

# The South African National Child Rights Coalition (SANCRRC)

**Submission to the United  
Nations Committee on the  
Rights of the Child to inform  
the List of Issues Prior to  
Reporting (LOIPR)**



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## Introduction

The South African National Child Rights Coalition (SANCR) is a national network of 112 civil society organisations. The members share and work together to advance their common goal of strengthening implementation of the Convention on the Rights of the Child through an effective national child rights governance system to ensure the realisation of the rights of every child in South Africa, especially its chronically marginalised populations.

The SANCR hereby submits two complementary submissions:

1. Part A: Written information on key issues identified by member organisations for consideration for inclusion in the List of Issues Prior to Reporting (LOIPR) for the Government of the Republic of South Africa (GRSA); and
2. Part B: A written submission documenting the issues identified by children through the national Children's Parliamentary structures as critical concerns that impact on their rights and that they would like the GRSA to address in its next report to the Committee.

## Part A: Submission by the members of the SANCR

The following report comprises submissions made by members of the SANCR. It follows the structure of the Committee's 2016 Concluding Observations (COs). The submission highlights outstanding issues raised by the Committee in its COs as well as issues that have emerged since then that impede the realisation of children's rights in South Africa.

Each section provides a summary of the critical issues requiring attention to secure children's protected rights, with a supporting set of key questions for consideration for inclusion in the LOIPR.

### 1. General Measures of Implementation

#### 1.1 Ratification of treaties

The GRSA has ratified and submitted reports on most child rights and related treaties and their optional protocols.

It has however:

1. Failed to ratify:
  - a. The Third Protocol to the Convention on the Rights of the Child on a Communication Procedure that affords children or groups of children the right to submit a complaint of rights transgressions directly to the Committee of Experts on the Rights of the Child
  - b. The ILO's Maternity Protection Convention, 1919 (No. 3) that obligates States Parties to protect the rights of pregnant and breastfeeding women in the workplace to paid social security benefits and to breastfeeding breaks.
  - c. The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa that protects the rights of pregnant (signed in 2019). The Protocol commits States Parties to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons – including children – with disabilities. It specifically obligates States Parties to realise the full and equal enjoyment of rights for children with

disabilities through the mainstreaming of disability across the governance continuum of policies, laws, administrative action, institutional and budgetary steps.

2. Ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2015, but it has done so subject to the reservation that education is not immediately realisable.
3. Ratified, but failed to submit and initial report on
  - a. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, overdue as of 25 October 2011
  - b. The UNESCO Convention Against Discrimination in Education ratified in 2000.

#### *Proposed questions for the LOIPR*

What measures have been taken to:

1. Ratify:
  - a. The Third Protocol to the Convention on the Rights of the Child on a Communication Procedure?
  - b. The ILO's Maternity Protection Convention, 1919?
  - c. The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa?
2. Withdraw the reservation to the ICESCR?
4. Develop and submit State Party reports on progress in implementing
  - a. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
  - a. The UNESCO Convention Against Discrimination in Education?

#### 1.2 Comprehensive national plan of action for children and coordination body

The Committee recommended in 2016 that the system of child rights governance to ensure government-wide fulfilment of all implementation responsibilities be strengthened through:

1. The adoption of an evidence-based National Plan of Action for Children (NPAC); and
2. The establishment of an effective, adequately mandated and resourced coordinating body at a high political level to secure effective leadership, accountability, monitoring, reporting and integration of the concluding observations into the national planning machinery to ensure effective follow-up and strengthening of the national child rights system

A NPAC for children and a supporting implementation plan has been developed and adopted by Cabinet in 2020. The NPAC establishes a high-level coordination mechanism – the Office on the Rights of the Child (ORC) – with the prescribed mandate.

The SANCRRC was pleased to learn that the ORC will be located in the Presidency to ensure adequate authority to fulfil its mandate for government-wide coordination and accountability. The ORC has not yet been established and it is unclear whether it will be adequately mandated and resourced to fulfil its role effectively.

In addition, the SANCRC is concerned that whilst the plan and coordination structure are in process, the current Medium Term Strategic Framework (2019-2024) which identifies the current administration's priorities and approach to ensuring government-wide attainment of its rights-based development agenda does not, as it does for women, youth and people with disabilities obligate government-wide mainstreaming of children's rights across the continuum. This is despite its commitment to advancing sustainable development through building human capital, starting with the children of South Africa.

#### *Proposed questions for the LOIPR*

What measures have been taken to:

1. Ensure that the ORC will be adequately mandated, positioned, resourced and integrated into the national planning system for advancing national development priorities so as to ensure a process of continuing assessment and systems strengthening to realise children's rights as a national development priority?
2. Ensure that the MTSF recognises children as a national development priority with an explicit government-wide duty to mainstream and account for the realisation of their rights across the governance continuum?

### 1.3 Child rights budgeting

The 2016 COBs noted concerns with the adequacy of the resources allocated to support the realisation of children's rights, as well as the adequacy of the national budgeting system and processes which must, based on government's implementation responsibilities, be child-centred.

The Committee recommended the development, organization and tracking of the national budget from a child-rights perspective so as to ensure that allocations are adequate to achieve child-rights targets and are monitored for efficiency and effectiveness in contributing to the realisation of children's rights.

In addition, it called for increased transparency and accountability with regards to the budget, improvements in equity in allocations and expenditure across provinces and districts and for measures to combat corruption.

To date the GRSA has not adopted the require measures. The budget is not developed, organised, tracked and analysed to advance children's rights and priorities within the national, provincial and district budgets. Thus it is difficult to assess allocations, efficiencies and increases and decreases in resources for implementation of key children's programmes.

In addition, the extensive discretion of provinces and local governments to determine how to allocate their budgets, and the lower levels of developmental budgeting and resource management capacity in historically poor provinces and municipalities contributes to significant inequities in the adequacy of resourcing and efficiency in the use of funds to implement children's programmes, often to the detriment of the most vulnerable populations.

This challenge has been aggravated in the context of COVID 9, given that national government reduced the provincial and local government conditional grant funding that is used to support special projects for

disadvantaged populations to fund its emergency funds. This reduced the available funds for children's programmes that were already under stress.

The combination of corruption, an existing economic recession, the impact of COVID 19 on the current budget and its projected impact on economic growth in the next fiscal cycle has reduced South Africa's national budget enormously. The International Monetary Fund (IMF), the South African Reserve Bank (SARB) and the National Treasury all estimate that the economy will shrink by about 7,3% in 2020.

This means that the next planning cycle is going to be seriously underfunded, and government is introducing a system of zero-based budgeting to significantly curtail expenditure. Given the lack of a child-centred budgeting process and the failure to recognise children as a national development priority, the coalition is concerned about the impact of these measures on the adequacy of resources for essential children's programmes.

#### *Proposed questions for the LOIPR*

What measures have been taken to:

1. Adopt a child-centred budgeting approach?
2. To monitor and measure if South Africa is complying with its commitments to regional and global bodies to allocate specified percentages of the national budget to health, education and ECD for children?
3. Equalise provincial and local inequities in resource allocation, developmental budgeting and efficiency in the use of resources to fund developmentally essential children's programmes?
4. Combat corruption?

#### 1.4 Independent monitoring

The UN and AU Children's Rights Committees expressed concern in their respective Cos in 2016 and 2019 at the inadequate resourcing of the South African Human Rights Commission to fulfil its child rights monitoring and advocacy role.

The SANCRC is concerned that this has not been addressed and the problem has worsened in the current fiscal climate. that The budget for the SAHRC is being cut every year and, therefore, the commission faces great challenges in being able to play their constitutional mandate of oversight, monitoring and providing remedies for complaints submitted by and on behalf of children thus supporting democracy. The Commission's budget for 2018/19 has been cut by R4.8 million from R183 million to R178 million. Its Chief Financial Officer (CFO) Peter Makaneta reported that after all expenses had been paid, the SAHRC had only R3.3 million to conduct its programmatic work during the 2018/19 financial year. Furthermore, capacity in terms of personnel is insufficient to carry out the mandate of the SAHRC for children in South Africa.

*Proposed questions for the LOIPR*

What measures have been taken to:

1. To increase resources for the SAHRC, and to ensure its resources are not further cut in the current climate of fiscal constraints?
2. Address the capacity constraints within the SAHRC to fulfil its child rights monitoring and advocacy role?

1.5 Cooperation with civil society

Civil society is an important role player in promoting and protecting children’s rights in South Africa. It does so through advocacy, service provision, monitoring and reporting, and follow-up on the state’s treaty implementation responsibilities.

Civil society recognises itself as a rights-based development partner and works collaboratively with government in planning and provisioning of services through various coordinating forums and through service level agreements with specific departments.

The fulfilment of civil society’s role has been limited by a number of factors including the following:

1. Inadequate funding of civil society by government to provide quality services at scale
2. Inadequate communication by government with regards to developments impacting on children’s rights. For example:
  - a. Departmental websites are not updated to enable access to all relevant policies, laws and programmatic information and there is inadequate.
  - b. There is no centralised or accessible point of access across government that provides a comprehensive overview of the country’s treaty and development commitments, reporting deadlines, treaty body sessions, concluding observations and follow-up actions.
  - c. Civil society itself has been challenged by its own coordination challenges, and it is for this reason that this coalition has been established.

*Proposed questions for the LOIPR*

What measures have been taken to:

1. Improve access to updated information on children rights, policies and programmes across all government departments?
2. Improve funding of the CSO sector?
3. Improved coordination and communication with regards to the country’s treaty and development commitments, responses, sessions and follow-up processes?

## 1.6 Children's rights and the business sector

South Africa has a well developed legislative environment regulating business practices to protect children against harm. Laws regulate environmental health, child labour, consumer protection rights, regulation of media content and regulation of infant and child feeding practices to comply with international standards. The challenge lies in implementation of the laws as a result of poor monitoring and follow-up systems for addressing transgressions.

It is a concern that the private sector appears to be reluctant to support CSO activities to support migrant children through corporate social investment initiatives.

### *Proposed questions for the LOIPR*

Please advise on measures taken to strengthen the systems for monitoring, reporting and follow-up on transgressions by the private sector of child labour laws, maternity and breastfeeding laws, environmental health standards, and the regulation of the marketing of breastmilk substitutes.

## 2. Definition of the child

The African Committee of Experts on the Rights and Welfare of the Child noted in its concluding observations in March 2019, that there was inconsistency across civil, customary and the common law with to the permissible age of marriage. The Committee called on the State to align all laws governing the age and definition of children and the age of marriage to comply with the African Charter on the Rights and Welfare of the Child (ACWRC) and the CRC. Specifically to ensure that all laws recognised children as anyone under the age of 18 years and explicitly prohibited all marriages under the age of 18 years.

The situation has not yet been addressed. Customary law permits marriage once puberty is reached, which for most children is before they reach the age of 18 years. The Recognition of Customary Marriage Act 108 of 1998 (RCMA) read together with the Marriages Act 25 of 1961 allow children to marry before the age of 18 years where they have the consent of their parents or the Minister of Home Affairs.

### *Proposed questions for the LOIPR*

Please advise on measures taken to outlaw all child marriages.

