ALTERNATE REPORT COALITION – CHILD RIGHTS SOUTH AFRICA

List of issues submitted to the Working Group on South Africa
Committee on Economic, Social and Cultural Rights
61st Session

9 – 13 October 2017

This submission on the List of Issues to the Committee on Economic, Social and Cultural Rights was prepared by the Alternate Report Coalition – Child Rights South Africa (ARC – CRSA). ARC – CRSA is a civil society alliance on children's rights in South Africa. This report is written with the 2017 complimentary report to the African Committee of Experts on the Rights and Welfare of the Child (ACREWC) as a basis. The contributors of this report are listed in Annexure A at the end of this report.

This report was edited and compiled with input from

1. **Carol Lynn Bower** - Consultant
2. **Faranaaz Veriava** – Section 27 (http://section27.org.za/**)**
3. **Joan van Niekerk** – Consultant, Child Rights and Child Protection
4. **Liesl Muller** – Lawyers for Human Rights (http://www.lhr.org.za/)
5. **Lori Lake** - Children's Institute (http://www.ci.uct.ac.za/)
6. **Mandivavarira Mudarikwa** – Legal Resources Centre, (http://lrc.org.za)
7. **Paula Proudlock** - Children's Institute (http://www.ci.uct.ac.za/)
8. **Sasha Stevenson** - Section 27 (http://section27.org.za/)
9. **Sheniece Linderboom** - Section 27 (http://section27.org.za/)
10. **Dr Stefanie Röhrs**- Children's Institute (http://www.ci.uct.ac.za/) and
11. **Zita Hansangule** – Centre for Child Law (http://www.centreforchildlaw.co.za/)

Introduction

1. South Africa's child rights protection framework is relatively comprehensive. The Government of South Africa (GOSA) and civil society have for a number of years invested significantly in its development. We also note the existence of strong jurisprudence from the superior courts – High Courts, the Supreme Court of Appeal and the Constitutional Court – affirming and protecting children's rights as contained in the Constitution. We recognise the strong practice of public participation in the development of law and policy relating to children. Furthermore, we commend the social assistance available to poor children and families, noting the positive impact on children's lives. However, despite the above laudable progress, some aspects of the framework are problematic, and the lives of the majority of children in South Africa are characterised by serious challenges. It is thus important to set out our views on these challenges and provide some questions for the Committee in order to ensure that the review of South Africa's implementation of the International Covenant on Economic, Social and Cultural Rights in inclusive of children's experiences.

Poverty and Inequality and the role of social assistance

2. The majority of South Africa's children live in poverty. Of the total population of 18.5 million children, 11.7 million (63%) live below the Statistics South Africa upper bound poverty line (This is equivalent to R923 per capita in 2014). The level of inequality is significant, the national average masks striking provincial and rural-urban variations in child poverty. For example, in the KwaZulu-Natal, Eastern Cape and Limpopo provinces, over 75% of children live in poverty while in the Gauteng and the Western Cape provinces the rate is 39%.
3. When looking at the lowest poverty line, the food poverty line (equivalent to R415 per capita per month in 2015 Rands), nearly a third of children (30% or 5.5 million) still live below this line. These children are not receiving the minimum nutritional requirement of 2100 kilocalories per person per day. These children's basic nutritional needs are not being met and as a result their rights to education, food, development and survival are severely compromised. Children tend to be disproportionately concentrated in poor households with 62% living in households that fall into the lowest income quintiles (quintiles 1 and 2), compared to 44% of adults. Thirty percent of children (or 5.5 million) live in households where the adults (their care-givers) are not employed.

Article 3

4. GOSA's Report is largely silent on the significant issue of violence against children, and the fact that children do not receive the same amount of protection from violence as do adults. Corporal punishment in the home has not been explicitly prohibited in law, and the common law defence of reasonable chastisement is still open to parents who assault their children. This in in contravention of provisions against discrimination on any grounds as enshrined in article 3 and expanded on in General Comment 16 (*Substantive Issues Arising in The Implementation of the International Covenant on Economic, Social and Cultural Rights*, 2005). GOSA has a duty to bring South Africa law in line with the international obligations by amending the Children's Act to include prohibiting corporal punishment in the home.
5. In para 62, GOSA highlights crime-awareness and child protection campaigns, but these have been shown to be an ineffective strategy to reduce violence. The recent Optimus Study on Child Abuse, Violence and Neglect in South Africa, the first national based prevalence study in the country, involving over 10,000 participants aged 15-17 years does not confirm that current strategies are reducing levels of violence against children. GOSA has a duty to prioritise and resource programmes to prevent violence, and should implement a coordinated, resourced and evidence-based violence-prevention strategy.

Suggested questions:

We recommend that the Committee ask:

6. **What steps have been taken to legislate against the use of corporal punishment in the home as recommended by the United Nations Committee on the Rights of the Child (UNCRC) in 2005 and 2016, the African Committee on the African Committee of Experts on the Rights And Welfare of the Child (ACREWC) in 2015 and the Universal Periodic Review (UPR) of 2007, 2012 and 2017?**
7. **What progress is there towards coordinating and resourcing an evidence-based violence prevention strategy?**

Article 6

The Child Support Grant

8. Within this context of high levels of poverty and unemployment, the important role of social assistance comes into sharp focus. While child poverty is still unacceptably high, it has been steadily declining from 79% in 2002 to 63% in 2014. This decline is primarily attributed to the availability of social grants and the expansion in reach of the Child Support Grant over this same period. Investing further in the CSG would therefore have a positive impact on reducing child poverty further.
9. However, the value of the CSG is extremely low and is not sufficient to cover even the basic nutritional needs of a child. Both the UN and AU Committees on Children's Rights have recently called upon GOSA to progressively increase the value of this grant.
10. In mid-2017 the CSG remains by far the lowest social grant in South Africa and its value remains below the lowest poverty line (the food poverty line). Furthermore, the annual "inflation related" increases to the value of the CSG over the past few years have only just kept pace with headline inflation rates and have not kept up with food price inflation rates. GOSA has therefore not heeded the recommendations to progressively increase the value of the grant and has no stated intentions to do so.

