special schools and that approximately 10 percent of children with disabilities do not attend school in South Africa (this is further addressed under section 8.1.2 below).⁸² Whilst the government enacted the Domestic Violence Act 116 of 1998, children with disabilities who are victims of violence and abuse are subjected to societal stigma and discrimination and are not provided with adequate and appropriate services to report and prevent exploitation, violence and abuse.⁸³

77. As the Committee may be aware, Article 33(2) of the CRPD requires state parties to designate a coordination mechanism and an independent monitoring mechanism in accordance with the *Paris Principles*. During the aforementioned meeting with Parliament, the SAHRC recommended that the then DWCPD “lead the process of determining how South Africa will comply with Article 33(2).” The SAHRC notes with concern that the subsequent dissolution of the DWCPD may impact negatively on the realisation of the suggestion as the government department that should have led the process has since been disbanded and there is no department that is dedicated to addressing issues of children and persons with disabilities.

Recommendations to the Committee

78. Legislation should be enacted and implemented affirming the right to basic education for children with disabilities and setting out the measures to be adopted in order to ensure that education is accessible and that children with disabilities are accommodated in all South African schools. The South African government should in addition develop training programmes for relevant government officials and service providers who interact with women and children with disabilities who are victims of exploitation, abuse and violence.
79. The government should clarify how in the absence of the DWCPD it intends to implement the Article 33(2) of the CRPD.

⁸² [http://www.sahrc.org.za/home/21/files/Disability%20submission
FINAL%20for%20Parliament%2025%207%2012.pdf](http://www.sahrc.org.za/home/21/files/Disability%20submission%20FINAL%20for%20Parliament%2025%207%2012.pdf)

⁸³ [http://www.sahrc.org.za/home/index.php?ipkArticleID=154.](http://www.sahrc.org.za/home/index.php?ipkArticleID=154)

7.2 Sexual and reproductive rights

80. The SAHRC shares the government's concern in *para 228(e)*, regarding the number of teenage pregnancies and the consequences thereof for the health and well-being of the girls and their infants. It particularly welcomes the measures put in place to address sexual and reproductive rights, and the government's commitment to improving reproductive health services for adolescents.
81. The SAHRC expresses concern that notwithstanding the fact that termination of pregnancy is legal in South Africa and available at several healthcare facilities, there are numerous unqualified operators who claim to be "abortion doctors". Advertisements for these "backdoor abortions" promise a painless, safe and cheap service and are often placed on lampposts in close proximity to schools and high traffic areas. Services offered through the back-door abortions pose a serious danger to girl children who may wish to use them.

Recommendations to the Committee

82. The government should enhance its education and awareness initiatives around the termination of pregnancy services and provision of contraception services, especially among adolescents. Termination of safe pregnancy services should be available and accessible in each province, particularly for communities in rural areas.
83. The government should make a concerted effort to close illegal abortion "clinics" and ensure that those carrying out activities professing to offer termination of pregnancy services without the requisite medical qualifications are prosecuted. Information on these prosecutions should be made public. There is also greater need to prosecute persons advertising such services.

7.3 Standard of living and measures

84. While there has been considerable strides by the government to improve children's rights, access to rights and services for vulnerable children remain a challenge. As highlighted in the *Poverty Traps* Report, "many children born to poor households

continue to suffer the indignities of poverty, often including lack of access to adequate nutrition, clean running water or adequate sanitation... while some children in South Africa live in relative luxury and have access to world class education and health services, others face threats to their development in the form of poor living conditions, poor nutrition and poor access to basic services".⁸⁴

85. In the South African state report, it is indicated that there has been a reduction in child poverty and inequality. Furthermore that there is an improvement in the living conditions of black, rural, and girl children and children living in poverty due to among others pro-poor laws and budgets relating to education, health, child protection and social security. However, income inequality remains high and is a key determinant of children's standard of living. In the *Equity Report* (2011), it is highlighted that nearly four out of ten children live in households with no employed household member. Among the poorest, seven of out ten children live in households with no economically active member.⁸⁵ Furthermore, the *Poverty Traps* Report highlights that children born into poor and socially excluded families are at high risk of being caught in a poverty trap and have little chance of getting a good education because of the poor quality of education available to them⁸⁶
86. South Africa also has the unique phenomenon of child-headed households in which case all persons living in a household will be below 17 years of age. Statistics indicate that in 2013, a total of 85 000 children in South Africa were living in 61,000 child-headed households.⁸⁷

7.3.1 Right to food

87. Food security is a systemic issue in South Africa with research showing that one out of every two households (52 percent) are at risk of hunger⁸⁸ and that 3.3 million children

⁸⁴ As above pg 4.