## 3. General Principles

### 3.1 Non-discrimination

The Committee's 2016 COBs noted, with concern, the high levels of discrimination and resulting inequality in access to basic services and an adequate standard of living in the country on the basis of disability, race, geography and economic status, with a disproportionate disadvantage for children living in rural areas and in urban informal settlements. It recommended that the GRSA focus on the eradication of structural

inequality and discrimination in all legislative, policy and programmatic measures to advance the rights of the child and address the accumulative impact of multiple discrimination

South Africa's most recent SDG report confirms that poverty levels have increased and are set to worsen, and South Africa's levels of inequality remain the highest in the world.<sup>i</sup>

South Africa's historically vulnerable children bear a disproportionate burden of both poverty and inequality. Although South Africa's policies, notably its progressive Child Support Grant, has contributed to significant reduction in child income poverty, too few children escape the poverty they are born into, and it is especially the historically disadvantaged Black African children, children in rural areas, children in women-headed households, and households with no employed adults, as well as children in the former homelands that have been left behind.

Children with disabilities continue to bear a disproportionate burden of poverty, material and educational deprivations, as well as a significantly higher risk of violence, abuse and neglect. Their situation is dealt with in some detail later in this report under the heading of disability.

In addition, there is structural discrimination against stateless children, migrant, asylum-seeking and refugee children, children in street situations and undocumented children who are routinely deprived of core rights to birth registration and certificates, early development, health care, nutrition, education, protection and participation.

Between 2003 and 2018, child income poverty rates dropped by 20% from 78,3 to 58,8%. However, there is still work to be done as the majority of children (67%) continue to live in income poor families with low levels of employment and in areas with poor social infrastructure that is critical for their normal health, protection and development. Income poverty is linked to children's access to developmentally supportive services such as water, sanitation, health care, housing, quality education and information.

In 2018, 59% of children (11.6 million) lived below the upper bound poverty line which is the minimum required to secure their basic nutritional and other needs. The burden of income poverty is unequally borne by Black African children (65% of whom are income poor); the former homeland provinces where child poverty rates are between 71 and 75%, compared to Gauteng and the Western Cape where it is much lower at 40 and 23% respectively; and in rural areas where 81% of children are poor compared to 44% in urban areas.<sup>ii</sup>

Income poverty and poor infrastructure intersect, resulting in 6 out of every 10 children in South Africa being multi-dimensionally poor (61%). However, the proportion is much higher for children:

- In rural areas (2/3rds) compared to urban areas (less than ¼ - 23%)
- Who grow up in female-headed households. They are on average 20 per cent more deprived than children who grow up in male-headed households.

The major challenges facing South Africa are the impact of the persistently high levels of multi-dimensional child poverty and inequality. Together they significantly limit children's right to development and entrench the cycle of intergenerational deprivation along historical equity fault lines.

The majority of children who were born into poverty continue to live in multidimensional poverty. Multidimensional (MD) child poverty is a composite based on income poverty as well as access to developmentally critical services, including water, sanitation and hygiene (WASH), housing, nutrition, protection, health, child development and information. A recent study by Statistics South Africa found that, despite 30 years of pro-poor social development policies, on average, 6 out of 10 children in South Africa are multidimensionally poor. The impact on their development is significant. Using proxy indicators of poverty and stunting, it is estimated that at least 38% of children under the age of five years are at risk of poor development outcomes.<sup>iii</sup> However, these averages do not reflect the underlying inequalities and the risk of perpetuation of the intergenerational patterns of exclusion amongst historically marginalised families and communities. Child poverty levels and the resulting risk of poor development in the early and later years are much higher, deeper and intergenerationally entrenched amongst historically marginalised children and households – that is Black African children, children in under-serviced rural areas and informal settlements, and children with disabilities.

Breaking the intergenerational poverty trap is key to South Africa getting back on track, and for fulfilling its commitment to realise children's rights as protected by the CRC.

President Ramaphosa's 6<sup>th</sup> Administration heeded the call for accelerated, strategic development. In 2019 it adopted the current Medium-Term Strategic Framework (MTSF) 2019 – 2024 that commits to accelerating rights-based sustainable development through:

- Increased access for vulnerable children and their families to developmentally critical services, including basic services, access to quality health, nutrition, early development, quality education and protection from abuse, neglect and exploitation.
- Inclusive economic transformation and employment.
- Safe communities.
- Leadership by a capable, ethical, developmental state.

The current MTSF is now nearing the end of its second year of implementation. Progress against its goals and objectives slowed down in the past few years given factors such as the deteriorating global economy, and most recently the COVID 19 epidemic and the aggressive social and economic measures taken to contain its spread.

Unemployment is closely linked with income and multidimensional poverty. South Africa's very high unemployment rate is a key driver of child poverty. In 2019 South Africa already had an unemployment rate - with one third of people of employable age out of work.<sup>iv</sup> In 2018, 30% of children (5.9 million) lived in households where there were no adults working.<sup>v</sup> This situation has since deteriorated. The COVID 19 shut down resulted in the loss of 2.8 million jobs between February and April 2020 and for the most part had not become re-employed by end June. The NIDS-CRAM study notes that "if the job losses we see in NIDS-CRAM are accurate and long-lasting then we will have lost the equivalent of 10 years' worth of job

growth in the space of four months.” Moreover, the poor were ten times more likely to lose their jobs than the rich. Similarly, rural, female and unskilled workers, as well as those with less education were at the greatest risk.<sup>vi</sup>

In addition to the massive job losses, South Africa faces additional burdens that have, and will continue to impact on the state’s ability to fulfil the rights of children.

### **Corruption**

Corruption is a significant problem that has both short- and long-term consequences for children’s rights. The AU recognises corruption as one of the biggest risks to development in Africa. A recent African Union report noted that corruption, defined as the “abuse of entrusted power for private gain”, is one of the biggest barriers to Africa’s development and the full realization of children’s rights.<sup>vii</sup>

The report observes a close link between corruption and the realisation of children’s rights, especially those critical to their development. There is a strong association between high levels of corruption and poor education and health outcomes for children. Conversely, countries that have been able to reduce corruption tend to have better child health and education indicators. The report notes further that, reducing “corruption is necessary for improving development outcomes for children in Africa and it is also a human rights obligation”.<sup>viii</sup>

The 30th African Union Summit unanimously endorsed the 2018 theme, Winning the fight against corruption: A sustainable path to Africa’s transformation. Given that Africa’s children are key to the continent’s future transformation it is imperative that investment in children is not undermined by corruption. Governments are duty bound to prevent and halt corrupt practices that hinder the realization of children’s rights.

South Africa has faced high levels of corruption, notably over the past ten years, and this has significant repercussions for the effective realisation of children’s rights.

Freedom House reports that “Pervasive corruption and apparent interference by nonelected actors have hampered the proper functioning of government, particularly during the Zuma administration, which the Gupta family heavily influenced. Ramaphosa appointed a Judicial Commission of Inquiry into state capture, or external influence held over an administration—namely that of the Gupta family over Zuma’s—in 2018. Ramaphosa also amended the terms of the state capture inquiry to pave the way for evidence gathered to be used in prosecutions.”<sup>ix</sup>

### **Economic recession**

South Africa’s economy was under strain before COVID 19. The additional demands on the fiscus to mount a rapid and population scale emergency response in a context of rapidly declining economic growth has created significant resource constraints that have, and will continue to impact on the rights of the most vulnerable children in South Africa.

UNICEF South Africa's recent budget policy briefs note that the International Monetary Fund (IMF), the South African Reserve Bank (SARB) and the National Treasury estimate that the economy will shrink by about 7,3% in 2020. This is the equivalent of having the 2009 recession four times in one year. This year has seen cuts to provincial budgets to find funds for mounting the country's COVID 19 emergency response and this will impact on the realisation of children's rights.

The accumulative impact of the economic recession has left South Africa in a dire financial crisis. The Minister of Finance presented his Medium-Term Budget Statement to Parliament in October 2020 and announced that the country will be introducing Zero-Based budgeting in a bid to curtail expenditure.

This means that every department will have to start with a clean slate: all budgets are off the table and every programme and project will have to be refunded, based on the proven value of the required investment in generating returns that will contribute to the country's growth and progress.

This offers a significant opportunity for securing funding for child-centred programmes that will build the human capital. The evidence is overwhelming: Investments in children's survival, development, protection and participation is essential for the recovery and sustainable growth of the country. Therefore, Zero-Based Budgeting could see improvements in child rights budgeting.

**However**, realising this opportunity will require significant leadership and skill in translating the evidence into well-structured, evidence-based programmes supported by costed implementation plans and well-motivated investment cases to secure the required funding. Should the required leadership and development planning, budgeting and advocacy skills not be available, Zero-Based Budgeting could see significant reductions in child rights programme funding, especially in new, innovative programmes that must be developed to unlock the human capital potential in children.

#### *Proposed questions for the LOIPR*

1. What measures have been taken to address the structural and systemic drivers of persistently high levels of MD poverty and inequality amongst vulnerable families and children?
2. What measures have been taken to ensure leadership and capacity for rights-based, child-centred developmental planning, budgeting, monitoring and quality improvement?
3. What measures have been taken to strengthen the enabling framework for providing support to secure the provision of nurturing care to children with additional needs / additionally vulnerable, notably?
  - a. Children with disabilities
  - b. children in rural areas
  - c. children in the provinces in former homelands and districts that are marked by poor administration of public resources
  - d. Foreign migrant children, unaccompanied minors and stateless children
  - e. Undocumented children?

### 3.2 Best interests and participation of the child

The Children's Act no 38 of 2005 explicitly requires that all decisions are made taking into account the best interests of the child and that they participate in all decisions that affect them.

The Committee previously expressed concern with regards to the lack of systematisation of children's participation across the governance continuum. In this regard, the SANCRRC is pleased at the development of a national Children's Participation Framework.

However, the Framework must be full operationalised along with educational support to address parental, caregiver and service provider attitudes that undermine the agency and participation of children.

In addition, the law and practices must be strengthened to ensure the meaningful participation of children in the asylum-seeking processes.

#### *Proposed questions for the LOIPR*

Please advise on:

1. Measures to provide education and change attitudes and behaviours amongst adults to secure the right of children's participation
2. Measures to ensure the meaningful participation of children in the asylum-seeking processes

## 4. Civil Rights and Freedoms

### 4.1 Birth Registration

The right to a name and nationality through effective and early birth registration continues to be limited by a number of legislative and regulatory impediments, notably for children who do not live with their biological caregivers, children whose parents have died, foreign migrant children and children living in poverty.

#### *Proposed questions for the LOIPR*

1. What measures have been taken to improve access to birth registration for the identified vulnerable groups?

## 5. Violence against children

South Africa has and continue to battle against very high levels of violence, abuse and neglect of children. This is a significant challenge as it impacts, not just on the right to protection, but children's survival, development and their participation.