Foster Child Grant

11. The Foster Child Grant plays an important role in supporting relatives caring for orphaned children. However, the foster care system is unable to process the majority of orphans in need due to the very high number of orphans and the labour intensive requirements of the formal child protection system (social worker investigations and court inquiries). As a result, less than a third of maternal orphans in need are currently being reached with the FCG and the numbers are declining each year. (In 2015 there were at least 1.2 million maternal orphans living with relatives, yet only 400 000 were able to access the FCG). Civil society has for many years been calling for the necessary amendments to the Social Assistance Act and the Children's Act to create an alternative less labour intensive system that would enable the majority of relatives caring for orphans in poverty to access an adequate social grant without delay.
12. The number of children on the FCG has been declining over the past 5 years. At the end of March 2017, 440 000 children (under 21 years) were accessing the Foster Child Grant (FCG)[1] of R860.[2] While the number of children accessing the FCG increased from 50 000 in 1998 to 550 000 in 2012, there has been a steady decline since 2012.[3] The increase was attributed to government's decision

[1] Source: SOCPEN (Governments social grants and pension database) data analysed by K Hall, Children's Institute, UCT.
[2] As of 1 April 2017 it is R890.
[3] Hall et al 'Social assistance for orphaned children living with family in Delany et al (eds) *South African Child Gauge 2016.* Children's Institute, University of Cape Town at 70

in 2002 to promote the use of the FCG (instead of the CSG) as the preferred grant for orphans living with relatives.[4] The decline since 2012 is attributed to the inability of the child protection system to place South Africa's uniquely high number of orphans into foster care. Table 1 below shows the declining numbers.

Table 1 – Number of children accessing the Foster Child Grant

Year	Number of FCGs in payment	Decline
31 March 2012	536 747	+23 873
31 March 2013	532 159	-4588
31 March 2014	512 055	-20 104
31 March 2015	499 774	-12 281
31 March 2016	470 015	-29 759
31 March 2017	440 000	-30 015

Source: SOCPEN (Governments social grants and pension database) data analysed by K Hall, Children's Institute, UCT.

13. The crisis within the foster care system was brought to the attention of the High Court in 2010 by civil society organisations and the state was ordered to design and implement a comprehensive legal solution by December 2014. In December 2014 however GOSA approached the High Court for an urgent extension of the timeframe to December 2017. The Court granted the extension due to the state's insistence that there was a 'national crisis'.
14. The 2016 Report on the Review of the Welfare White Paper – the product of a Ministerial Committee, found that "[t]he strain on the foster care system results in children who are abandoned, abused or neglected not receiving the level of service they require, as a great deal of social workers' time is spent on dealing with the administrative and court processes relating to foster care".[5] The report supports the proposal of a larger CSG for orphans in the care of relatives instead of the FCG (this proposal is contained in the draft Social Assistance Bill), and recommends the fast-tracking of amendments to section 150 of the Children's Act (contained in the draft Children's Act Amendment Bill), the effect of which will be to ensure that orphans living with relatives will benefit from an increased grant via the larger CSG and will only be referred to a social worker if he or she has care and protection needs.

[4] Hall et al above at 69
[5] Department of Social Development *Comprehensive Report on the Review of the White Paper for Social Welfare, 1997* (March 2016) 364.

15. Despite these two complementing reform proposals for a comprehensive legal solution being in the pipeline for the past 5 years, there appears to be a lack of political prioritisation to table the required Amendment Bills in Parliament. It appears therefore that the state will not be able to meet the court deadline in December 2017, despite having had 7 years to find a solution to the 'national crisis'.

Suggested Questions

16. **GOSA should be asked to report on how it intends to progressively increase the value of the Child Support Grant to ensure it at least covers the basic nutritional needs of a child.**
17. **GOSA should be asked to provide an explanation as to why the FCG numbers are declining and to provide data on the number of new FCGs per year?**
18. **GOSA to explain its plans and timeframes for implementing a durable and comprehensive legal solution to the foster care crisis, given that the Court deadline for said solution is December 2017.**

Article 10

Child Marriages

19. One of the fundamental entrenchments of article 10 is that marriage must be concluded with the free consent of the intending spouses. In the GOSA's state report, the issue of child marriages is not addressed at all.
20. The minimum age of marriage is set in common law at 12 for girls and 14 for boys. This is the age below which no child can enter into any type of marriage including a customary marriage. Section 12(2) of the Children's Act prohibits the marriage or engagement of any child below the minimum age set by law, namely 12 for girls and 14 for boys. There are different requirements that apply in relation to consent to marriage of a child. The Minister of Home Affairs' consent is required for boys aged between 14 - 17 years (for customary or civil marriages). The requirement for girls differs for different age groups and different kinds of marriages. Girls aged 12 - 14 years that wish to enter into civil marriages require the consent of the Minister of Home Affairs. Girls aged 15 - 17 years only require the consent of their parents. If girls aged 12 - 17 years wish to enter into customary marriages the consent of the Minister of Home Affairs is required. The Civil Union Act 17 of 2006 does not allow children to enter into civil unions. Children are, as a consequence, allowed to enter into civil and customary marriages but are not allowed to enter into same sex marriages in terms of the Civil Union Act.
21. The inconsistencies in marriage laws violate a number of protections entrenched in the convention regarding the provision of equality, the need for marriage to be entered into with the consent of the intending spouses, right to health and right to education among others.
22. The South African Law Reform Commission (SALC) began a process of carrying out stakeholder engagements and developing a discussion paper and draft legislative document on child marriages. The process stalled in 2016 after a discussion paper and draft Bill on the "prohibition of forced marriages and child marriages" was sent out for public comment. This delay is disappointing in light of the urgent need to affirm the constitutional rights of and to protect children vulnerable from harmful cultural practices such as unlawful child marriages.