⁸⁵ South Africa's Children: A Review of Equity and Child Rights (2011) (SAHRC Equity Report), page 12.

⁸⁶ South African Human Rights Commission, *Poverty Traps and Social Exclusion Among Children in South Africa* (SAHRC Poverty Traps Report), pg 18.

⁸⁷ Statistics on Children in South Africa: Child-Only Households, at <http://www.childrencount.ci.org.za/indicator.php?id=1&indicator=17>

⁸⁸ Labadarios, D., Swart, R., Maunder, E.M.W., Kruger, H.S., Gericke, G.J., Kuzwayo, P.M.N., et al. 2008. Executive summary of the National Food consumption Survey Fortification Baseline (NFCS-FB-I) South Africa. *SAfr J Clin Nutr*, 21(2):245-300.

live in households where there is child hunger.⁸⁹ The state report in *para* 266 indicates that 18 percent of children are stunted, 9.3 percent are underweight and 4.5 percent are wasted. It is further noted that the most affected children are within the 1 to 3 years age group. The *Poverty Traps* Report points out that micro-nutrient deficiency, in particular vitamin A deficiency is pervasive among children from poorer backgrounds.⁹⁰

88. In 2014, the SAHRC designated its annual thematic focus area on the right to food. In the course of its research, the SAHRC found that, poverty, food price increases, demographic changes, energy costs and climate change pose significant risks to sustainable food security in South Africa.⁹¹
89. Children are particularly vulnerable when it comes to accessing adequate food as they require a specific level of nutrition to ensure nourishment and development and are largely dependent on adult caregivers in this regard. According to the *Equity Report* children in the poorest households and female-headed households are more likely to experience hunger.⁹² In addition, statistics indicate that female-headed households that contained children were more likely to report hunger, in statistical terms female-headed were 16 percent more likely to experience hunger compared to 10.2 percent for male-headed households and 11.2 percent for child-headed households.⁹³
90. The SAHRC notes that in *para* 268 of the state report, it is stated that the government's school feeding scheme, the National Schools Nutrition Programme (NSNP), reaches almost 10 million children. However, no information is provided on the frequency, quality or nutritional value of the food which is supplied. Research conducted by the SAHRC demonstrated that the food provided by the school feeding schemes is often nutritionally deficient⁹⁴. In some cases the scheme is terminated due to disagreements with service providers and the children are left to fend for themselves.

⁸⁹ Social profile of vulnerable groups in South Africa, 2002–2012 / Statistics South Africa. Pretoria: Statistics South Africa, 2012. Available at, <http://www.statssa.gov.za/wp-content/uploads/2014/02/Fieldworker-Feb-2014Mar-2014.pdf>

⁹⁰ SAHRC's Poverty Traps Report, pg57.

⁹¹ SAHRC Right to Food Report, concept note, pg11.

⁹² SAHRC Equity Report pg 4.

⁹³ Social profile of vulnerable groups in South Africa, 2002–2012 / Statistics South Africa. Pretoria: Statistics South Africa, 2012.

⁹⁴ SAHRC Poverty Traps Report pg158.

91. Although not referenced in the state report, the SAHRC welcomes the government's, *Roadmap for Nutrition in South Africa, 2013-2017*⁹⁵ as this policy seeks to direct nutrition-related activities in the health sector to the achievement of the sector's four focus areas, which are: increasing life expectancy; decreasing maternal and child mortality; combating HIV/AIDS and decreasing the burden of disease; and strengthening health system effectiveness.⁹⁶ However, there is still a need for a legislative framework addressing the right to food.

Recommendations to the Committee

92. The government should implement a system to improve and monitor the quality of food provided to children under the NSNP. Food provisioned to children should be safe and meet the minimal nutritional standards especially in light of the fact that some children may not have adequate food in their homes.