Levels are high across the population, but there are very vulnerable children that are at a significantly higher risk of violence, especially in their homes, places of care, schools and communities at the hands of those responsible for caring for them. This includes children living in poverty, children in rural areas, and

the predominantly rural, poor provinces of the Eastern Cape, Limpopo and KZN, children with disabilities and the very youngest children under the age of 5 years. <sup>x</sup>

Violence takes many forms, including physical violence, homicide, corporal punishment, sexual abuse, rape, emotional abuse, neglect, intimate partner violence, bullying, gang violence, and xenophobic violence.<sup>xi</sup> The child homicide rate in South Africa is 5.5 per 100,000 – this is more than double the global average.<sup>xii</sup> 35 per cent of children in the country have been sexually abused and the same proportion have experienced physical violence; 26 per cent have suffered emotional abuse; and 15 per cent, neglect. Overall, 42 per cent have experienced some form of violence.<sup>xiii</sup>

In recent years, there has been a substantial increase in the prevalence of sexual and commercial exploitation of children as a result of globalization, travel and tourism and the increased use and availability of information and communication technology. Emotional violence and neglect are of great concern, especially in view of the number of children not living with their biological parents. Whilst corporal punishment is banned in schools and was effectively banned in the household by the Constitutional Court in 2019, it is commonly practised in schools and homes.

Home and school environments present significant risks. It is in these environments, where they are meant to be protected and nurtured, that children regularly experience corporal punishment, cruel and humiliating forms of punishment, emotional and verbal abuse and neglect, and bullying. More than half of parents in South Africa regularly use corporal punishment or smacking their children, and 33 per cent report, using a belt or other object when administering punishment. It is not just corporal punishment that is pervasive in homes: 84 per cent of child rapes are perpetrated by relatives, friends, acquaintances and neighbours.<sup>xiv</sup>

The causes of violence are now well-documented. They are structural and systemic, and in most cases violence and abuse is completely preventable through the provision of a package of support as defined in the WHO's INSPIRE Framework. This includes legal protection including the prohibition of corporal punishment and the criminalisation of all forms of abuse as prescribed by the CRC and Optional protocols, education and behaviour change interventions to support the laws, material support, access to services, parenting education and support and access to responsive services where children fall through the safety net. The focus and the bulk of the country's resources should be directed towards prevention. This is more effective and efficient in reducing violence and as such reducing the need for expensive formal statutory protective services.

The challenge in South Africa is that there has, and continues to be inadequate investments in the prevention of violence through appropriate laws and multi-sectoral programmes aligned to the INSPIRE framework.

Some of the most significant concerns include the following:

- South Africa's laws do not comprehensively outlaw all prohibited forms of violence. Notable in this regard is the failure to legislate the prohibition and criminalisation of corporal punishment in the home.

- Laws are not supported with effective, evidence-based education and behaviour change strategies to support awareness and compliance with the laws.
- South Africa's policy commitments as contained in the National Child Care and Protection Policy to adopt systemic, structural, and multi-sectoral preventative solutions aligned to the INPSIRE package of support are not adequately systematised and resourced. As a result, parents and caregivers do not receive the support needed to create nurturing protective environments for their children that will shield them from harm.
- In addition, the lack of access to safe publicly funded day care for children in the temporary absence of their parents is a major risk factor for abuse and violence against children.
- Violence prevention programmes are often framed as gender-based violence programmes or programmes for addressing violence against women and children, rather than being designed as child-specific programmes. This creates some uncertainty as to how the interventions apply to children's specific risks and vulnerabilities, and who the leading responsible role players are, given that women and children fall under different departments.
- Resourcing for violence prevention interventions is inadequate.
- Whilst the emphasis has fallen on developing and resourcing statutory or therapeutic programmes for children who have fallen through the net and have experienced violence, abuse or neglect, the protection system remains weak and requires substantial strengthening.

*Proposed questions for the LOIPR*

1. What measures have been taken and what progress has been made in adopting legislation prohibiting corporal punishment in the home and the development and adoption of complementary education and behaviour change strategies?
2. What are government's plans for developing and rolling out at the required scale, a comprehensive prevention programme aligned to the INSPIRE framework?
3. Has a programme been developed and costed? Will the prevention programme be adequately resourced, and if so, what is the envisaged time frame for full resourcing of the package?
4. Please explain how issues pertaining to violence against children are going to be implemented under the existing framework of the NSP and GBV Council?
5. What measures are being taken to strengthen the statutory protection system, including:
  - a. Improved availability of services in under-resourced areas
  - b. Increased human resources
  - c. Increase equipment and infrastructure such as cars, computers
  - d. Information management, including the digitisation of the case management system?
6. What measures have been taken to address the growing risk of online sexual and commercial exploitation and abuse of children?

## 6. Family environment and alternative care

The GRSA has adopted a development approach to the rights of children to a family environment and alternative care. The National Child Care and Protection Policy (NCCPP) (2019) recognises that every child has a right to a family, and that families and children's parents and caregivers bear the primary duty to provide children with the nurturing care and protection they need to fulfil their rights to survive, develop, be protected and to participate. The Policy further recognises that all parents and caregivers need some support to fulfil their responsibilities, and it is the role of the state to provide this support. In addition, many parents and caregivers in South Africa face daily social, economic, cultural and other pressures that make it difficult to fulfil their responsibilities, and they have a right to additional support to overcome these.

The developmental approach requires the state to promote the right of children to a family environment through the provision of an appropriate package of support to enable parents, families and caregivers to provide their children with the nurturing care and protection they need. It also requires that all children are cared for in families and the alternative care remains a measure of last resort. Where children must be removed from their families, it further requires that children are not placed in institutions, or where this is the case, it is done as a temporary measure pending their placement in a family setting. It further requires that children are placed in child and youth care centres that are safe and in turn provide nurturing care and protection.

There are a number of challenges in operationalising this developmental policy on supporting the right to nurturing family care. These include the following:

1. Families in South Africa face multiple adversities and require a combination of support and services to overcome these. They require legal protection and direction with regards to their rights and responsibilities and the rights of their children, they require material support in the way of social assistance and access to basic services, they require access to developmentally promotive and protective services such as health care, early development and education, and they require access to education and information on responsive caregiving, positive parenting and the dangers of the use of harsh discipline. In addition, parents with children with additional needs, such as children with disabilities, children in conflict with the law and children with substance abuse problems require specialised support to fulfil their children's unique nurturing care and protection needs.

Whilst the GRSA provides a number of supportive services, these are often not provided in the appropriate combinations to meet the needs of families and children in different contexts. This is largely because of the lack of an adequate system for identification of families and children at risk and mechanisms for assessing their needs and ensuring the appropriate package is provided. This challenge is aggravated by the persistent siloed approach within government to the planning and provision of family support for nurturing care.

2. Whilst some of the services are available, many of the services are not accessible to the most vulnerable children, or where they are accessible, the quality of public services provided is much

poorer for vulnerable children. Families and children living in poverty, in rural areas, in under-serviced informal areas, foreign migrant and unaccompanied children, and children with disabilities face daily challenges in accessing birth certificates, grants, early childhood care and education services, health care, rehabilitative services and assistive devices, and quality education.

3. Critical services and support to secure the provision of nurturing care and protection are not available at scale, and are not available to meet the needs of especially vulnerable groups. Notable in this regard is the lack of a national, sustained programme of family and parental/caregiver support to provide responsive caregiving, and the lack of specialised family support programmes tailored to meet the needs of families caring for children with disabilities, children with substance abuse problems, children with behavioural problems, and children of teen parents.
4. South Africa is unique in that it has very high numbers of children that live with kin – that is extended family members rather than their biological parents. The reasons for this vary from poverty, to labour migration and pursuit of educational opportunities. The majority of these children are not in need of care and protection through the formal statutory protection system. Instead, their families need additional support to enable the provision of nurturing care. The challenge has been that the state has responded to their needs by channeling these families into the formal care and protection system to secure foster care orders as a means of obtaining financial support in the way of the foster child grant. This has created an enormous challenge for the system. The large number of kinship care families has placed an enormous burden on social workers, courts and related service providers, crowding out children really in need of statutory protection. In addition, the majority of kinship carers are also not able to access the system and have been left without adequate support. For example, this situation has resulted in children in kinship care receiving less than adequate financial support from the State - in 2018 only 50% of the 600 000 eligible children living in kinship care were in receipt of the Foster Child Grant (FCG) and 20% were receiving no form of grant at all. The administrative requirements of a high foster care caseload have over-burdened social workers making them less available to carry out preventive services to families (such as family counselling and support or parenting support) and adequately respond to children in need of care and protection because of abuse, neglect or exploitation.

The National Child Care and Protection Policy and Social Assistance Act make provision for addressing this problem. The Policy introduces an administrative process, rather than a court-based process for regulating and recognising kinship care arrangements, bestowing certain parental rights and responsibilities on caregivers, and providing an entry point for access to family support services. The Social Assistance Act has been amended to provide a top up to the CSG for kinship carers who go through the administrative process – thus diverting them away from the formal protection system.

The SANCRRC welcomes these developments, but it remains unclear when they will be operationalised and the Children’s Act must be amended to align with the revised policies.

5. Adoption is a key mechanism for securing alternative family care for children in need of care and protection. The Children’s Act (38 of 2005) and the Adoption Policy Framework and Strategy (DSD,

2010a) prioritises adoptions as a preferred form of permanent alternative care for young adoptable children in line with The United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The purpose of adoptions is to protect children and to promote the goals of permanency by providing stable permanent alternative family care. The emphasis is on the fact that children have a right to grow up in permanent and stable families. Adoptions is evidenced to be the best option for children who have been abandoned and who have no family or kin network or care. Although there is a lack of formal statistics on the number of child abandonments reported, service providers working in this area have reported a significant growth in numbers compared to 2019. The Gauteng Department of Health issued a report stating that 118 babies had been abandoned in Gauteng hospitals during lockdown. In cases where children have no family alternative to institutional care, adoption has robust developmental and emotional benefits over long term institutional care, in particular for younger children. The Children’s Act is explicit about the importance of considering adoptions as a means to achieve permanence.

However, adoption numbers remain relatively low when compared to other forms of alternative care and sadly the numbers show a consistent decline. During the 2010/11 financial year there were 2436 adoptions registered in SA, compared to only 1186 registered during the 2017/18 financial year. These numbers are inclusive of the number of related or family adoptions. The Table below provides statistics of children by care placement arrangement for 2017, 2018 and 2019.

**Children according to childcare placement, 2012, 2017/18 & 2019**

Number of children in foster care 2019	Estimated number of children in residential care facilities 2018	Number of adoptions registered in SA 2017/2018
386 019	21 000	1 186

Current proposed amendments to the Children’s Act are set to aggravate the situation and make adoption more costly, administratively onerous and serve to further deter adoption as a viable family-based alternative.

6. Despite the policy recognition of family care as the preferred option and institutional care as only a measure of last resort, in practice policy makers and practitioners continue to adopt institutional-centric thinking and practices. Although the harm caused by the long-term residential care of children is widely recognised, its use continues to be sanctioned or actively promoted by many policy makers and social workers in South Africa. Because the challenges in the communities and families, and because of the lack of appropriate services to overcome these challenges, it is often seen as unsafe for children to be in families, so there are still a number of social workers who still think that it is better for the children to be in care in an institution.

The challenges driving this problem include the absence of a clear and explicit deinstitutionalization policy, the inadequate developmentally-oriented training of social workers, and the lack of accurate and updated data on the number of children in alternative care settings, including institutions.

