

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

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

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

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

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

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

In respect of migrant children we support the oral submissions of XXXXX and XXXXX.

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

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

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

### 3. Minimum age of criminal responsibility

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

### 4. Education

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

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

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

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

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

## 5. Health

### Primary healthcare

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

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

### Quality of services

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

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

### Malnutrition

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

## 6. Violence and child protection

### Prevalence of Violence

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

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

### Corporal punishment

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

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

### Child protection and criminal justice systems

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

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

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

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

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

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

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

## **7. Foster care**

Finally we must address the arrangements relating to foster care, which are highly problematic, impacting in two significant ways. Firstly, classic foster care has proven to be an ineffective way of delivering social grants and services to South Africa's uniquely large number of orphans. The formal foster care system has been over-utilised to deliver social assistance to relatives caring for orphans, and yet there are 1.4 million orphans still to be reached. The system is in a state of collapse and is being supported through a court order that provides a temporary administrative solution. The government missed the first 3-year court-ordered

deadline to provide a systemic solution. Secondly, the reliance of the foster care system for orphan care by relatives is placing inordinate strain on the already compromised care and protection system, and leaving children who are abused or neglected (or at risk thereof) without adequate services.

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

## **8. Conclusion**

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

We thank you