Suggested Questions

We recommend that the Committee ask the GOSA:

23. **What steps have been taken to prioritise SALC processes relating to engagements on a discussion paper and Bill on the prohibition of forced marriages and child marriages with the aim of beginning a governmental and eventually a parliamentary process of introducing new legislation?**
24. **What steps are being taken to ensure that the SALC process will remove and/or amend current legislative provisions in the Marriages Act and Recognition of Customary Marriages that allow children to be legally married and set a uniform age of marriage as well as remove the discriminatory provisions of marriage between boys and girls?**

Birth Registration

25. In paragraph 90 of the state report, the GOSA states, among other things, refugees are entitled to apply for birth certificates for their children born in South Africa.
26. We note that in 2016 the UNCRC made several recommendations to South Africa regarding barriers to birth registration. It recommended that the GOSA "*review and amend all legislation and regulations relevant to birth registration and nationality to ensure their full conformity with the Convention, including through the removal of requirements that may have punitive or discriminatory impacts on certain groups of children*".
27. The punitive measures referred to here are twofold. First, the regulations accompanying the new Births and Deaths Registration Act (BDRA) have introduced a fee for late registration of births. All births registered after 30 days of the birth are considered late. These fees are reportedly not being implemented yet, but the legislation already lays out the basis and this is concerning as it may create a barrier for those who cannot afford the fee. Secondly, the GOSA has issued a directive by which all children who are born to one foreign parent are required to produce proof of paternity in the form of a DNA test if the birth is registered after 30 days. The tests cost approximately R1 200 to R1 800 and applicants are expected to cover the cost. The test can only be done by one service provider, the National Health Laboratory Service (NHLS) which can only be found in major cities. Where parents cannot afford to pay for the test or travel to a major city to have it done, births remain unregistered. There is currently no exception to this rule. Many children go unregistered, because of this expensive exclusionary practice.
28. With regards to discrimination, the BDRA (in regulation 3, 4 and 5) lists the requirements and documents, without which no application for birth registration will be accepted. These include, amongst others, a valid passport and permit of the parent; the fingerprints of the parents if alive; an affidavit by a South African citizen if the birth occurred outside a hospital; and the presence of the mother if the child is born out of wedlock. This means that the following children cannot be registered:
29. Children of undocumented parents (whether South African or foreign) or parents whose permits have expired;
    - 29.1 Children who are in the care of next-of-kin where the parents are alive;
    - 29.2 Children born at home where there was no witness or the only witness was a foreign national; and
    - 29.3 Children in the care of single fathers where the mother has abandoned the child or is undocumented.
30. Around 10% of children in South Africa remain unregistered and hundreds of stateless children are identified each year. Birth certificates and identity documents are crucial as the lack thereof can result in the denial of fundamental rights and the access to nationality, education, social grants and health care.

Suggested Questions

31. **The GOSA should explain what measures have been undertaken to ensure that the births of children not registered within 30 days after the date of birth would receive birth registration?**
32. **The GOSA should also provide details on to the Committee on measures that have taken to ensure birth registration of stateless children and children at risk of statelessness, including those born to parents who are undocumented non-nationals.**
33. **The Committee should ask the GOSA to provide details on measures taken to improve access by refugee, asylum-seeking and migrant children, in particular unaccompanied children, to birth certificates and other enabling documents; and to social services such as health care, education and social security without discrimination; as well as protection from exploitation, violence and arbitrary arrest and detention.**
34. **What steps has the GOSA taken to address the impediments posed by the fee and the requirement of DNA tests for late registration of birth and how this limits the access of certain children to birth certificates? To the extent that DNA tests are necessary, what steps have been taken to provide a state budget for these tests?**
35. **What steps are being taken to remove the discriminatory requirements in regulation 3, 4 and 5 of the BDRA or to remove the absolute ban on acceptance of applications of birth registrations and allow such applications with the use of discretion by either the Department of Home Affairs or a Children's Court?**

Article 11: **The right to an adequate standard of living, including adequate food, clothing and housing**

36. In para 105 and 106, GoSA provides an optimistic view of its efforts to promote food security and the right to food. Yet this alternative report raises ongoing concerns about **household food security and child malnutrition**: In 2016, 20% of households had run out of money to buy food in the past 12 months[6], and only 23% of children 6 –23 months received a minimum acceptable diet[7]. It is therefore not surprising that 31% of children who died in hospital were severely malnourished,[8] and a further one in four children (27%) aged 0 - 3 years are stunted, indicating chronic malnutrition with long-term implications for schooling and cognitive development.
37. While the Mother-and-Baby-Friendly Hospital Initiative helps women initiate **breastfeeding,** only 25% of infants 4-5 months are exclusively breastfed.[9] Greater investment in community-based breastfeeding support is therefore needed[10] and support for working mothers to ensure breastfeeding is sustained. Similarly, while Regulation 991 aims to regulate the marketing of breastmilk substitutes, there is widespread ignorance and apathy amongst health professionals, and continued violations by industry. Overweight (15%) and obesity (6%) are also a concern. [11] GOSA also needs to regulate the aggressive marketing of unhealthy foods to address rising obesity in children.

[6] Statistics South Africa (2016) *Community Survey 2016. Statistical Release PO301.* Pretoria: Stats SA.

[7] National Department of Health, Statistics South Africa, Medical Research Council and ICF (2017) *South African Demographic Health Survey 2016. Key Indicator Report.* Pretoria: NDOH, Stats SA, MRC & ICF.

[8] Unpublished data from the Child Health Problem Identification Programme that audits hospital deaths at 75% of facilities countrywide.

[9] National Department of Health, Statistics South Africa, Medical Research Council and ICF (2017) *South African Demographic Health Survey 2016. Key Indicator Report.* Pretoria: NDOH, Stats SA, MRC & ICF.