7.3.2 Water and Sanitation

93. Following several complaints lodged with the SAHRC relating to the rights to water and sanitation, the SAHRC dedicated 2012 and 2013 as the period when it would accord special attention to water and sanitation in order to establish the extent to which these rights were being realised in South Africa. The SAHRC subsequently held public hearings, roundtable discussions, conducted investigations and undertook site visits. The exercises culminated in the release of the 2014 *Report on the Rights to Access Sufficient Water and Decent Sanitation in South Africa (Water and Sanitation report)*. The report contains several findings and recommendations relating to accessing water and sanitation.⁹⁷
94. One of the key findings in the report was that, despite a substantial increase in the number of people accessing water and sanitation, many residents, particularly those in

⁹⁵ <http://www.health-e.org.za/2015/06/04/strategy-roadmap-for-nutrition-in-south-africa-2013-2017/>.

⁹⁶ As above pg 9.

⁹⁷ SAHRC Report on the Rights to Access Sufficient Water and Decent Sanitation in South Africa', 2014, (SAHRC Water and Sanitation Report) pg 52.

the poorer areas of South Africa, do not have adequate access to water and sanitation.⁹⁸ In certain instances there is no access altogether whereas in other instances, access to water and sanitation is non-functional due to poor infrastructure.⁹⁹ Furthermore, the lack of access to safe water and sanitation has a disproportionate impact on vulnerable groups such as children who may fall ill due to consuming dirty water or using unhygienic sanitation facilities.¹⁰⁰ According to the report, the non-realisation of the right of access to safe water and sanitation is more acutely experienced by the girl child since a large number of households use a bucket for sanitation thereby placing girls are at risk of assault or sexual violence when they resort to relieving themselves in the bush or when during the night they resort to relieving themselves in the fields.¹⁰¹

95. The SAHRC notes *paras* 248 to 252 in relation to the steps taken by the government to improve access to water and sanitation. The government further indicates in *para* 68, that the percentage of children with access to piped water increased from 54.7 percent to 61.8 percent between 2002 and 2010 and that access to sanitation increased from 10 percent to 49.5 percent in 2010. In the SAHRC's *Water and Sanitation report*, however, it was established that although national statistics show an improvement, the level of service delivery, access to water and sanitation in poor and rural communities remained below the national average.¹⁰² Furthermore, studies indicate that close to six million children live in households that do not have access to clean drinking water on site.¹⁰³ In addition, close to four million children still use unventilated pit latrines or buckets, despite the state's goal to provide adequate sanitation to all, and to eradicate the bucket system.¹⁰⁴
96. The SAHRC further notes that the state report fails to address the impact on the right to water and sanitation within the school environment and highlights that the lack of water and adequate sanitation in schools directly impacts on the right to education, particularly

⁹⁸ As above.

⁹⁹ As above.

¹⁰⁰ As above pg 36.

¹⁰¹ As above.

¹⁰² SAHRC Section 184(3) Report, 2012-2013, pg 53.

¹⁰³ Child Gauge 2015, pg 130.

¹⁰⁴ As above pg 131.

for girls. During the SAHRC's public hearings on the right to water and sanitation, it was established that:

- a. Many learners have no access to drinking water during school and often become dehydrated and constipated;
- b. Learners do not have access to water and soap to wash their hands;
- c. Toilets in schools are filthy and children cannot sit down when they want to use the facilities;
- d. Infrastructure is inadequate as there are too few toilets for the number of learners; and,
- e. Girls do not have access to sanitary towels.¹⁰⁵ Lack of sanitation also resulted in a high level of absenteeism, particularly when girls experienced their menstrual cycles.

Recommendations to the Committee

97. The Committee should inquire from the government about the plans in place to address water and sanitation backlogs in schools and whether there is a concerted effort to address the problem. There is need to establish whether the problem is being attended to in a coordinated manner. With specific reference to girl children, there is a need to establish whether in addition to water, the issue of sanitary towels is being addressed to ensure that absenteeism is eradicated.
98. The Committee should seek information on the measures in place to monitor the cases of violence against girls due to lack of access to water and sanitation in their home, local communities and schools. The South African government should provide information on the progress made to eradicate the bucket system in all provinces of South Africa and the time frames in which full eradication can be expected.