7. Unfortunately the quality of care provided in many child and youth care centres, notably those run by government, is inadequate to ensure children receive the nurturing care and protection they require. For example, children placed in temporary care (for 6 months) are often denied access to education as local schools will not take them. Furthermore, children in institutional care often additional remedial educational support which they do not receive. Non-government child and youth care centres face significant challenges in maintaining the quality of care because they are not adequately funded by the state.

In addition, there are inadequate alternative care available for and equipped to provide nurturing care to children with additional needs, such as children with behavioural difficulties and children with disabilities.

8. Once placed in institutional care, the lack of universal and quality parenting and family support programmes makes it difficult to place children back in safe and nurturing families.

#### Proposed questions for the LOIPR

1. What measures have been taken to strengthen the national system of developmentally-focused family support to identify and provide all families caring for children at risk with an appropriate combination of supportive services to enable the provision of nurturing care?
2. What measures are in place to improve access to support for vulnerable families to access quality developmentally essential services, such as families and children in rural areas, children with disabilities, foreign migrant and unaccompanied children, and others?
3. What measures are in place to develop and implement a population scale programme of parenting and family support for responsive caregiving for all families, and for additionally vulnerable families including teen parents, parents of children with disabilities, children with behavioural difficulties, families whose children have been removed and placed in alternative care?
4. What measures have been taken to implement the policy and legislative provisions to strengthen family support for kinship carers?
5. What is the plan and process for addressing the challenges preventing adoptions?
6. Please advise on plans to adopt and pursue an explicit policy of deinstitutionalisation supported by appropriate family support programmes and human resources development?
7. What measures are being taken to improve the availability and quality of alternative care settings to ensure they provide nurturing care and protection?
8. What measures are being taken to improve information management systems to enable accurate monitoring and planning for the provision of nurturing care for children in need of alternative care?

## 7. Disability, basic health and welfare

### 7.1 Disability

As noted previously, children with disabilities continue to experience significant discrimination. The South African Disability Alliance, PACSEN and the Equal Education Law Centre are actively working in the sector and provided an overview of the range of deprivations experienced by children with disabilities in South Africa. They do not enjoy the same protections and services as other children and their rights to survival, protection and development remain at a higher risk than the rest of the child population. Notably, children with disabilities do not have equal or adequate access to:

- Early childhood development and education. It is estimated that only 1% of children with disabilities access ECD services.
- Education because of the unequal and exclusive educational system. As will be discussed in some detail in the followings section dealing with the right to education, large number of children with disabilities (estimated 60 000) are out-of-school.
- Safety at school hostels for children with disabilities is not adequate. PACSEN has lost 7 children to fires in hostels for children with disabilities.
- Preventative, promotive and therapeutic health services are not available through the public health system. The Department of Health does not systematically screen young children for developmental progress and disabilities and as a result, many avoidable and preventable disabilities are not identified and addressed early enough.
- Quality health care, including assistive devices and rehabilitative care are not available despite South Africa's policy committing to provide children with these essential tools for securing their development and participation.
- To protection from abuse and neglect.
- The denial of the right to justice by the police and prosecuting authorities where children with disabilities are the victims of crime. This is because of prejudice towards children with disabilities resulting in perpetrators not being criminally charged and prosecuted.
- The heightened deprivation and marginalisation of children with disabilities because of poverty.
- The exclusion, alienation and marginalisation of children with disabilities because of harmful cultural and traditional beliefs.
- The exclusion of children with disabilities from play, recreational, social and cultural activities.

#### **Family and alternative care and protection from abuse, neglect and exploitation**

Children with disabilities are 3 – 4 times more likely to be victims of violence and abuse and are often repeat victims. 10 percent of children with disabilities, compared to 6 percent of other children experience physical abuse and 23 percent compared to 13 percent are neglected.<sup>xv</sup>

Children with disabilities experiencing abuse in the home are rarely removed to safe alternative care and where they are moved, appropriate services are not available.<sup>xvi</sup>

Children with disabilities are at great risk of abuse violence and neglect in their homes. There are few, if any parenting support programmes educating parents on caring for children with disabilities and the importance of positive parenting and the risk of physical punishment to their survival and development.<sup>xvii</sup>

The reasons for this are diverse, and include:<sup>xviii</sup>

- Lower status of children with disabilities among families and communities
- Social isolation and invisibility of children with disabilities
- Lack of knowledge of rights and what constitutes abusive behaviour among children
- Lack of opportunities to report violence and abuse
- Inadequate spread and availability of alternative and/or partial care facilities providing care for children with disabilities
- Very few alternative care facilities / partial care facilities offer appropriate therapeutic programmes
- Support for and review of foster placements of children with disabilities is poorly implemented and where it is available, parental participation is poor
- Parents of children with disabilities as well as parents with disabilities caring for their children require, but do not receive adequate material, social and psycho-social support. Often this leads to inability to care for children and raises the risk of their removal from their parents. For example, access to the Care Dependency Grant is severely limited by the underlying medical model, rather than the social model aimed at securing inclusion and participation, for determining eligibility. As a result, the vast majority of children who do not have adequately “severe” disabilities cannot access the social assistance they need.
- The National Integrated ECD Policy (2015) and the National Child Care and Protection Policy (2019) commit to the development of a suite of strategies and programmes, which if developed and adequately resourced would significantly improve the capacity of caregivers to provide their children with disabilities with the nurturing care and protection they need to realise their rights.

These include the following – none of which have yet been developed:

- A disability strategy for young children that prioritises prevention, screening, early identification and treatment
- The provision of parent support programmes to address the heightened risk of children with disabilities to abuse, neglect and exploitation
- The development of promotive, prevention and early intervention programmes for children with disabilities to ensure inclusive programmes of family support to meet their additional needs to secure the rights of children with disabilities to survive, protection, to develop to their full potential and to participate.

What measures are in place and what progress has been made:

1. In developing a disability strategy for young children that prioritises prevention, screening, early identification and treatment?
2. The provision of parent support programmes to address the heightened risk of children with disabilities to abuse, neglect and exploitation?
3. The development of promotive, prevention and early intervention programmes for children with disabilities to ensure inclusive programmes of family support to meet their additional needs to secure the rights of children with disabilities to survive, protection, to develop to their full potential and to participate?
4. Amending the social security policy to ensure that all children with disabilities access the social assistance needed to ensure their development and inclusion?
5. In securing access to adequate health care, including assistive devices and rehabilitation services for children with disabilities?
6. In addressing prejudicial and discriminatory attitudes among parents, caregivers and service providers?

## 8. Education, leisure and cultural activities

The Committee 2016 COBs expressed concerns at the persistently high levels of inequality along historical fault lines of race, geography and disability, as well as the related persistence in the intergenerational transmission of poverty among these same groups. It further expressed grave concern at the persistent and significant disparities in access to quality education across the same fault lines driven by inadequate, unequal and inefficient resourcing, high levels of violence and drop out rates in schools attended by poor, mostly Black African children, notably so in the predominantly rural provinces that used to be the former Apartheid homelands.

This submission raises the two sets of concerns as a collective as they are fundamentally linked. Until South Africa addresses the continuing educational disparities and realises the right of all children, notably its historically marginalised children to a quality education, it will not see a reduction in the high levels of inequality and will be unable to end the intergenerational patterns and transmission of poverty along the equity fault lines inherited from apartheid.

The members of the SANCR are concerned that many of the recommendations made by the Committee to address this problem have not been addressed. The coalition would particularly like to draw the Committee's attention to the following problems and challenges:

1. The Ministry of Education framed an overarching policy response to address the educational exclusion of its most vulnerable children as far back as 2001 when it adopted Education White Paper 6: Special Needs Education ("**White Paper 6**"). White Paper 6 established a 20-year inclusive education policy

framework that was meant to ensure access to quality education for all children, notably the most vulnerable who had been and continued to be excluded because of their race, class, gender, disability, religion, culture, sexual preference, learning styles and language. The White Paper sought to ensure that all ordinary public schools were supported and able to respond to the needs of *all* learners, including those requiring extra support because of learning or physical disability, social disadvantage, cultural difference or other barriers to learning. In addition, it made provision for establishing enough, adequately resourced special schools for learners with severe disabilities.

2. In addition, the White Paper was supported by a number of pro-poor policies such as the no-fee school policy for schools in the poorest quintiles and school fee exemptions for poor learners attending schools in wealthier areas, the school nutrition programme, an increased per learner allocation in no-fee schools and ring-fenced funding for addressing infrastructure backlogs for basic services and safe buildings in schools in the poorest provinces.
3. The Department of Basic Education has also universalised one year of pre-school (Grade R) to improve the school readiness of many children who had not benefited from quality early child development.

Despite the many measures in place, South Africa has not made significant progress in addressing educational inequalities and exclusions across historical fault lines. Thus it is still the case that the majority of poor, Black African children, children in rural areas in the former homelands and children with disabilities do not receive quality education. Many girls from these vulnerable groupings continue to be at risk of pregnancy and dropping out of school, and the poor quality of Grade R means that the large numbers of young children that do not access quality early development before Grade R are not any better prepared for formal schooling. Indeed, studies have shown that the quality is so poor as to deepen inequalities.

The inequalities have deepened in the context of COVID 19. The social, economic, and political context has deteriorated significantly as a result of the measures taken by government to contain its spread. It is estimated that children have lost 40% of the academic year, and that it will take until 2031 to return to our pre-pandemic learning trend.<sup>xix</sup>

The Equal Education Law Centre is a coalition member has provided a comprehensive overview of the sector's concerns with the current education system, the key gaps and challenges and the underling reasons for the lack of progress. Their submission is summarised in this section of this submission and is annexed in full to this report for further reading.

The key concerns listed hereafter point to a failure on the part of the Government of the Republic of South Africa (GRSA) to act effectively on the recommendations in the Committee's 2016 concluding observations:

1. Inclusivity as envisaged in White Paper 6 and supporting strategies has not been realised for marginalised children, and especially children with disabilities. Many children with disabilities are excluded from school, and despite the commitment to reasonable accommodation, many children continue to be placed in special schools rather than included in schools that are adequately supported

to fulfil their right to education.

In 2015, Human Rights Watch reported that children with disabilities continue to face enormous challenges when accessing education, including discrimination, when accessing all types of public schools.<sup>xx</sup> In 2019, Human Rights Watch also reported that an estimated 600 000 children with disabilities were not attending any type of school in South Africa, but that accurate government data on this did not exist.<sup>xxi</sup>

The reasons for this include the fact that the White Paper has never been comprehensively regulated through binding legislation and this has resulted in the inadequate resourcing and provisioning of inclusive education, with limited, if any accountability. In addition, White Paper 6 is now outdated and needs to be revised.

In addition, the pro-poor policies applicable to ordinary public schools do not include children with disabilities. Poverty and school fees remain a major barrier to access to education for children with disabilities. The existing legal framework on inclusive education in South Africa does not make provision for free education for learners attending special schools.

2. Poverty remains one of the biggest barriers to education and the no-fee and fee exemption policies as well as the per-learner funding threshold are not adequately resourced or implemented to overcome this barrier.