[10] *Tylleskär,* T et al. (2011) Exclusive breastfeeding promotion by peer counsellors in sub-Saharan Africa (PROMISE-EBF): a cluster-randomised trial The *Lancet, Volume 378(9789): 420- 427*

[11] Shisana O, D Labadarios, T Rehle, L Simbayi, K Zuma, A Dhansay, P Reddy, W Parker, E Hoosain, P Naidoo, C Hongoro, Z Mchiza, NP Steyn, N Dwane, M Makoae, T Maluleke, S Ramlagan, N Zungu, MG Evans, L Jacobs, M Faber and the SANHANES-1 Team (2013) *South African National Health and Nutrition Examination Survey(SANHANES-1)*. Cape Town: HSRC Press

We welcome moves to introduce a tax on sugary beverages. Consideration should also be given to ring-fencing the revenues from this tax to subsidise basic, healthy foods such as milk and placing taxes on ultra-processed foods whose consumption is driving the **obesity epidemic**.[12]

38. Poor children continue to be adversely affected by **rising food costs w**hile the Child Support Grant (CSG) valued at R350 in 2016 falls below the food poverty line (R415 in 2015) and is failing to keep pace with food price inflation. So current trends are likely to worsen in the context of recession and rising unemployment.
39. Greater efforts are needed to identify and **support at-risk children** whose growth is faltering, and to ensure that hungry or malnourished children are linked to food provision, community health services and social assistance. It is therefore of concern that the dedicated allocation for nutrition in all provinces combined amounts to only 0.5% of the primary health care budget from 2013/14 to 2018/19.[13]

Suggested questions:

40. What steps is GoSA putting in place to ensure household food security and address the high prevalence of low birth weight and stunting? This should ideally include renewed efforts to enforce regulation 991 and support sustained breastfeeding in communities and the workplace, identify and providing nutritional support for children who are failing to thrive, increasing the value of the child support grant and the budget allocated for nutrition services.

Article 12

Access to Health

Emergency Medical Treatment

41. In para 115, the report refers to the inclusion, in the right of access to health care services, to the right not to be refused emergency medical treatment. While this right is found in the Constitution and the National Health Act 61 of 2003, access to emergency medical services remains difficult in many places across the country and in particular in rural areas. A report published in 2015 following an investigation by the South African Human Rights Commission into the lack of emergency medical services in the Eastern Cape can be found here: http://section27.org.za/2015/10/ems-in-the-eastern-cape/.
42. The National Department of Health has, for years, been working on regulations to standardise emergency medical services throughout the country but no regulations have been published.
43. We also note with concern that ambulance crews have extremely limited training in the **management of paediatric emergencies** and most EMS services do not carry the necessary equipment to manage the resuscitation and safe transport of children. It is therefore vital to scale up training in paediatric emergency care and triage, and to ensure that paediatric staff and equipment is specified in the national standards.
44. In addition many hospitals continue to turn away children due to a shortage of beds in **intensive care**. It is therefore important to prioritise the development of paediatric facilities and address the shortage of paediatric and neonatal staff.

Suggested questions

45. **What steps are being taken to improve access to emergency medical services and ensure realisation of the right not to be refused emergency medical treatment at provincial level?**

[12] Monteiro, C., Cannon, G., Moubarac, J., Levy, R., Louzada, M., & Jaime, P. (2017). The UN Decade of Nutrition, the NOVA food classification and the trouble with ultra-processing. *Public Health Nutrition,* 1-13. doi:10.1017/S1368980017000234

[13] Unicef & International Budget Partnership (2016) *Children and South Africa's Health Budget.*

46. **What steps are being taken to standardise access to emergency medical services and ensure realisation of the right not to be refused emergency medical treatment at national level?**

47. **What steps are being taken to ensure that children's specific needs are addressed in emergency medical services and intensive care?**

Mental Health

48. The tragedy of Life Esidimeni saw the deaths of over 100 mental health care service users following a decision to rapidly and carelessly "deinstitutionalise" a large group of chronic mental health care users. A report on this matter can be found here: http://www.ohsc.org.za/images/documents/FINALREPORT.pdf.

49. The report revealed systemic failures in the mental health care system in Gauteng Province, and notes the suspicion that these failures are not confined to this province. While the State has been working on the implementation of the recommendations of the Ombud in Gauteng, action in regard to a review of mental health care services across the country and steps taken to ensure that the Life Esidimeni tragedy is not repeated elsewhere are unclear.

50. 80% of all mental health problems start in the first 18 years of life, and an estimated 17% of young South African's have a diagnosable and treatable mental health disorder[14], so this is a critical point for prevention, early intervention and treatment services. Yet there are fewer than 50 child & adolescent psychiatrists in South Africa, and of those only 15 in state-funded posts. Most provinces do not have child and adolescent psychiatrists or in-patient paediatric facilities; and there is no mention of treatment services in the Department of Health's Adolescent and Youth Health Policy. [15] One in three children are sexually-abused, and many experience complex and continuous trauma, yet therapeutic services are under-resourced and thinly stretched with many children falling through the cracks – especially in rural areas.[16]

51. Children with behavioural difficulties are often failed by a system that is meant to protect them because there aren't any appropriate services that can be utilised to meet their specific needs. Mainstream residential facilities struggle to manage children with behavioural difficulties in the environments and with the programmes that they currently provide. Institutions providing mental health care services cannot provide appropriate services either. There is currently no government policy or strategy setting out care services for these children. This state of affairs is worsened by the fact that there is no government department that is willing to take responsibility for the care of and/or provision of services to these children. This dire lack of services and assistance results in these children ending up in the criminal justice system. In addition, because these children are often sent from pillar to post they are never able to settle down and consistently receive appropriate education.

Suggested questions

52. **What steps has the State taken to review mental health care services across the country and improve access to and the quality of these services – with a particular focus on prevention and treatment programmes for children and adolescents?**

53. **What are GOSA's plans to ensure that children with behavioural difficulties receive the care needed to meet their specific needs?**

---

[14] Kleintjes S., Flisher A. J., Fick M., Railoun A., Lund C., Molteno C. *et al*. (2009) The prevalence of mental disorders among children, adolescents and adults in the western Cape, South Africa. *South African Psychiatry Review* 9, 157–60.