¹⁰⁵ SAHRC Water and Sanitation Report pg 57.

7.3.3 Child Support Grant

99. The SAHRC expresses concern that despite Child Support Grant (CSG) being the largest programmes to alleviate child poverty as noted in *para 255* of the state report,¹⁰⁶ the limited money provided through the CSG is insufficient to meet the needs of a child and that in comparison to other social grants, CSG is the smallest social grant.¹⁰⁷
100. The Committee's attention is drawn to the 2013 study conducted by UNICEF South Africa and the South African Social Security Agency (SASSA) which assessed the challenges accessing the CSG.¹⁰⁸ Whilst the study concluded that CSG had a positive impact on children and families living in poverty, it was noted that there were several barriers in accessing the grant. These included:
- i) The lack of publicly accessible information about the CSG, especially relating to the means test and programmes that are available to help vulnerable children and their caregivers;
 - ii) Poor knowledge of rights and procedure, language and literacy barriers and lack of publically accessible information;
 - iii) Policy limitations which exclude certain groups of children who would ordinarily be eligible for the grant, for example, teenage mothers cannot simultaneously apply for the CSG for themselves and their infants;
 - iv) Prejudice, discrimination and fear, especially among refugees, teenage mothers, mothers with more than one child;
 - v) Lack of requisite documentation such as birth certificates, identity documents and death certificates which remains one of the most common barriers to receiving the CSG and is particularly prevalent amongst children affected by HIV/AIDS, refugee children and new mothers and their infants.¹⁰⁹

¹⁰⁶ Also see *para 256* of the State report.

¹⁰⁷ <https://africacheck.org/factsheets/separating-myth-from-reality-a-guide-to-social-grants-in-south-africa/>.

¹⁰⁸ United Nations Children's & South African Social Security Agency, *Preventing Exclusion from the Child Support Grant: A Study of Exclusion Errors in Accessing CSG Benefits*, 2013, pg 120.

¹⁰⁹ As above, pg 6 & 7.

Recommendations to the Committee

101. The Committee should ask the South African Government to undertake a review process of the amount of money paid out under the CSG. In this regard, the government should take into account the impact of poverty in South Africa and the actual cost of raising a child. The government should report back to the Committee in its next reporting cycle on the extent to which the provision of CSG has extended both in terms of reach and also in value.

Section 8: Education, leisure and cultural activities

8.1 Right to education

102. The SAHRC reiterates that the right to basic education, as enshrined in Section 29(1)(a) of the Constitution, is an unqualified socio-economic right and not subject to availability of resources or progressive realisation.¹¹⁰ Monitoring this right has been hindered by the lack of a common and consolidated national statement of the scope and content of the right and there are gaps in the understanding of what it actually means to realise the right to basic education. In January 2015, the South African government ratified the International Covenant to Economic Social and Cultural Rights (ICESCR), however, at the time of ratification, the South African government entered a declaration in respect of the right to education stating that it shall, “give progressive effect to the right to education... within the framework of its National Education Policy and available resources”.
103. Poverty and dysfunctionality reinforce exclusion within education and school fees and other hidden costs make education unaffordable. Many learners are hungry at school and basic resources such as buildings, sanitation, water, electricity and telephones are lacking in several schools. Teachers lack passion and many teachers are unqualified, underqualified, or lack appropriate training to implement the curriculum; use old teaching methods; have too many children in their classes and are disconnected from the community in which they teach.

