



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

National Human Rights Institution Parallel Report to South Africa's Responses to the
Concluding Observations and Recommendations Follow-Up Procedure Issued by
the Committee on Economic, Social and Cultural Rights

*Submitted to the United Nations Committee on Economic, Social and Cultural Rights
For consideration at the 70th Session*

August 2021

Contents

1. Introduction	3
2. South Africa's National Human Rights Institution	3
3. Dissemination of the CESCR Concluding Observations and consultation	4
4. Specific recommendations for follow-up	5
a) Composite index on cost of living	5
b) Social assistance.....	7
c) Social Assistance Amendment Act	10
d) Access to education for undocumented migrant, refugee and asylum-seeking children..	10
5. Conclusion	12

1. Introduction

- 1.1. The South African Human Rights Commission (SAHRC) welcomes the opportunity to submit a parallel National Human Rights Institution (NHRI) report in relation to the South African State follow-up report submitted to the Committee on Economic, Social and Cultural Rights (Committee) in March 2021.
- 1.2. The SAHRC notes with concern that while it appears that the State submitted its follow-up report to the Committee in March 2021, the South African government only officially informed the SAHRC, as well as civil society organisations (CSOs) about developments in this regard on 25 July 2021. The time passed as between submission by the State to the Committee, and informing the SAHRC and civil society some four months later, has not been explained. This has significantly limited the time available to the SAHRC to develop its own NHRI follow-up report and to ensure that the Committee has comprehensive and adequate information at its disposal.
- 1.3. The SAHRC's responses to the State's follow-up report is the third NHRI report contribution by the SAHRC and may be read together with its initial NHRI report to the Committee, which was submitted in August 2017¹ and its reply to the State's response to the List of Issues, submitted in September 2018. For ease of reference, the SAHRC's third report responds succinctly to the State's follow-up report to the Committee.

2. South Africa's National Human Rights Institution

- 2.1. The SAHRC is mandated by Section 184 of the Constitution of the Republic of South Africa to:
 - (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.
- 2.2. Section 13(1)(b)(vi) of the South African Human Rights Commission Act, 40 of 2013 specifically mandates the SAHRC to monitor the implementation of, and compliance with, international and regional human rights instruments.²

¹ Available at: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ZAF/INT_CESCR_IFL_ZAF_28910_E.pdf.

² See section 13(1)(b)(vi) of the Human Rights Commission Act, 40 of 2013.

2.3. As a NHRI, the SAHRC is additionally guided by the Paris Principles adopted by the United Nations General Assembly in 1993.³ The SAHRC therefore submits its third NHRI Report to the Committee within its constitutional, statutory, and international mandate as an 'A' status NHRI.

2.4. The SAHRC provides information firstly related to the broad recommendation of the dissemination of the Concluding Observations and recommendations and then the specific recommendations for which a follow up was required within 24 months.

3. Dissemination of the CESCR Concluding Observations and consultation

The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it informs the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the South African Human Rights Commission, non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

3.1. The SAHRC notes with concern that the South African government has taken almost no steps to disseminate the Concluding Observations, and further failed to consult with the SAHRC or CSOs for purposes of its follow-up report to the Committee.

3.2. The South African government correspondence to the SAHRC, dated 25 July 2021, notes that the Department of Justice published the Concluding Observations on its website in ostensible fulfilment of the Committee's request to disseminate the Concluding Observations broadly at all levels of society. In the SAHRC's view, publications on a government website and consultation with limited State departments do not constitute wide dissemination. Furthermore, it appears as though the State took no steps to disseminate the Concluding Observations specifically amongst 'parliamentarians, public officials and judicial authorities' as requested by the Committee.

³ UN General Assembly Resolution 48/134 on National Institutions for the promotion and protection of human rights (1993).

- 3.3. The SAHRC moreover notes that no virtual consultation with it or civil society was attempted by the South African government during 2020. Prior to the Covid-19 pandemic, the SAHRC assumed a leading role in disseminating the Concluding Observations by hosting a seminar on this topic in November 2019, followed by a workshop with government stakeholders and CSOs in February 2020.⁴ The SAHRC is not aware of any similar endeavours undertaken by the State in relation to the Concluding Observations or the International Covenant on Economic, Social and Cultural Rights (Covenant) more generally.
- 3.4. The SAHRC has limited financial and human resources at its disposal, and it is unreasonable that the NHRI instead of the State assumes the primary role in popularising, disseminating and consulting on the State's international human rights obligations.
- 3.5. The SAHRC accordingly recommends that the Committee makes a determination that the State has not sufficiently disseminated the Concluding Observations, and that the State has further failed to consult with the SAHRC or CSOs in the lead up to its follow-up report.