[15] Department of Health. Policy guidelines for youth and adolescence health. In: Health Do, editor. Pretoria: Government Printers; 2001.

[16] Mathews S, Berry L & Marco J (2016) *An outcome assessment of a residential care programme for sexually-abused children in South Africa. C*ape Town: Children's Institute, University of Cape Town.

National Health Insurance

54. National Health Insurance (NHI) is a long promised health system reform intervention. While we support universal health coverage unreservedly, civil society has repeatedly raised concerns about the lack of improvement to the health system in preparation for NHI, the lack of monitoring of "pilot districts", the lack of detail in policy documents, the lack of planning for appropriate governance and controls to prevent corruption in relation to the National Health Insurance Fund, the short time period provided for the roll out of NHI, among other concerns. A report reflecting these concerns can be found here: http://section27.org.za/wp-content/uploads/2017/01/GS-NHI-report-2016-v2-print.pdf.

55. Community Health Workers are a bedrock of universal health coverage. In South Africa, Community Health Workers remain irregularly employed on unequal and low stipends with unsafe working conditions, little monitoring and minimal support. While a Community Health Worker policy (Ward Based Primary Health Care Outreach Team Policy) has been discussed for years, the policy that was eventually approved by Cabinet bears little resemblance to those versions of the policy that went before and on which consultation was conducted and has little implementable detail. The draft Implementation Plan was not developed with input from National Treasury and it is unclear whether the programme will be funded. The position of this vital cadre of health care worker thus remains unclear.

56. The **re-engineering primary health care** (PHC-R) and associated Ward-based Outreach Teams, Integrated School Health Programme and District Clinical Specialist Teams – have the potential to improve the reach and quality of maternal and child health services provided they are adequately staffed and implemented with fidelity.

57. The **District Clinical Specialist Teams** are intended to improve clinical governance, enhance quality of care, and drive intersectoral collaboration in response to the local burden of disease. While there are examples of promising practice, many teams are understaffed and only 40% of DCSTs had appointed a paediatrician by 2016.[17] The Department of Health should as a matter of urgency ensure that all DCSTs have their full paediatric complement. In addition, the department should appoint provincial paediatricians to improve provincial co-ordination and leadership for child health.

58. The Ward-based PHC outreach teams have the potential to extend the reach of health care services to vulnerable children and families. the proposed ratio of 1 CHW: 250 households is simply not sufficient to enable regular home visits and follow-up care[18]. We also note that the Policy Framework and Strategy for Ward-based PHC Outreach Teams passed by the National Health Council in 2016, outlines a narrow role for CHWs – focusing on prevention and health promotion, despite evidence that CHWs can treat infectious childhood diseases, such as pneumonia[19]. It is therefore essential to expand both the numbers of CHWs and their scope of

[17] Personal communication. Neil McKerrow

[18] Leon N, Sanders D, Van Damme W, et al. The role of 'hidden' community volunteers in community-based health service delivery platforms: examples from sub-Saharan Africa. Global health action 2015; 8: 27214.
White J, Mason J. Assessing the impact on child nutrition of the Ethiopia community-based nutrition programme. New Orleans: Tulane University, 2012.
World Health Organisation. Essential Nutrition Actions: Improving maternal-newborn-infant and young child child health and nutrition. Geneva: WHO, 2012.

[19] Sazawal S & Black RE (2003) Effect of pneumonia case management on mortality in neonates, infants, and preschool children: a meta-analysis of community-based trials. Lancet Infect Dis 3(9):547-56.
Dawson P, Pradhan Y, Houston R, Karki S, Poudel D, Hodgins S. From research to national expansion: 20 years' experience of community-based management of childhood pneumonia in Nepal. Bull World Health Organ 2008;86(5):339-43.

practice to ensure meaningful gains for child health, and to amend Medicines Control Council and Pharmacy Council regulations to enable CHWs to dispense these simple preventative medicines. In addition, the CHW programme remains uncoordinated and underfunded, and this remains a huge impediment that limits children's access to preventative and primary health care.

59. Quality of care remains a concern. In 2011, the NDoH introduced **National Standards for Health Care Facilities** which offer a potentially powerful mechanism for driving quality improvement processes. Similarly, we welcome the vision of an **ideal clinic** which "opens on time", "is very clean", and "treats people with dignity" yet there appears to be little focus on children and adolescent's specific needs and what is needed to develop child and family-friendly services at clinics and community health centres and hospitals. It is therefore vital that the Norms and Standards for Health Care Establishments, Ideal Clinics and other guidelines such as the proposed "comprehensive package of health services" and "essential drug list" explicitly factor in children's needs and articulate with, and give effect to, the proposed essential package of care for children and adolescents. In particular, adolescent friendly sexual and reproductive health services are not adequately considered, which has significant implications for teenage pregnancy and growing adolescent HIV-rates.[20]

60. The development of an Essential Package of Care for children and norms and minimum standards for child health services needs fast-tracking. It is vital for the health department to specify staffing, resources and clear targets to ensure that child health services are adequately resourced. This essential package needs to be integrated with existing accountability and quality improvement mechanisms such as the National Core Standards and Office of Health Standards Compliance.

<u>Suggested questions</u>

61. **Very little detail has been provided in publically available documents about the package of care, funding, or governance and control of the NHI Fund. Does the State intend to provide clarity on these matters for public comment prior to the passage of legislation on NHI?**
62. **How does the State intend to protect against corruption in relation to the NHI Fund?**
63. **What lessons has the State learned in the process of piloting NHI that can be applied to the implementation of NHI more broadly?**
64. **How does the State anticipate achieving an extremely fast implementation of NHI, in the context of other more developed health systems that have taken decades to implement similar interventions?**
65. **When will the State implement a policy that in reality ensures a standardised, appropriately remunerated, integrated, supported and monitored cade of Community Health Workers to support universal health coverage?**
66. **When will the State define an essential package of care for children and how will it ensure this is integrated into the national core standards and essential medicines list, and that children's best interests are represented and addressed at national, provincial and district**

Lassi ZS, Haider BA, Bhutta ZA. Community-based intervention packages for reducing maternal and neonatal morbidity and mortality and improving neonatal outcomes. Cochrane Database Syst Rev 2010; (11): CD007754.