No fee schools are not permitted to charge fees but they may raise additional funds through *voluntary* contributions. There are ongoing reports of parents and guardians being forced to pay donations in spite of this being prohibited.<sup>xxii</sup>

A judgment handed down in 2017 permitting a single parent to apply for a partial or full fee exemption, even in the case of the other parent failing or refusing to provide their particulars<sup>xxiii</sup> (“**Saffer judgment**”) was an important victory for single parents, however the regulations relating to the exemption of parents from payment of school fees in public schools<sup>xxiv</sup> have yet to be amended to implement this ruling.

The South African government has determined that schools are funded at nationally determined per learner amounts, which must be paid by provincial departments of education. In a recent meeting of the Portfolio Committee of Basic Education, the Financial and Fiscal Commission noted that various provincial departments of education have been funding schools below the nationally determined per learner amount since 2014.

3. Infrastructure backlogs have not been adequately dealt with and large numbers of children continue to attend unsafe and unhygienic schools that do not provide an enabling teaching and learning environment.

Despite clear deadlines in the Infrastructure Norms and Standards, the National Education

Infrastructure Management System (“NEIMS”) report reveals that there remain a number of schools with pit latrines and with an unreliable water supply.<sup>xxv</sup> In the latest NEIMS report, there are still 3164 schools across South Africa with pit latrines as their only form of sanitation.

A lack of capacity in provincial departments of education has resulted in a reliance on implementing agents, that in many instances, have failed to deliver construction projects as planned.<sup>xxvi</sup> Poor data collection which often results in poor planning across national and provincial education departments has also had a bearing on the provision of school infrastructure.

Concerningly, we have seen a decrease in the national Department of Basic Education’s (“DBE”) budget, which has resulted in cuts to school infrastructure grants, amongst other things.<sup>xxvii</sup> While government has adopted austerity measures and reduced social spending, a partial reason for reductions to education budgets relates to the inability of education departments to spend their funding efficiently and effectively. Often, particularly with some infrastructure grants, money has been returned to National Treasury because it was not spent.

4. Lack of transport for children living far from schools remains a key barrier despite the adoption of a scholar transport policy in 2015. There are ongoing concerns regarding the lack of stakeholder co-operation between the provincial departments of education and transport and the failure to allocate roles and responsibilities to national and provincial departments of education and transport.<sup>xxviii</sup> A failure of government departments to cooperate, a lack of dedicated funding and a lack of accurate data on the extent of the need for scholar transport is impacting on the extent to which learners who require transport are able to access it. A lack of scholar transport affects learner attendance at school and places their safety at risk, which affects learners’ ability to realise their right to education. The national Learner Transport Policy contains significant gaps which have hampered the effectiveness of the policy.
5. Inadequate access to early childhood development and education is a major driver of the perpetuation of educational inequalities. The majority of children in South Africa do not have access to quality early childhood development (ECD) services. Currently, 3.2 million children are not accessing any ECD programmes and only 626 574 or 25% of the children who need it are obtaining subsidised learning.<sup>xxix</sup> Of the children who are able to access some form of ECD programme, 2.9 million children are in unregistered programmes,<sup>xxx</sup> which fall outside the regulatory net. The reasons for this are many and the current regulatory framework (in particular, the Children’s Act, 2005) has failed to address, but rather aggravated inequalities. It does not create an enabling environment to ensure equal access to quality early childhood education.

Amongst other things, the Act:

- Fails to enable implementation of the National ECD Policy.
- Imposes a complicated dual registration process on ECD programmes and partial care facilities.
- Does not recognise the need for different types of ECD programme provisioning.
- Requires compliance with excessively burdensome and unattainable requirements, making registration and access to funding almost impossible.

The proposed amendments to the Children’s Act introduced through the Children’s Amendment Bill in 2020 fail to address core challenges facing the ECD sector, and in some cases, exacerbate existing challenges.

6. Teen pregnancies remain a key barrier to education. Findings presented during a recent meeting of the Portfolio Committee on Basic Education, cite teenage pregnancy as one of the contributing factors for school drop-out.<sup>xxxii</sup> There are ongoing reports of pregnant learners being excluded from school due to inconsistent school policies.

The draft National Policy on the Prevention and Management of Learner Pregnancy in Schools was developed to address this issue. It was published for public comment in 2018 (“**draft policy**”). There are concerns that the draft policy does not provide sufficient information to facilitate effective implementation. However, a final policy has still not been published and it is unclear to what extent the issues raised will be addressed in the final policy.

7. There are ongoing reports of learners being subjected to degrading and inhumane forms of punishment in schools despite the fact that corporal punishment is a criminal offence in terms of the South African Schools Act, 84 of 1996. Despite the publication of the Protocol to Deal with Instances of Corporal Punishment in Schools, there has been inadequate monitoring of implementation of the protocol.
8. The increasing involvement of private or non-state actors in the ownership and management of schools has brought with it a range of concerns relating to equity, access, quality and equality in education in South Africa. In its work, the EELC frequently assists clients in situations where independent schools withhold reports, refuse to provide transfer documents, or expel learners for the non-payment of fees.

Poor regulation of private involvement in education results in failure to ensure adequate standards are implemented in schools owned and managed by private actors.

In October 2018, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) recommended that South Africa intensify its efforts to improve the existing regulatory framework to define the roles and responsibilities of private sector actors and its efforts to monitor the education provided by such actors.

## Proposed questions for the LOIPR

What measures are in place and what progress has been made with regards to the following issues:

### **Children with disabilities**

1. What are the GRSA's plans to review White Paper 6 and develop and adopt binding legislation (through an Inclusive Education Act, for example) to enable an adequately resourced and equitable system of inclusive education?
2. What measures have been taken to develop and adopt binding norms and standards for resourcing inclusive education?
3. What timelines and indicators for implementation will be put in place?
4. What measures are planned to ensure equity in allocation and use of resources to fund inclusive education across provinces?
5. What progress, if any, has been made on ensuring the functionality of existing full service schools, and what measures are in place to expedite this process?
6. What steps will be or are being taken to address the issues raised in respect of full service schools and to assess the *viability* of full service schools in enabling a holistic, inclusive education system?
7. What plan is in place to improve conditions generally, and the provision of specialists in particular, in special schools for their conversion into resource centres?
8. What steps will be taken to put adequate data collection and analysis systems in place regarding enrolments?
9. What steps will be taken to ensure free quality education for learners with disabilities?
10. What legislative and policy measures are being taken to ensure that the full range of issues relevant to the rights of children with disabilities are taken into account in all aspects of planning, resourcing, and provisioning? What timelines and indicators for implementation will be put in place?

### **Children living in poverty**

1. How will the South African government ensure schools comply with the requirements for voluntary contributions?
2. When will the South African government amend regulations giving effect to the *Saffer* judgment?
3. How will the South African government ensure that all provinces fund schools in accordance with the nationally determined per learner amounts?

### **Infrastructure backlogs and inequalities**

How and according to what timelines will the South African government:

1. Ensure effective oversight of education infrastructure spending and ensure that sufficient financial resources are allocated for the completion of infrastructure projects?
2. Build capacity in provincial departments of education to implement and manage infrastructure projects and prevent an over-reliance on implementing agents?
3. Urgently address infrastructure backlogs and comply with the deadlines as contained in the Infrastructure Norms and Standards?
4. Ensure universal compliance with norms and standards for school infrastructure, appropriate sanitation and access to water and electricity?

### **Transport**

How will the South African government:

1. Ensure scholar transport is adequately funded across provinces?
2. Exercise oversight to ensure that all provinces publish adequate, comprehensive scholar transport policies?
3. Ensure accountability and transparency of spending on scholar transport?
4. Ensure there is accurate data on the extent of the need for transport?
5. Ensure that learners attending schools of parental choice are not excluded from this service?
6. Ensure that learners with disabilities are given priority when considering learners who qualify for transport?

### **Inadequate access to early childhood development and education**

1. What measures will be taken and according to what timeframes to ensure that the ECD regulatory framework adequately addresses current challenges?
2. When will government make its detailed plans for the imminent migration publicly available for engagement?

### **Teen pregnancies**

1. When will the South African government finalise the draft policy, including finalising and publishing the accompanying proposed Implementation Plan?

### **Corporal punishment in schools**

1. What monitoring mechanisms are in place to ensure implementation of the Protocol to deal with Instances of Corporal Punishment in Schools?
2. What plans are in place to ensure educators, learners and parents are aware of the prohibition on corporal punishment and the effects of corporal punishment on learners?

### **Regulation of private schools respect for children's rights**

1. What measures are being taken by government to implement the recommendations of the CESCR to regulate private involvement in education and to provide adequate guidance to provinces in their regulation of private actors?
2. Has South Africa considered the Abidjan Principles. Will steps be taken to ensure their implementation?
3. When will national legislation be published to regulate private involvement in education?

## 9. Special protection measures

### 9.1 Migrant, asylum-seeking, refugee and undocumented children

As previously noted, there is persistent and structural discrimination against stateless children, migrant, asylum-seeking and refugee children, children in street situations and undocumented children. One of the challenges with addressing the underlying problems is the lack of data.

It is recorded that almost 1 million learners in the education system are undocumented, with 82% of these learners being South African citizens.<sup>xxxii</sup> In the case of undocumented migrants, the problems are severe. May foreign migrant children do not access education because of their lack of documentation. The problem is caused by the lack of systems for generating documentation and the lack of protective education laws to enable their access to education without undue administrative burdens.

Undocumented children are also denied their right to alternative care. Undocumented children are turned away from child and youth care centres despite the legal provision that a birth certificate is not a pre-requisite for admission into alternative care. Children must be admitted to care centres as places of safety for vulnerable children while their documents are being processed.

The challenges are the result of multiple barriers, including a lack of clarity in the legal framework, legal gaps, administrative and socio-economic barriers, funding models for schools, the lack of awareness of applicable laws and policies, and the lack of separation between the provision of basic services and immigration control.<sup>xxxiii</sup> A further challenge lies in implementation of existing laws. Implementation is a problem because of inadequate education and xenophobic attitudes amongst services providers.

#### *Proposed questions for the LOIPR*

1. What measures have been taken to strengthen the legal protection of the following vulnerable groups:
  - i. Stateless children
  - ii. Foreign migrant children
  - iii. Unaccompanied minors
  - iv. Undocumented minors?

## Part B: Submission by the children of South Africa on matters to be included in the List of Issues for the UN Child Rights Committee

### Introduction

A child consultation workshop took place on 31 October 2020 involving 12 child ambassadors from each of the provinces who serve as representatives for their province in the Children's Parliament. The following is a record of their contribution to the LOI with regards core issues that continue to impact them and their peers.

### The issue

The children acknowledge that South Africa has one of the most comprehensively structured constitutions in the world and seeing as the CRC was the first international treaty that the South African democratic government ratified<sup>1</sup>, with these and the subsequent development of legislative frameworks that are, for the most part, inclusive of children and children's issues, the government gave the public the impression that it would be dedicated to prioritising and protecting the rights of children in the country.

However, since then, government's implementation of existing legislative frameworks, particularly the UNCRC, has not been enough to meet the needs of the children of South Africa. There is a deep lack of transparency, and therefore accountability, and monitoring of resources in all spheres of government. Critical systems and mechanisms that should allow for the realisation of children's rights either lack cohesive coordination or are yet to be put into place, mainly due to a lack of inter-sectoral and interdepartmental coordination and collaboration.