4. Specific recommendations for follow-up

- a) Composite index on cost of living

48. The Committee recommends that the State party:

(a) Design and regularly update a composite index on the cost of living;

- 4.1. The SAHRC notes the State response regarding the use of the Consumer Price Index (CPI) instead of a composite cost of living index, or an adequate standard of living index. The SAHRC is of the view that a tailor-made index should be developed to ensure that all who reside in South Africa are able to live with dignity, and to further ensure that inequality is addressed, particularly at a micro level (poorer communities) and that exclusive focus is not placed on poverty alleviation.

⁴ Reports from these engagements can be obtained from the SAHRC.

- 4.2. The SAHRC draws the Committee's attention to its initial NHRI report to the Committee (submitted in August 2017), which states in paragraph 48:

The SAHRC highlights the absence of an official rights-based index to measure the standard of living of South Africans, particularly with reference to the indicators and benchmarks drawn from the various rights enunciated in the Covenant and the South African Constitution. This is further demonstrated by the limited indicators provided in the State Report.

- 4.3. The SAHRC is concerned that continued use of the CPI will not enable policy choices that guarantee an adequate standard of living and continued improving living standards, as enshrined in Article 11 of the Covenant.⁵

- 4.4. The SAHRC wishes to draw the Committee's attention to three innovative initiatives (two of which were initiated by SAHRC partners) that serve as examples of what a composite cost of living index, or an adequate standard of living index, may comprise of:

- 4.4.1. The Studies in Poverty and Inequality Institute (SPII) has conducted sustained research on a Decent Standard of Living Index since 2014.⁶ Through participatory and consultative processes, the SPII has identified 21 indicators of a decent standard of living, based on what people in contemporary South Africa value most. This index is therefore rights-congruent in that it results from participatory engagement, and speaks to the rights guaranteed in the Covenant as well as those enshrined in the Constitution of the Republic of South Africa, 1996 (Constitution).

- 4.4.2. The Individual Deprivation Measure (IDM) Program was a partnership between the Australian National University (ANU), International Women's Development Agency and the Australian Government through the Department of Foreign Affairs and Trade. The IDM will be taken forward and implemented by ANU as the Individual Measure of Multidimensional Poverty. The IDM was developed to assess deprivation at the individual level and thereby overcome limitations of approaches that measure poverty at the household level. The IDM was implemented in South Africa,⁷ and measured individual deprivation across 15 dimensions of deprivation identified through

⁵ In addition to not constituting a rights-based index, the CPI suffers from other flaws such as the 'substitution bias' and 'quality improvements' problem.

⁶ See further <<https://spii.org.za/research-and-advocacy/decent-standard-of-living/about/>>.

⁷ As well as the Philippines, Fiji, Indonesia, and the Solomon Islands.

participatory research.⁸ These dimensions include food, water, shelter, health, education, energy/fuel, sanitation, relationships, clothing, violence, family planning, environment, voice, time-use, and work.

- 4.4.3. The Gauteng City-Region Observatory (GCRO) has conducted a Quality of Life survey every two years since 2009, generating data that can inform policy and decision-making. The survey is conducted with households in the Gauteng province of South Africa by numerous trained enumerators. Topics covered in the survey questionnaire include inter alia housing, basic services, amenities, household finances, public participation, governance, democracy, personal wellbeing, employment, safety and crime, transport, health and community. Demographic information is also collected. The most recent survey includes questions on direct impacts of the Covid-19 pandemic, economic and psychosocial conditions, socio-political attitudes and beliefs, and satisfaction with government.⁹

- 4.5. The SAHRC recommends that the Committee makes a determination that continued use of the CPI is inadequate, and to reiterate its recommendation for the State to develop a composite cost of living index that is rights-based and capable of steering policy to address both poverty and inequality.

b) Social assistance

48. The Committee recommends that the State party:

...