[20] Mathews C, Eggers SM, de Vries PJ, Mason-Jones AJ, Townsend L, Aaro LE, *et al.* Reaching the hard to reach: longitudinal investigation of adolescents' attendance at an after-school sexual and reproductive health programme in Western Cape, South Africa. *BMC Public Health* 2015;15:608

level – for example through the National Health Commission, Office of Health Standards Compliance?

Article 13 and 14

Right to Education

Progressive realisation v immediate realisation

67. In Para 139, the report refers to the Declaration in relation to Articles 13 and 14 of the ICESCR in that government will give 'progressive effect to the right to education… within the framework of its National Education Policy and available resources'. This Declaration is tantamount to a reservation. It further fails to acknowledge the wording of section 29(1)(a) of the Constitution as an unqualified right and the South African jurisprudence of the right as a right that must be 'immediately realised' and not 'progressively realised.

68. Civil society organisations that have been involved in advocacy in respect of the right to education have objected to the Declaration as being inconsistent with the South African state's obligation in respect of the right.[21]

69. In addition, there has accrued a substantial jurisprudence in respect of "immediate realization" as opposed to "progressive realization" beginning in the Constitutional Court case of *Governing Body of the Juma Musjid Primary School & Another v Ahmed Asruff Essay NO and Others* ("*Juma Musjid"*) in which the Court stated that – [22]

It is important, for the purpose of this judgment, to understand the nature of the right to a basic education" under section 29(1)(a). Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be 'progressively realised' within 'available resources' subject to 'reasonable legislative measures'. The right to a basic education in section 29(1)(a) may be limited only in terms of a law of general application, which is 'reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom'. This right is therefore distinct from the right to 'further education' provided for in section 21(1)(b). The state is, in terms of that right, obliged, through reasonable measures, to make further education 'progressively available and accessible'. (Own emphasis.)

70. The precedent established in *Juma Musjid* has been followed in several subsequent right to education cases. In the Supreme Court of Appeal (SCA) judgment in the case of *Minister of Basic Education and Others v Basic Education for All and Others ("BEFA")*[23] the court held that every learner is entitled to a textbook in every subject at the commencement of the academic year. The *BEFA* judgment further confirmed that the right as an unqualified socio-economic right is distinguishable from the other qualified socio-economic rights in the South African Constitution (such as health care and housing) and is therefore "immediately realisable".[24] The immediate realisation principle was further adopted in the school furniture case of *Madzodzo and Others v Minister of Basic Education and Others*[25], and the school transport case of *Tripartite Steering Committee and another v Minister of Basic Education and Others*[26].

71. This significant jurisprudence in detailing the state's obligations is ignored in the state report,

---

[2121] SECTION27 et al 'Joint Statement: SA government's ratification of the ICESCR – SA govt's declaration on education clause mars the welcome ratification of the international covenant on economic, social and cultural rights (ICESCR) (21 January 2015).

[22] 2011(8) BCLR 761 (CC) para 37.

[23] [2016] 1 All SA 369 (SCA).

[24] See paras 36 -37 and 44.

[25] [2014] 2 All SA 339 (ECM), 2014 (3) SA 441 (ECM) para 18.

[26] 2015 (5) SA 107 (ECG).

instead it notes at para 159 the case of *Governing Body of Rivonia Primary School v The MEC of the Gauteng Department of Education* as the *only'* important court decision' to improve the realisation of the right to education.

Suggested Questions

72. **How does the state reconcile its Declaration with the jurisprudence of the Constitutional Court and the lower court's in respect of the obligation to immediately *realise the right to basic education?***

Learner Teacher Support Material

73. The National Department of Basic Education has chosen a curriculum which by design relies heavily on learner teacher support material (LTSM) for implementation. This includes textbooks, workbooks, stationery and teacher guides. LTSM is supposed to be funded by the provincial department or, in the case of no-fee public schools, procured directly by the provincial department.
74. In para 150 the state report speaks briefly to curriculum however it fails to provide detail on the implementation and monitoring of delivery of LTSM as a key facet of the right to basic education. Despite court orders there are still thousands of textbook, workbooks and stationery shortages reported to non-governmental organizations across the country, this was confirmed by the 2016 report by the Public Service Commission on the availability of learning and teaching support material. [27]
75. There is an urgent need for regularisation of the ordering, procurement and delivery process to ensure that learners have the LTSM they require. There have been three separate investigations into the non-delivery of LTSM in South Africa, these are: the Metcalfe Report, the Presidential Task Team Report and the South African Human Rights Commission (SAHRC) Report. In July 2012, Presidential Task Team report recommended that the Department of Basic Education (DBE) must develop a *national* policy for the standardisation for the procurement and distribution of LTSM. Despite a draft policy being released for comment in 2014, there has been no further progress towards formalizing a policy or regulations setting out the norms and standards for LTSM.
76. With regards to learners with disabilities, braille workbooks are being provided to learners with visual impairments in special schools, but there is no programme for provision of braille textbooks, which are considered by the DBE to be an essential component of the curriculum.