Many individuals, and in particular children, do not know their rights, or of the officials that are meant to uphold the protection of their rights, due to government neglecting its mandated responsibility to ensure that all are aware of and understand their rights and the legislation that govern this nation. Practical and coordinated implementation remains at the heart of the child rights issues that child continue to face today, and it is around this that we frame the submission for the issues raised by the child ambassadors consulted.

### General measures of implementation

The children consulted identified the following challenges:

#### *GMI 3 - Development of comprehensive strategies or agendas for children*

Despite the development of the National Plan of Action for Children and other strategic plans geared towards putting legislation into action, the outcomes of such strategic frameworks are yet to be seen. Strategies to implement solutions to issues children face are either not comprehensive enough or are simply not present. Substance abuse is one of such issue that children in vulnerable areas are frequently

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<sup>1</sup> Please see : [https://www.parliament.gov.za/storage/app/media/Pages/2019/november/19-11-2019\\_30\\_Year\\_Commemoration\\_of\\_the\\_United\\_Nations\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child/docs/FAST\\_F\\_ACTS\\_UNCRC\\_draft\\_2\\_19\\_November\\_2019final.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2019/november/19-11-2019_30_Year_Commemoration_of_the_United_Nations_Convention_on_the_Rights_of_the_Child/docs/FAST_F_ACTS_UNCRC_draft_2_19_November_2019final.pdf)

exposed to. There are no strategies to combat substance abuse and quality services to combat this problem are inaccessible, i.e. quality rehabilitation centres are expensive and scarce in South Africa.

#### *GMI 4 - Development of permanent governmental coordination mechanisms*

The children acknowledge the development of largely inclusive and comprehensive legislation that exists in the country, however, the coordination of systems to implement them are insufficient.

#### *GMI 5 - Systematic monitoring – data collection and evaluation*

This measure of implementation are largely neglected with regard to data collection on children's issues. This issue is further explored under the child protection sub-heading below.

#### *GMI 6 - Allocation of resources for children (budget analysis, etc.)*

Allocation of resources to address children's issues are simply not prioritised and the needs of children are treated as an afterthought in government budgeting. One such example is that government denied children their right to nutrition during the COVID-19 lockdown due to a lack of prioritisation of this dire need and systems to continue to roll out the National School Nutrition Programme. Not enough resources are allocated to civil society to assist in the continuation of provision of nutrition to children.

#### *GMI 7 - Education, training and awareness-raising on the CRC*

The government has neglected to educate the public on the rights of children and the CRC in particular. Vulnerable households do not have access to information on the CRC. Without such knowledge, the public is unable to hold the government accountable for the implementation of the CRC and other legislation, hence transparency in government is a point of concern that needs addressing.

#### *GMI 8 – Collaboration in the process of implementation with civil society including children*

During the disruption to the National School Nutrition Programme during the COVID-19 lockdown, government had the opportunity to collaborate with civil society to ensure continued roll out. This opportunity was not taken, however, which led to the infringement on the rights of thousands of children.

The children are of the opinion that in order for effective collaboration to take place, children must be consulted by government first before civil society, professionals, businesses and the media, in matters that affect them. Many professionals, businesses and the media only work with children when it is beneficial to them; to "tick the box" to meet Corporate Social Responsibility quota, for example. Hence, no real collaboration or consultations with children takes place.

Government is expected to put pressure on these entities to collaborate effectively with children and push forward the mandate ensuring their activities are carried in the best interests of children. However, government itself fails to fulfil this mandate.

#### *Children's survival*

The problem of stagnant or slow-paced implementation of the Convention and the country's legislation impacts greatly on children's survival. The lives of many children are placed at risk and their ability to live fulfilling lives is stifled due to government failure to systematically provide the shelter, health, nutrition

and other basic social services that children need to thrive and survive. The gaps in provision of basic social services became particularly evident during the COVID crisis.

In particular, the collection and reporting of data on the mortality rates of children over the age of 5 years to 17 years of age by government is practically non-existent. Information on child-related the statistics are heavily reliant on the work of CSOs and NGOs which, as established in the issues regarding GMI 6, are generally underfunded and are therefore unable to report on these issues as comprehensively as required. This further reflects the extent to which children's issues, and their right to survival, are given low priority.

The issue was identified as impacting on the following rights of children in terms of child survival:

- Right to life
- Right to nutrition
- Right to shelter/adequate living conditions
- Right to access to medical services

### Child Protection

Violence against children is simply not prioritised and therefore implementation to protect children is greatly lacking. Cultural practices such as ukuthwala persist today where children are kidnapped and forced into marriages, with little to no governmental intervention and a general societal silence on this problem. Safe havens to protect children from harm, especially from harmful situations in the home, are required to avoid the re-victimisation of vulnerable children; access to shelters exist for women much more than they do for children.

The children commend government for developing legislation that prohibits corporal punishment from being practiced in schools, however, there remains challenges in terms of implementation and the monitoring of this legislation. The child ambassadors shared personal stories of threatened and actual corporal punishment still occurring in schools. One ambassador admitted that she was almost expelled for approaching teachers demanding that they find an alternative solution to physically disciplining students and admitted that teachers in her school do not like her because she is a child advocate. Another ambassador informed the workshop of a school in her area that is well known for practicing severe corporal punishment and that there is a widely held belief in her own school that corporal punishment is the only way to help children learn. This further illustrates the argument that there is not enough roll out of much needed school interventions, such as Positive Discipline in Everyday Teaching (PDET) and efforts to implement legislation that prohibit this act.

When reporting on VAC, the media must take measures to protect the identity of the child victims. The ethics of the media houses in South Africa are not monitored and there is unsatisfactory regulation of the media. The government must sign and ratify protocol on regulating and monitoring all forms of media.

This issue impacts on the following rights of children, among others:

- Right to safety
- Right to be protected from exploitation
- Right to be protected from abuse
- Right to a safe environment

- Right to access to social services

### Development in the Education sector

COVID has highlighted the inequalities within the education sector in the country. A clear and standard education system that caters to children from all walks of life is needed to be developed and implemented to ensure fairness in access to quality education. Schools are not prioritised in the allocation of governmental funds resulting in, among other issues, poor infrastructure, i.e. pit latrines, disable-friendly infrastructure and classroom structures, which has kept children from learning effectively and in some cases, placed their lives at risk. For resources that are allocated to schools, there is a lack of transparency and monitoring of the use of these resources.

The issue was identified as impacting on the following rights of children in terms of child development:

- Right to basic education
- Right to a safe environment
- Right to freedom from all forms of violence

### Child Participation

The issue of child tokenism was identified to be a great hindrance to the implementation of government's responses to issues affecting children. In a discussion on IDPs and the involvement of the ambassadors as their respective provincial child representatives, the tokenism of child participation, for example on junior councils, was identified as an ambassador from the Western Cape, who served as a deputy junior mayor, indicated that they were not as involved or even consulted in any municipal planning as they should have been and that the position itself has not resulted in any involvement in decision making processes.

This has further created a culture of tokenism in society where children's rights are not truly given priority required to facilitate meaningful change in the lives of children. Online child tokenism was identified when one or few crimes against children are reported on and cause short-lived uproar online, however many other cases are not spoken about and a true picture of the problem that is VAC is not presented. In addition to that, there is rarely any follow through of media's reporting of these cases and the outcomes are not shared. The feeling is that few cases are reported or "trend" in the media to create a sense that something is being done to help children, when in actual fact, VAC or other issues children face are not prioritised or considered matters that require urgent and meaningful addressing.

### Questions to government

1. Why hasn't government made it mandatory for Junior City Councils to exist in every city/municipality?
2. Why do we not have child representatives in the creation of IDPs?
3. What actions are being put into place to ensure that all children in South Africa, including those living with disabilities and children from vulnerable background, receive the same quality of education?
4. How does the DBE plan to ensure that all schools are in proper learning condition?

5. What is being/will be done about the infrastructure of schools so that children living with disabilities has access to them? What budget allocations are planned for this? Where is the money that was supposed to go to upgrading school infrastructure?
6. How can the media be regulated to protect the child victims they report on?

## Annexure A: Full submission on education made by the Equal Education Law Centre



### Implementation of the United Nations Convention on the Rights of the Child (UNCRC): List of issues to be reported on by the South African government

November 2020

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#### **Introduction:**

1. This submission is made by the Equal Education Law Centre (“EELC”) for inclusion in a consolidated list of issues to be submitted to the Committee on the Rights of the Child by the South African National Child Rights Coalition in order to identify priority issues that the South African government should report on in its periodic report in respect of the United Nations Convention on the Rights of the Child (“UNCRC”)<sup>2</sup>. The EELC is a public interest law centre, using legal advocacy, research, and litigation to advance the struggle for equal and quality education in South Africa.
2. In this submission, the EELC considers the right to education contained in the UNCRC and the obligations of the South African government as a State Party to the UNCRC.
3. This submission will provide a current situational summary of the challenges being experienced by children in South Africa with reference to the right to education and general measures of implementation. Against this context, it will propose a list of questions/issues to be addressed by the South African government toward fulfilment of its obligations in terms of the UNCRC. The following rights contained in the UNCRC will be considered in this submission:
  - (i) Article 23(3) - the right of children with disabilities to access education;
  - (ii) Article 28 - the right to education (this includes the right to access education on the basis of equal opportunity, the availability of free primary education, the provision of financial assistance, a reduction in drop-out rates and that school discipline be conducted in a humane manner); and
  - (iii) Article 29 - the right to education that is directed to a child’s holistic development.

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<sup>2</sup> UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

Nature of inequalities and exclusions	Current situational summary	Impact on the right	Cause of the issue	List of questions/issues
<p><b>(1) Lack of implementation of an inclusive education system</b></p>	<p>Inclusive education is defined as a learning environment that promotes the full personal, academic and professional development of all learners irrespective of race, class, gender, disability, religion, culture, sexual preference, learning styles and language.<sup>3</sup> It refers to the capacity of ordinary schools to respond to the needs of <i>all</i> learners, including those requiring extra support because of learning or physical disability, social disadvantage, cultural difference or other barriers to learning.</p> <p>Education White Paper 6: Special Needs Education (“<b>White Paper 6</b>”), introduced in 2001, established a 20-year inclusive education policy framework that was meant to enable an inclusive education system in South Africa. It specifically sets out, amongst other things, government strategy for systematically addressing and removing barriers to learning through establishing <b>full service schools</b> (mainstream institutions providing a full range of learning needs), converting <b>special schools</b></p>	<p>Contrary to what is envisaged in White Paper 6, the DBE continues to approach inclusive education as a separate component of education provisioning, as opposed to seeing the entire education system itself as one which should be inclusive.</p> <p>The result has been that learners who require additional support or reasonable accommodation in local neighborhood schools do not receive this and are often even excluded from attending ordinary schools on the basis of their additional support needs or disability. There remains an over-reliance on support</p>	<p>The failure to comprehensively regulate inclusive education through binding legislation has resulted in the resourcing and provisioning of inclusive education going unchecked, unprioritised and underfunded.</p>	<p>a. When will binding legislation (through an Inclusive Education Act, for example) be developed to enable a system of inclusive education? What timelines and indicators for implementation will be put in place?</p> <p>b. What progress, if any, has been made on ensuring the functionality of existing full service schools?</p> <p>c. What steps will be or are being taken to address the issues raised by the AG in respect of full service schools and to</p>

<sup>3</sup> Department of Education 2007 *Quality education for all: Report of the National Commission for Special Needs in Education on Training (NCSNET) and the National Committee on Education Support Services NCESS.*

	<p><b>into resource centres</b>, and training education managers and teachers.<sup>4</sup></p> <p><b>However, with the timeline for the implementation of White Paper 6 coming to an end in 2021, there has been little progress in its effective implementation so far. The principles contained in White Paper 6 are also outdated and must be reconceptualised when developing legislation for an inclusive education system.</b></p> <p>In 2014, the DBE introduced its Policy on Screening, Identification, Assessment and Support (“SIAS”).<sup>5</sup> The SIAS Policy makes clear that every learner has a right to receive reasonable accommodation in an inclusive setting. This approach towards inclusivity is also confirmed in section 7(5) of the SIAS Policy, which highlights that the system must shift away from merely referring learners to specialised settings, and move towards placing a learner in the nearest school to their home.<sup>6</sup></p>	<p>provisioning in special schools.</p>		<p>assess the <i>viability</i> of full service schools in enabling a holistic, inclusive education system?</p> <p>d. What plan is in place to improve conditions generally, and the provision of specialists in particular, in special schools for their conversion into resource centres?</p>
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<sup>4</sup> Department of Basic Education, 2001. Education White Paper 6: Special Needs Education- Building an Inclusive Education and Training System 5-8.