¹¹⁰ South African Charter of Children's Basic Education Rights: briefing by South African Human Rights Commission to Portfolio Committee on Basic Education, 14 May 2013, <https://pmg.org.za/committee-meeting/15839/>

104. Education in South Africa remains characterised by high drop-out rates, poor infrastructure, poor quality of education provided and the inefficient usage of education resources.¹¹¹ These challenges are heightened based on socio-economic and racial lines, black children living in rural areas being the most negatively affected. Most schools in rural areas and townships have no electricity, access to water and sanitation, libraries and books. In addition, children with disabilities and children residing in rural areas have limited access to basic education and approximately 476 000 children with disabilities were, for example, unable to access schooling in 2010.¹¹² It is further concerning that access to *Braille* is not available to the majority of children with visual impairments nor is it readily available across the country.¹¹³ These realities continue to contribute to the perpetuation of inequality in South African society.¹¹⁴
105. The Commission, conducted inspections at various schools across the country, and found that, although some of the schools in the rural areas of the Eastern Cape province had sanitation facilities, almost all of the toilets were blocked; or broken, rendering them unusable to learners. Hygiene was further compromised by the absence of facilities for the learners to wash their hands.
106. Also identified during the inspections, the Commission noted that most schools in the Eastern Cape have serious infrastructure challenges, including classrooms, which infringe on the children's right to education.
107. In a complaint lodged with the Commission concerning the systematic challenges of lack of transportation for learners in the Eastern Cape, the Commission found that children from six (6) different schools had to travel long distances (some longer than 12km) by foot in order to access schools. The Commission also found that, many of the cases of absenteeism from the schools were attributed to the lack of transportation to school.

¹¹¹ SAHRC Charter of Children's Basic Education Rights, pg 8.

¹¹² South African Human Rights Commission, *Charter of Children's Basic Education Rights*, 2012, pg 8

¹¹³ As above.

¹¹⁴ As above, pg 8. Also see SAHRC Section 184(3) Report 2014/2015, pg 57.

Recommendations to the Committee

108. The Committee should inquire as to whether the state will adopt urgent measures to address geographical differences in the provision of basic education, in particular that the DBE investigate the underlying reasons and seek to find solutions for the discrepancies in the provisioning of quality basic education.
109. The Committee should inquire about the steps taken by the state to ensure a comprehensive transport assistance programme for poor learners as well as progress in the adoption of a national learner transport policy. Such a policy would ensure that the number of children who drop out of school or absent themselves is reduced.
110. The Committee should established through the South African government the measures that have been adopted by the state to ensure that a minimum level of infrastructure relating to school buildings, access to water, electricity, basic electrical equipment, sufficient toilets for the number of children attending the school, fences and a library are provided to all schools throughout South Africa.

8.1.2 The right to education for children with disabilities

111. In the *Equity Report*, disability is recognised as a, “serious barrier to access basic education” with 10 percent of children with disabilities not attending school. During the public hearing into the delivery of learning materials in Limpopo, it was found that there was a failure by both the Department of Basic Education (DBE) and the provincial education departments to respect, protect and fulfil the rights of learners with disabilities. It was also found that, blind or partially-sighted learners experience significant challenges in accessing primary learning materials and that no coherent plan was in place for converting learning materials into *Braille*. The SAHRC further observed that these difficulties emanate from a broad range of systemic issues including:
 - i) Lack of data sets and statistics which are relevant to the learning needs of children with disabilities;

- ii) Lack of adequate sensitisation of educators and indeed government officials as to what these children require in order to learn in an enabling environment;
 - iii) Insufficient attention paid to children with disabilities living in rural and impoverished areas; and
 - iv) Lack of coordination within government as to how these challenges should be addressed.¹¹⁵
112. In its RBE Report the SAHRC found that in some provinces, only a few schools can cater for children with disabilities and in other provinces these schools are unevenly distributed.¹¹⁶ It was also noted that some children with disabilities cannot physically access schools, leading to exclusion from education. Recently, the SAHRC found that in certain instances children with disabilities are placed in mainstream schools where there are no measures in place to reasonably accommodate such children. In addition, the state is not currently legally required to provide early childhood development (ECD) services for children with disabilities and, “only 4.5% of children with disabilities attend ECD facilities”.¹¹⁷ Furthermore, educational outcomes for learners with special needs are limited and “most special needs schools go no further than Grade 9”.¹¹⁸
113. Whilst the government’s *Education White Paper 6: Special Needs Education - Building an Inclusive Education and Training System* (2001) provides the legal framework for the equalisation of educational opportunities for children with disabilities and other special needs, it is outdated as there have been considerable developments since the paper was released in 2001. In particular, the paper does not take into account South Africa’s obligations under the CRPD which South Africa ratified in 2007.
114. The SAHRC acknowledges that there are challenges in the implementation of the inclusive education policy, largely due to the inadequacy of resources, and welcomes the state’s commitment that ‘it is committed to resolving these issues, and plans on building more full-service schools so that there is one in each district (92), as well as training more teachers on the disability strategy, with the goal of training 416 by

¹¹⁵ As above, sec 9.3.2.