Suggested questions

77. **What are the states intentions to publish a finalised LTSM policy?**
78. **What steps are being taken around the development of a comprehensive, costed programme for provision of LTSM to learners with disabilities, in particular blind learners that respond to those learners' needs in special schools, full service schools and public ordinary schools?**

---

27 http://www.psc.gov.za/documents/reports/2016/Consolidated%20report%20on%20service%20delivery%20inspections%20conducted%20in%20the%20department%20of%20correctional%20service.pdf

School Infrastructure

79. In Para 154 GOSA lauds its Accelerated School Infrastructure Delivery Initiative (ASIDI) programme and the complementary Provincial Schools Build Programme (PSBP) as measures aimed at ensuring infrastructure delivery in compliance with the norms and standards for school infrastructure. However, recent reports to Parliament by the DBE and National Treasury reveal severe underspending of the ASIDI grant. The DBE's slow pace in spending the ASIDI grant, and the subsequent decrease in funds allocated to the grant by National Treasury do not bode well for successful implementation of the norms and standards. It demonstrates that proper planning and implementation across government departments is not taking place.
80. The School Infrastructure Norms and Standards require each provincial Member of the Executive Council (MEC) for Education to submit annual implementation plans and progress report to the Minister of Basic Education. The MECs' latest reports lack the detail needed to ensure properly coordinated and successful school infrastructure delivery.
81. The Norms and Standards also have certain loopholes and deficiencies which the Minister has refused to address and which are currently the subject of litigation.

Suggested Questions

82. **What steps are being taken to urgently address the deficits within the School Infrastructure Norms and Standards?**

83. **What steps are being taken by the Provincial MECs of Education to ensure that annual progress reports and implementation plans are thorough and cover all necessary aspects?**

84. **What steps are being taken by GOSA to encourage various government departments and agencies co-ordinate their activities in a way that proper planning and implementation can take place?**

Inclusive Education and incorporation of special need education

85. In para 146 and 148 GOSA highlights significant progress being made in improving access to education for children with disabilities through the policy on inclusive education. This is embodied in the White Paper 6 on inclusive education. This is embodied in White Paper 6 on Inclusive Education which the DBE published in 2001 as part of a drive to eliminate barriers to access to education. The White Paper sets out a progressive framework for systemic changes required to establish a truly inclusive education system in South Africa. Unfortunately, the legal status of the White Paper is unclear and most of the steps set out in the White Paper have either not been implemented or have been inadequately implemented. This was noted in government's own Twenty Year Review of Disability in South Africa developed within the Office of the President of South Africa. [28]

[28] The Presidency 'Twenty Year Review South Africa 1994 -2014 – Background Paper: Disability"'(2014).

86. As a result, the education system remains mostly inaccessible to learners with disabilities, and entirely untransformed to be truly inclusive. Brief descriptions of the barriers to access experienced by children with disabilities follow.

87. Children with disabilities experience discriminatory admission policies as they attempt to access ordinary schools and special schools. Special schools have long waiting lists of children applying for entry. The consequence is worst felt by those in rural areas where full-service schools are not readily available and where special needs schools are far in between.

88. The differentials in the available data make a proper statistical analysis impossible, but it is clear that thousands of learners with disabilities are out of school because schools are unable to adequately cater for their needs or parents are not aware that their children are educable. Once learners are in school, there is insufficient funding provided for learners because a proper budgetary framework for special and full-service schools is yet to be established. A conditional grant envisioned by the White Paper to provide ring-fenced funding for non-personnel expenditure has never been established. There are also no special schools that have been categorized as "no fee-paying schools", therefore learners with disabilities that attend special schools do not have access to free basic education. Poor families are able to apply for fee exemptions but either do not know about this or struggle with the procedures.

89. The provision of school transport does not account for the needs of learners with physical disabilities and the heightened risks and difficulties associated with these learners getting to school. Transport is provided to learners in unsafe, inappropriate vehicles that have not been adapted to meet the needs of the learners concerned. In addition, funding norms and standards comprehensively addressing the transport needs of learners with disabilities have not been adopted yet.

Suggested questions:

90. **What measures are being taken to fund and resource; implement; monitor and evaluate its inclusive education policies and guidelines to address learner diversity and provide appropriate support to teachers and learners to achieve quality learning outcomes?**

Access

91. At paras 142 & 143 GOSA notes the legislative amendments introducing 'no-fee' schools and at fee-paying schools the provisions to exempt poor parents that are unable to pay fees. At para 146 it further notes the increase in access and enrolment across population groups.

92. This however does not paint an accurate picture of issues of access and retention of learners. Education researchers analysing South African access data concur that while enrolment rates in South African school are high, dropout rates once learners reach Grade 8 are significant. According to education researcher, Dr Nic Spaull for example for each 100 pupils who started school in 2003, only 48 wrote matric in 2014. Of these, 36 passed and 14 qualified to go to university. The GHS data further disaggregate the reasons for this. These include examples such as financial reasons or because of pregnancy. The GOSA does not discuss the measures, if any, that have been put in place to address this.

93. At no-fee schools, civil society organisation are increasingly having to deal with schools demanding 'compulsory contributions' such as registration fees to make up for deficits in state funding. Where parents are unable to make these contributions, learners are excluded or sent

home. At fee school, schools are failing to implement exemption policies lawfully. This is because schools are insufficiently compensated by the state for the loss of revenue to exempted learners. Legal challenges to the exemption policy also highlight many gaps with the exemption policies that prejudice poor parents.[29]

Suggested Questions:

94. **What, if any, measures does the state have in place to address the high drop-out rates in schools?**

95. **What measures are in place to address compulsory contributions at no-fee schools, and to ensure the lawful implementation of the exemption policy?**

Article 15:

Harmful Customary Practices

96. The government report states in Para 160 that the country has undertaken not only to promote diversity and tolerance but it has also taken positive measures to promote the rights of minority groups and further that the Courts have been instrumental in addressing harmful customary practices in para 58. We are concerned by the continued reports of harmful customary practices that hinder children's access to economic social and cultural rights.