(c) Ensure that those between the ages of 18 and 59 with little or no income have access to social assistance;

- 4.6. The SAHRC notes the State's response that steps have commenced to investigate the possibility of social assistance for unemployed persons between the ages of 18 and 59 years, including exploring the possibility of a Universal Basic Income Grant (UBIG). However, the SAHRC is concerned that the State's response is vague, and does not provide details including whether a BIG should be universal or means-tested; timelines for implementation; sources of funding through increased taxation or otherwise; or concrete budgets in this regard. Furthermore, the SAHRC wishes to draw the

⁸ IDM *Individual Deprivation Measure South African country study Preliminary results feedback* (February 2020) < https://www.individualdeprivationmeasure.org/wp-content/uploads/IDM_RSA_PrelimResults_Devpol-Feb2020.pdf> and see further < <https://www.individualdeprivationmeasure.org/data/south-africa/>>.

⁹ <https://www.gcro.ac.za/research/project/detail/quality-life-survey-vi-202021/>

Committee's attention to the fact that the UBIG policy debate is not new, and has been mooted since the publication of the Committee of Inquiry into a Comprehensive Social Security System (Taylor Committee) Report in 2002.¹⁰ In addition, government officials, the National Economic Development and Labour Council (NEDLAC) civil society partners, the SAHRC and United Nations officials all serve as part of the steering committee for the SDG Fund on Social Protection, with no sessions yet convened during 2021. It is therefore concerning that the State regards policy work as only commencing in 2021.

4.7. The SAHRC further wishes to draw the Committee's attention to the special Social Relief of Distress Grant (special Covid-19 grant) of R350 per month, which was instituted to respond to the impact of the Covid-19 pandemic and concomitant lockdown measures.

4.7.1. Conditions for eligibility for the grant initially included not receiving any other form of social grant. This indirectly discriminated against parents, with a significant impact on women, who receive a Child Support Grant, since they are excluded from receiving the special Covid-19 grant. However, they do not receive the Child Support Grant in their own right. They are accordingly left destitute and unable to meet their own needs. Government sought to bridge this gap by introducing an additional form of Social Relief of Distress allowance of R500 per recipient of the Child Support Grant. Importantly, the R500 was not provided per child, but per caregiver. This special allowance expired at the end of October 2020,¹¹ rendering caregivers without any social assistance other than the Child Support Grant until the reinstatement of the special Covid-19 grant later in 2021.

4.7.2. Moreover, despite the Social Assistance Act's Regulations¹² that allow for the extension of the Social Relief of Distress Grant to anyone affected by a disaster, the initial special Covid-19 grant was limited to South African citizens and permanent residents. The discriminatory effects of the special Covid-19 grant in relation to non-nationals, prompted the Scalabrini Centre of Cape Town to launch a successful legal challenge against the exclusionary eligibility parameters of the grant, relatively soon after the declaration of a state national disaster. The court cited Regulation 9(5), as

¹⁰ https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming_the_Present.pdf.

¹¹ Amendment to the Directions issued in terms of Regulation 4(5) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002 in *Government Gazette* No. R. 517 of 9 May 2020.

¹² Regulation 9 of the Regulations relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in respect of Eligibility for Social Assistance.

well as relevant constitutional provisions, to conclude that the rights to equality, human dignity and social assistance were violated by the exclusions.¹³ As a result, the special Covid-19 grant was extended to asylum seekers and special permit holders. Non-nationals with irregular migration status remain excluded.

4.7.3. The special Covid-19 grant was discontinued on 30 April 2021. Following public outcry, led by CSOs, as well as the unrest ('attempted insurrection') in the Gauteng and KwaZulu-Natal provinces in July 2021, the President of South Africa announced that the grant will be reinstated until March 2022.¹⁴ Payments will be made from August 2021, and no back payments will be made. Unemployed persons who receive no income or other grants (other than the Child Support Grant) are eligible to re-apply for the special Covid-19 grant. The grant is now extended to recipients of the Child Support Grant. Nevertheless, the special Covid-19 grant is set far below the food poverty line, and challenges are being experienced in respect of the administration of the grant.

4.8. On 24 August 2021, the national statistics agency, Statistics South Africa, released its Quarterly Labour Force Survey (QLFS) for quarter two of 2021. The report indicated that unemployment rose by 1.8 percentage points from 32.6% to 34.4%, the highest since the start of the QLFS in 2008.¹⁵ The unemployment rate under the expanded definition now sits at 44.4%.