¹¹⁶ As above, sec 4.3.3 *para* (xv).

¹¹⁷ SAHRC Charter pg 5.

¹¹⁸ As above, pg 18.

2014/15".¹¹⁹ However, further information on the implementation of this undertaking is required.

115. The SAHRC draws the Committee's attention to the case of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Government of the Province of Western Cape*¹²⁰ wherein a consortium of organisations that provide care for children with severe intellectual disabilities challenged the Western Cape government's failure to provide these children with appropriate education.¹²¹ Furthermore, it was alleged that the state's educational provisions for children with such disabilities are:

- i) Less than those granted to other children;
- ii) Inadequately cater for their educational needs; and
- iii) Are only made available through non-governmental organisations.¹²²

In this matter, the Court found that the provincial government failed to take reasonable measures to make provision for the educational needs of children with severe intellectual disabilities in the Western Cape thereby violating the rights of those children to "a basic education; protection from neglect or degradation; equality and human dignity."¹²³ The Court subsequently ordered the state to take reasonable measures to give effect to the rights of these children and required the state to:

- i) Ensure that every such child has affordable access to a basic education of an adequate quality;
- ii) Provide adequate funds to organisations that provide education for such children;
- iii) Provide transportation for such children to special care centres;
- iv) Enable the staff of such centres to receive proper accreditation, training and remuneration; and

¹¹⁹ Para K(b)(ii) of State report.

¹²⁰ Case no: 18678/2007 (hereafter WC Forum for Intellectual Disability v Government).

¹²¹ <https://www.crin.org/en/library/legal-database/western-cape-forum-intellectual-disability-v-government-republic-south-africa>

¹²² As above.

¹²³ Para 52 of WC Forum for Intellectual Disability v Government).

v) Make provision for the training of persons to provide education for such children.¹²⁴

In addition, the Court also directed that the government should report back within 12 months of the judgment on the progress made.

116. Failing to provide sufficient teaching and learning material, timeously, to schools compromises the curriculum and fails to expose children to basic skills and knowledge. A dearth of knowledge, training and skills by teachers at special schools, on how to interact with children disabilities, from mild to severe disabilities, further contributes to their ability to overcome daily challenges.
117. The Commission has noted, through both complaints and investigations initiated on its own accord, that the mainstreaming of children with disabilities often occurs without the provision of sufficient support, such as teaching and learning material (namely: Braille and assistive devices).

Recommendations to the Committee

118. The government should revise the White Paper 6 on Inclusive Education and develop it further, in line with the CRPD.
119. Information is required from the South African government on the number of full-service schools that have been built throughout the country that cater for children with disabilities and in which districts these are. Furthermore information should be provided the South African government on whether the target of training 416 teachers on the disability strategy and, if not, what the reasons were for non-achievement.
120. The Committee should inquire from the South African government whether appropriate steps have been taken to give effect to the judgment in the case of *Western Cape Forum for Intellectual Disability v. Government of the Republic of South Africa & Government of the Province of Western Cape* and what measures have been put in place to ensure that the measures set out by the Court are also applied throughout the country.

¹²⁴ <https://www.crin.org/en/library/legal-database/western-cape-forum-intellectual-disability-v-government-republic-south-africa>

Section 9: Special protection measures

121. The SAHRC wishes to point out that its views on special protection measures relating to children have been incorporated, where relevant, under various relevant clusters within this report.¹²⁵

¹²⁵ As noted on page 6 of the SAHRC's Equity Report: "The number of children in correctional facilities has decreased substantially over the past years as an increasing number of children are placed in secure care centres or diverted from the mainstream criminal justice system by attending diversion programmes such as life skills or anger management programmes. Little data is available on children in situations of exploitation, such as child labour, child prostitution and trafficking. More than one in ten high school learners has taken at least one illegal narcotic drug or psychotropic substance."