Practice of Ukuthwala

97. The South African Law Reform Commission (SALRC) Discussion Paper on *ukuthwala* notes that in 2009 there were numerous reports that the age-old tradition of *ukuthwala*, which had apparently died out, was re-emerging in certain parts of the country.[30] *Ukuthwala* is an irregular method for commencing negotiations between the families of the intended bride and bridegroom directed at the conclusion of a customary marriage.[31] Many men who abduct girls in the name of *ukuthwala* conceive of *ukuthwala* as a form of marriage. However, that is contrary to the provisions of the Recognition of Customary Marriages Act 130 of 1998. Since *ukuthwala* is a portal to commencing marriage negotiations, the minimum requirements for a valid customary marriage must apply. This proposition finds its authority in the wording of section 211(3) of the Constitution which states that the practice of custom is subject to any applicable legislation that specifically deals with customary law. Section 3 of the Recognition of Customary Marriages Act stipulates two requirements for a valid customary marriage to exist (i) that both parties consent to the marriage; and (ii) that both parties be at least 18 years old or have parental consent. Additionally, there is an exemption clause in the Recognition of Customary Marriages Act which gives parents and guardians the authority to give consent for their minor children to be married in terms of this Act. This is detrimental to the rights of the girl children forced into these circumstances.

98. A number of cases have been reported where girls as young as 12 years were *thwala'd* by men old enough to be their fathers in some cases. Many of these girls have had to drop out of school because they fall pregnant and/or are required to stay home to take care of household chores, placing them in perpetual poverty and dependency on their male counterparts. A digression from constitutional precepts that value and protect children as a vulnerable group

[29] In the case of *Saffer v HOD, Western Cape Education Department and Others*, the applicant a single mother argued that the exemption policy discriminates against single custodian parents because exemptions are calculated according to the income of both parents.

[30] South African Law Reform Commission (SALRC) *Revised Discussion Paper 138: Project 148 The Practice of Ukuthwala* (January 2016) page 18.

[31] *Jezile v S and Others* 2016 (2) SA 62 (WCC) at para 72.

in society. Many girls have had difficulties, and in some cases fatal experiences, with child birth as they are too young to be delivering babies. We believe that this is a very serious concern that must be borne in mind in considering this legislation.

Death and mutilation of boys because of botched circumcision and virginity testing of girls

99. There continue to be numerous reports of violence against children perpetuated through the practice of certain harmful customary practices. Anecdotal evidence suggests that girls and boys, in some instances as young as 12 years, are subjected to practices that include illegal male circumcision and virginity testing without their consent. In the five and a half years from June 2001 to December 2006, one provincial Health Department recorded 208 deaths and 115 mutilations, out of 2,262 hospital, admissions due to initiation practices relating to male circumcision.[32] A 2014 report revealed that despite the high number of deaths and injuries, only 11 people had been convicted.[33]

100. In 2016 the Kwazulu Natal Province's uThukela District Municipality caused uproar when it promoted a study bursary for girls using virginity testing as a qualifying factor.[34] Girls wanting to be considered for the bursary have to produce a certificate certifying their virginity status and should their application succeed then during the course of their studies they have to undergo inspections and produce regular confirmation of their virginity status in order to hold on to the bursary. News of the bursary scheme caused the Commission for Gender Equality to investigate the terms of the bursary and it subsequently found the virginity testing requirement to be unconstitutional. It found that the terms of the bursary creates gender inequality especially seeing that the municipality offers a similar bursary to boys but they are not required to undergo virginity testing in order to qualify for the bursary. It held that "any funding by an organ of state based on a women's sexuality perpetuates patriarchy inequality in South Africa".[35]

Suggested Questions:

101. **We request that the Committee ask the GOSA to provide updated information on the following:**
    - 101.1 **prevalence and trend of harmful practices;**
    - 101.2 **prevention measures, investigation, prosecution and sanctions of perpetrators; and**
    - 101.3 **remedies, protection and support provided to child victims of such practices.**

102. **The GOSA should be requested to provide information steps taken to address and combat harmful customary practices as well as the evaluation of the effectiveness of such measures**

103. **Since the conclusion of the investigation of the South African Law Reform Commission on the impact of *ukuthwala* on girls and its assessment on the needs of law reform, what steps have been taken to address the findings of this report in protecting children especially girls from harmful customary practices?**

---

[32] Eastern Cape Department of Health *Health Statistics: Circumcision Statistics Since June 2001* (not dated), available at www.ecdoh.gov.za/uploads/files/120707095947.pdf.

[33] Nqaba Bhanga "119 initiation deaths reported over past two years" (20 August 2014), available at http://www.politicsweb.co.za/politics/119-initiation-deaths-reported-over-past-two-years.

[34] Georgina Guedes "Maiden's Bursary Awards must be scrapped" Politicsweb (16 January 2016), available at https://www.enca.com/opinion/maidens-bursary-awards-must-be-scrapped; Amanda Khoza "Girls be warned: Lose your virginity, you lose your bursary" News24 (January 2016) available at http://www.news24.com/SouthAfrica/News/municipality-warns-maidens-lose-your-virginity-lose-your-bursary-20160122.

[35] Commission for Gender Equality *Supplementary Investigative Report: The Maiden Bursary Investigative Report* (24 June 2016) 22.

ANNEXURE A:

AUTHORS OF THE 2017 COMPLIMENTARY REPORT TO THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

16 individuals participated in writing this Complementary Report:

1. Ann Skelton, Centre for Child Law

2. Carol Bower, Consultant

3. Debbie Budlender, Consultant

4. Haroon Saloojee, Community Paediatrics, University of the Witwatersrand

5. Joan van Niekerk, Consultant

6. Karabo Ozah, Centre for Child Law

7. Kate Paterson, Section 27

8. Liesl Muller, Lawyers for Human Rights

9. Lisa Draga, Equal Education Law Centre

10. Lori Lake, Children's Institute

11. Mandivavarira Mudarikwa, Legal Resources Centre

12. Paula Proudlock, Children's Institute

13. Samantha Waterhouse, Dullah Omar Institute

14. Shanaaz Matthews, Children's Institute

15. Stefanie Röhrs, Children's Institute

16. Zita Hansungule, Centre for Child Law