<sup>5</sup> Department of Basic Education, 2014. Policy on Screening, Identification, Assessment and Support. Available at: <https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371>.

<sup>6</sup> Ibid at 14.

	<p>Despite these policy undertakings, inclusivity as envisaged in White Paper 6 and SIAS has not been forthcoming.</p> <p><b><u>Full service schools</u></b></p> <p>Originally, full service schools were established as a model for the way in which <i>all</i> ordinary schools should become inclusive schools. However, this has not been the case.</p> <p>A report was issued by the Attorney General of South Africa (AG) which stated that after Guidelines for Full Service Schools were issued in 2010, the DBE did not develop a national strategy to coordinate the designation and establishment of full-service schools in a consistent and viable manner across the provinces. Further, the AG notes, Provincial Education Departments did not adequately guide the designation/conversion of full-service schools.</p> <p>On 24 August 2019, in response to the report issued by the AG, the Director General for Basic Education issued a circular on the ‘Temporary Suspension of the Designation of Full-service Schools’, asking provinces to consider suspending the designation of full service schools for three years to “ensure that those that have been designated are adequately capacitated to fulfil their roles and responsibilities....’ The circular also contained</p>		<p>The failure to adequately</p>	
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	<p>guidance for provinces on what should be done to ensure that the AG's recommendations for full-service schools are implemented.<sup>7</sup></p> <p><b><u>Conversion of Special Schools into Resource Centres</u></b></p> <p>The goal of White Paper 6 was to convert all existing special schools into resource centres to provide outreach support to neighbouring ordinary schools accommodating learners with disabilities. The aim was to promote access to education for learners with disabilities in the general education system by using the existing specialist skills at special schools to support ordinary schools.<sup>8</sup></p> <p>Only a few special schools have been converted into resource centres. Most remain poorly resourced, dysfunctional schools providing a poor quality of education to the learners who attend the special schools often without specialists of any kind and no programme to support ordinary schools.</p>		<p>regulate full service schools has resulted in them being inadequately designated and established. Moreover, the original intention of establishing full service schools as a model for the way in which all ordinary schools should become inclusive schools has not been achieved.</p>	
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<sup>7</sup> Department of Basic Education (2019) 'Temporary Suspension of the Designation of Full-service Schools' Available at: <https://www.education.gov.za/Curriculum/Circulars/tabid/587/Default.aspx>.

<sup>8</sup> Department of Basic Education, 2001. Education White Paper 6: Special Needs Education- Building an Inclusive Education and Training System at pg. 47.

		<p>Learners with disabilities continued to be segregated in special schools with little support provided to ordinary schools to accommodate learners with disabilities.</p>	<p>Funding for the strengthening of special schools to be converted to resource centres has not materialised.</p>	
<p><b>(2) Lack of funding for an inclusive education system</b></p>	<p>Draft National Guidelines for Resourcing an Inclusive Education System were developed, but</p>	<p>Underfunding of inclusive education results in children not being accommodated in ordinary schools and instead</p>	<p>Amongst other things, this can be attributed to the failure to publish binding and costed norms and standards</p>	<p>a. When will binding norms and standards for resourcing inclusive education be published?</p>

	<p>never finalised.<sup>9</sup> They were intended to provide guidance on the equitable and efficient provision, distribution and use of infrastructure, personnel and non-personnel funding for an inclusive education system, in line with the prescripts of White Paper 6.<sup>10</sup></p> <p>Regrettably, guidelines do not have the legal status of norms and standards, and are not legally binding, and in the case of the Draft Resourcing Guidelines, they remain in draft form.</p> <p>Despite the critical role of public, ordinary schools in advancing an equitable, quality all-inclusive education, schools appear to receive no additional financial support for the reasonable accommodations that must be made in terms of the SIAS Policy in order to accommodate learners with barriers to learning in ordinary schools:</p> <ul style="list-style-type: none"> <li>• In terms of financing low levels of accommodation, these should be accommodated through the school's budget and "the norms and standards of ordinary schools are to be expanded to accommodate a standard allocation</li> </ul>	<p>being segregated in special schools.</p>	<p>for resourcing inclusive education.</p>	
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<sup>9</sup> Department of Basic Education, 2018. Draft National Guidelines for Resourcing an Inclusive Education System. Available at: <http://www.thutong.doe.gov.za/ResourceDownload.aspx?id=49853&userid=-1>

<sup>10</sup> Department of Basic Education, 2018, Draft National Guidelines for Resourcing an Inclusive Education System.

	<p>for all schools to address care and support needs for learning”.<sup>11</sup></p> <ul style="list-style-type: none"> <li>• Where moderate levels of accommodations are concerned, the SIAS Policy indicates that these costs are to be recovered from the school’s “Inclusive Education allocation”. However, in practice, it does not appear as if schools receive an additional allocation dedicated solely to inclusive education.<sup>12</sup></li> <li>• In terms of high-level accommodations, the SIAS Policy suggests that “standard specialised funding and HR norms and standards related to specific support programmes are required” .<sup>13</sup></li> </ul> <p>In addition, no mention is made of how reasonable accommodations made in schools must be financed.</p>			
<b>(3) Access to education for children with disabilities</b>	In 2015, Human Rights Watch reported that children with disabilities continue to face enormous challenges when accessing education, including discrimination, when	Where it is necessary for learners to access special schools (for instance, where high levels of support are	The lack of accurate enrolment data makes provisioning impossible.	a. What steps will be taken to put adequate data collection and analysis systems in place

<sup>11</sup> Department of Basic Education, 2014. Policy on Screening, Identification, Assessment and Support. Available at: <https://www.education.gov.za/LinkClick.aspx?fileticket=2bB7EaySbcw%3D&tabid=617&portalid=0&mid=2371> at pg. 19.

<sup>12</sup> Ibid at 20.

<sup>13</sup> Ibid at 21.

	<p>accessing all types of public schools.<sup>14</sup> In 2019, Human Rights Watch also reported that an estimated 600 000 children with disabilities were not attending any type of school in South Africa, but that accurate government data on this did not exist.<sup>15</sup></p> <p><b><u>Fee exemptions in special schools:</u></b></p> <p>The Convention on the Rights of Persons with Disabilities (CRPD) recognises payment of school fees as a potential barrier for learners with disabilities to accessing education. For this reason, the CRPD requires State Parties to take practical steps aimed at ensuring free primary and secondary education for learners with disabilities. Regrettably, the existing legal framework on inclusive education in South Africa does not make provision for free education for learners attending special schools.</p> <p>The 2015 Human Rights Watch report notes that among the factors that impede the ability of children with disabilities to access education</p>	<p>required), the cost of schooling remains a barrier to access.</p>		<p>regarding enrolments?</p> <p>b. What steps will be taken to ensure free quality education for learners with disabilities?</p> <p>c. What legislative and policy measures are being taken to ensure that the full range of issues relevant to the rights of children with disabilities are taken into account in all aspects of planning, resourcing, and provisioning? What timelines and indicators for implementation will be put in place?</p>
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<sup>14</sup> Human Rights Watch, 2015. “Complicit in exclusion”: South Africa’s failure to guarantee an inclusive education for children with disabilities. Available at: [https://www.hrw.org/sites/default/files/report\\_pdf/southafricaaccessible.pdf](https://www.hrw.org/sites/default/files/report_pdf/southafricaaccessible.pdf).

<sup>15</sup> Human Rights Watch, 2019. South Africa: Children with disabilities shortchanged. Available at: <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged>.

	<p>are prohibitive costs associated, in particular, with...school fees.<sup>16</sup> It notes further that although 80 percent of mainstream schools have been declared as “no fee schools”, there are no special schools currently listed as “no fee schools”.<sup>17</sup> This problem prevails despite the fact that the majority of learners attending special schools are coming from similar poverty stricken communities.</p>			
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<sup>16</sup> Human Rights Watch, 2015. “Complicit in exclusion”: South Africa’s failure to guarantee an inclusive education for children with disabilities. Available at: [https://www.hrw.org/sites/default/files/report\\_pdf/southafricaaccessible.pdf](https://www.hrw.org/sites/default/files/report_pdf/southafricaaccessible.pdf). Pg 26.

<sup>17</sup> Ibid at pg 27.

<p><b>(4) Charging of contributions in no-fee schools, discrimination against learners applying for fee exemptions, especially for children with single parents, and funding schools below the national threshold amount.</b></p>	<p><b><u>Requiring payment of voluntary contributions:</u></b> No fee schools are not permitted to charge fees but they may raise additional funds through <i>voluntary</i> contributions. There are ongoing reports of parents and guardians being forced to pay donations in spite of this being prohibited.<sup>18</sup></p> <p><b><u>Regulations pertaining to the exemption of parents from payment of school fees:</u></b> A judgment handed down in 2017 permitting a single parent to apply for a partial or full fee exemption, even in the case of the other parent failing or refusing to provide their particulars<sup>19</sup> (“<b>Saffer judgment</b>”) was an important victory for single parents, however the regulations relating to the exemption of parents from payment of school fees in public schools<sup>20</sup> have yet to be amended to implement this ruling.</p>	<p>The fee exemption provisions are important in ensuring access to education for vulnerable groups in society. Without access to fee exemptions, by being forced to make voluntary contributions and provincial departments of education failing to fund schools in accordance with the national threshold amount, learners and schools who are in desperate need of financial assistance to ensure access to education are compromised.</p>	<p>The South African government has failed to amend existing regulations giving effect to the <i>Saffer</i> judgment.</p> <p>There are insufficient monitoring processes to ensure compliance with the fee exemption regulations and the South African Schools Act regarding voluntary contributions.</p> <p>There is an ongoing failure to prioritise payment of per learner amounts.</p>	<p>a. How will the South African government ensure schools comply with the requirements for voluntary contributions?</p> <p>b. When will the South African government amend regulations giving effect to the <i>Saffer</i> judgment?</p> <p>c. How will the South African government ensure that all provinces fund schools in accordance with the nationally determined per learner amounts?</p>

<sup>18</sup> Section27. Basic Education Rights Handbook: Education Rights in South Africa. 2017. Available at: <https://section27.org.za/basic-education-handbook/>

<sup>19</sup> *Head of the Department: Western Cape Education Department and Others v Saffer* (Women’s Legal Centre as Amicus Curiae) 2017. (1209/2016) SCA.