4.9. The SAHRC accordingly recommends that the Committee makes an assessment that the State should provide a concrete, costed and time-bound plan for the urgent introduction of a UBIG, which includes appropriate exit strategies, and which is set above at least the food poverty line. The plan should include details regarding the administration and implementation of the UBIG to minimise further delays and administrative challenges. In the interim, the South African government should increase the special Covid-19 grant to an amount at or above at least the food poverty line and should improve the administration of this grant.

¹³ *Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others* (22808/2020) [2020] ZAGPPHC 308; 2021 (1) SA 553 (GP) (18 June 2020).

¹⁴ President of the Republic of South Africa *South Africa's response to Coronavirus COVID-19 pandemic* (25 July 2021) <<https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-25-jul-0>>.

¹⁵ Statistics South Africa *Quarterly Labour Force Survey: Quarter 2 (2021)* <<http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2021.pdf>>.

c) Social Assistance Amendment Act

57. The Committee recommends that the State party:

...

(c) Expedite the adoption of the Social Assistance Amendment Bill of 2018 to increase the level of child support grants for orphaned and abandoned children living with relatives, for which it has already earmarked funds;

4.10. The SAHRC notes the State report that the publication of Regulations under the Social Assistance Amendment Act, to provide for a higher value Child Support Grant for orphans living with family members, was expected to be concluded by April 2021. The SAHRC notes that while the Social Assistance Amendment Act was assented to by the President on 20 December 2020, there does not appear to have been any progress since then in respect of proclaiming the Act for operation, or publishing new Regulations thereunder.

4.11. The SAHRC recommends that the Committee request the State to expedite the process of proclaiming the Social Assistance Act and publishing new Regulations thereunder.

d) Access to education for undocumented migrant, refugee and asylum-seeking children

73. The Committee recommends that the State party:

....

(c) Ensure that all migrant, refugee and asylum-seeking children have access to education regardless of their immigration status. The Committee refers in this regard to its statement on the duties of States towards refugees and migrants under the Covenant.

4.12. The SAHRC notes the State's response in respect of the international law requirement that primary education be free and accessible for all, and advises the Committee that this is not the case in South Africa and that the State's Declaration to its ratification of the Covenant has not yet been withdrawn.

4.13. The SAHRC further notes the State's response in respect of the landmark judgment in *Centre for Child Law and Others v Minister of Basic Education and Others*,¹⁶ for which the SAHRC intervened as second amicus curiae, and the Department of Basic Education's subsequent circular in this regard. Despite this significant legal victory for all undocumented children – including migrant, refugee, and asylum-seeking children - the SAHRC is aware that some undocumented children still face challenges in accessing education.

4.13.1. The Centre for Child Law published a statement on 26 February 2021, noting that it continued to receive queries from excluded children. According to the Centre for Child Law, certain school principals continue to insist on official birth certificates before children are admitted to schools, in clear violation of the court order as well as the Department of Basic Education's circular. The Centre for Child Law accordingly calls on the Department of Basic Education and Provincial Departments of Basic Education to comply with the judgment and ensure that all children have access to education.

4.13.2. The SAHRC received complaints of children being excluded from schools across most provinces in South Africa due to the lack of documentation. For example, in the Northern Cape, two children, originally from Namibia, were not allowed entrance to school and then offered temporary acceptance, pending the provision of the relevant documents. The parents approached the SAHRC, worried that their children would not be allowed to complete the school year. The SAHRC liaised with the provincial department, which then acknowledged the rules around undocumented learners and, through engagement with the school, ensured the parents that the children would not be excluded. Similarly, an undocumented learner was expelled from a primary school in Lusikisiki in the Eastern Cape, for not being in possession of a birth certificate. The SAHRC engaged the school and the provincial department before the child was readmitted to school.

4.14. The SAHRC recommends that the Committee requests the State to ensure that all schools comply with the court order and subsequent government circular, to ensure that all children have access to education regardless of their documentation status.

¹⁶ 2020 (3) SA 141 (ECG) (12 December 2019) <<http://www.saflii.org/za/cases/ZAECGHC/2019/126.html>>.

5. Conclusion

The SAHRC thanks the Committee for this opportunity to provide this parallel report. It is hoped that the information presented herein will be of assistance to the Committee. The SAHRC wishes the Committee well in its consideration of the South African government's follow-up report and avails itself to provide further information where required.