<sup>20</sup> The Regulations relating to the exemption of parents from payment of school fees in public schools published under Government Notice No.1052 of 18 October 2006 in terms of the South African Schools Act, 84 of 1996 (“**Fee exemption regulations**”).

	<p><b><u>Funding schools below the national threshold:</u></b></p> <p>The South African government has determined that schools are funded at nationally determined per learner amounts, which must be paid by provincial departments of education. In a recent meeting of the Portfolio Committee of Basic Education, the Financial and Fiscal Commission noted that various provincial departments of education have been funding schools below the nationally determined per learner amount since 2014.</p>			
<p><b>(5) Lack of appropriate infrastructure and sanitation</b></p>	<p>The Regulations Relating to Minimum Uniform Norms and Standards for public School Infrastructure<sup>21</sup> (“<b>Infrastructure Norms and Standards</b>”) regulate, amongst other things, when schools must be built or upgraded, specify appropriate school building materials and deal with the provision of water and sanitation.<sup>22</sup> Despite clear deadlines in the Infrastructure Norms and Standards, the National Education Infrastructure Management System (“<b>NEIMS</b>”) report reveals that there remain a number of schools with pit latrines and</p>	<p>The conditions under which teaching and learning take place have a bearing on learner performance. Learners who are forced to learn in conditions that are unsafe and which expose them to the elements cannot be expected to perform well academically. Poor learner performance perpetuates inequality as learners’ are left without the tools to access</p>	<p>One of the contributing factors to a lack of appropriate infrastructure and sanitation are sector wide budget cuts. In addition to this, a lack of capacity of provincial education departments, under expenditure and irregular or wasteful expenditure have contributed to the backlog in completion of infrastructure</p>	<p>How and according to what timelines will the South African government:</p> <p>a. Ensure effective oversight of education infrastructure spending and ensure that sufficient financial resources are allocated for the completion of infrastructure projects?</p>

<sup>21</sup> The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure were published under Government Notice No R920 in Government Gazette No 37081 of 29 November 2013 in terms of the South African Schools Act, 84 of 1996.

<sup>22</sup> Equal Education, 2018. “Implementing Agents: The Middlemen in Charge of Building Schools”. Available at: <https://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf>.

	<p>with an unreliable water supply.<sup>23</sup> In the latest NEIMS report, there are still 3164 schools across South Africa with pit latrines as their only form of sanitation.<sup>24</sup></p> <p>A lack of capacity in provincial departments of education has resulted in a reliance on implementing agents, that in many instances, have failed to deliver construction projects as planned.<sup>25</sup></p> <p>Maintenance of existing infrastructure presents another challenge. Schools have cited limited maintenance staff and maintenance budgets as one of the causes for the deterioration of infrastructure.<sup>26</sup></p> <p>Poor data collection which often results in poor planning across national and provincial</p>	<p>tertiary education or obtain adequate employment to break the cycle of poverty.</p>	<p>and sanitation projects.</p> <p>Furthermore, poor coordination between national and provincial education departments and other relevant authorities results in delays towards addressing infrastructure backlogs.</p>	<p>b. Build capacity in provincial departments of education to implement and manage infrastructure projects and prevent an over-reliance on implementing agents?</p> <p>c. Urgently address infrastructure backlogs and comply with the deadlines as contained in the Infrastructure Norms and Standards?</p> <p>d. Ensure universal compliance with norms and standards for school infrastructure,</p>
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<sup>23</sup> Department of Basic Education. National Education Information Management System Standard Report. August 2020.

<sup>24</sup> Ibid.

<sup>25</sup> Implementing agents can support the governance of a provincial department of education and/or manage a school construction project. Equal Education, 2018. "Implementing Agents: The Middlemen in Charge of Building Schools". Available at: [httpEs://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf](http://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf).

<sup>26</sup> Equal Education, Breaking the Cycle: Uncovering Persistent Sanitation Issues in Gauteng Schools (2018). Available at: <https://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-GP-Sanitation-Audit-Report-2018.pdf>

	<p>education departments has also had a bearing on the provision of school infrastructure. While there has been progress in addressing infrastructure backlogs, particularly after the promulgation of the Infrastructure Norms and Standards, there is, at times, a disconnect between the realities that learners face and the information reported by education departments.</p> <p>Concerningly, we have seen a decrease in the national Department of Basic Education’s (“DBE”) budget, which has resulted in cuts to school infrastructure grants, amongst other things.<sup>27</sup> While government has adopted austerity measures and reduced social spending, a partial reason for reductions to education budgets relates to the inability of education departments to spend their funding efficiently and effectively. Often, particularly with some infrastructure grants, money has been returned to National Treasury because it was not spent.</p>			<p>appropriate sanitation and access to water and electricity?</p>
<p><b>(6) Lack of access to scholar transport</b></p>	<p>In 2015, the Department of Transport published the national Learner Transport Policy. There are ongoing concerns regarding the lack of</p>	<p>A failure of government departments to cooperate, a lack of dedicated funding and</p>	<p>The national Learner Transport Policy contains significant gaps which have</p>	<p>How will the South African government:</p>

<sup>27</sup> Budget Justice Coalition. Submission to the Select and Standing Committees on Finance on the 2020 Medium-term Budget Policy Statement, pg 43-44. 3 November 2020. Available at: <https://iej.org.za/submission-by-the-budget-justice-coalition-in-response-to-2020-medium-term-budget/>

	<p>stakeholder co-operation between the provincial departments of education and transport and the failure to allocate roles and responsibilities to national and provincial departments of education and transport.<sup>28</sup></p> <p>Scholar transport is funded through revenue received nationally that is unconditionally (Equitable Share) allocated to provinces for the supply of services. Departments are permitted to exercise discretion as to how to spend this allocation, which has resulted in scholar transport being un-prioritised or inadequately funded.<sup>29</sup> For over three years, National Treasury and the Department of Planning, Monitoring and Evaluation (DPME) have stated that they would look into developing such a conditional grant (ring-fenced money) to fund the provision of scholar transport.</p> <p>A lack of accurate data on the number of learners requiring transport has impacted on proper planning, budgeting and costing of transport provisioning.</p>	<p>a lack of accurate data on the extent of the need for scholar transport is impacting on the extent to which learners who require transport are able to access it. A lack of scholar transport affects learner attendance at school and places their safety at risk, which affects learners' ability to realise their right to education.</p>	<p>hampered the effectiveness of the policy. These include a lack of clarity on how multi-stakeholder coordination as envisaged by the policy is to be facilitated, a lack of guidance on how planning for learner transport provisioning would be implemented, gaps in ensuring effective monitoring and implementation of the policy and an absence of mechanisms to ensure adequate funding.</p> <p>Further contributing factors to the lack of access to transport include a lack of stakeholder cooperation, inconsistent and inadequate funding for scholar transport across provinces and a lack of reliable and consistent data.</p>	<ul style="list-style-type: none"> <li>a. Ensure scholar transport is adequately funded across provinces?</li> <li>b. Exercise oversight to ensure that all provinces publish adequate, comprehensive scholar transport policies?</li> <li>c. Ensure accountability and transparency of spending on scholar transport?</li> <li>d. Ensure there is accurate data on the extent of the need for transport?</li> <li>e. Ensure that learners attending schools of parental choice are not excluded from this service?</li> </ul>
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<sup>28</sup> Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 35. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

<sup>29</sup> Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 37. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

	<p>The limitation that learners can only access scholar transport if they attend their nearest school, excludes learners. The national policy states that transport will not be provided if a learner attends a school of parental choice, but there are various circumstances which can determine a learner attending a school further away.<sup>30</sup></p> <p>The Learner Transport Policy acknowledges that the current system of provisioning does not adequately consider children with disabilities and requires provincial departments of education to select learners who qualify for transport, giving priority to learners with disabilities. Many provincial learner transport policies contravene this requirement.<sup>31</sup></p>			<p>f. Ensure that learners with disabilities are given priority when considering learners who qualify for transport?</p>
<p><b>(7) Lack of access to universal, quality early</b></p>	<p>The majority of children in South Africa do not have access to quality early childhood development (ECD) services. Currently, 3.2</p>	<p>Supporting young children in their early years is crucial to reducing poverty and</p>	<p>The current regulatory framework (in particular, the Children’s Act, 2005) does</p>	<p>a. What measures will be taken and according to what timeframes to</p>

<sup>30</sup> Equal Education and Equal Education Law Centre. Submission on KwaZulu-Natal Draft Scholar Transport Policy (2020), pg 3. Available at: <https://eelawcentre.org.za/wp-content/uploads/kzn-learner-transport.pdf>

<sup>31</sup> Deochand, E and McLaren, D, 2019. “Children with disabilities left behind by learner transport policy”, Mail & Guardian, 29 January 2019. Available at: <https://mg.co.za/article/2019-01-29-00-children-with-disabilities-left-behind-by-learner-transport-policy>. Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 38. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

<p><b>childhood education</b></p>	<p>million children are not accessing any ECD programmes and only 626 574 or 25% of the children who need it are obtaining subsidised learning.<sup>32</sup> Of the children who are able to access some form of ECD programme, 2.9 million children are in unregistered programmes,<sup>33</sup> which fall outside the regulatory net.</p>	<p>inequality, and is a fundamental and universal human right. Children are significantly influenced by their environments and are more likely to thrive if their physical, social, emotional and cognitive influences are positive. Children who have access to quality early learning opportunities are also more successful in their educational and professional futures.</p>	<p>not create an enabling environment to ensure equal access to quality early childhood education. Amongst other things, the Act:</p> <ul style="list-style-type: none"> <li>● Fails to enable implementation of the National ECD Policy.</li> <li>● Imposes a complicated dual registration process on ECD programmes and partial care facilities.</li> <li>● Does not recognise the need for different types of ECD programme provisioning.</li> <li>● Requires compliance with excessively burdensome and unattainable requirements, making registration and access to funding almost</li> </ul>	<p>ensure that the ECD regulatory framework adequately addresses current challenges?</p> <p>b. When will government make its detailed plans for the imminent migration publicly available for engagement?</p>
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<sup>32</sup> Ilifa Labantwana’s analysis of the Stats SA *General Household Survey 2018*. Available at: [www.statssa.gov.za/publications/P0318/P03182018.pdf](http://www.statssa.gov.za/publications/P0318/P03182018.pdf).

<sup>33</sup> Ibid.

			<p>impossible.</p> <p>The proposed amendments to the Children’s Act introduced through the Children’s Amendment Bill in 2020 fail to address core challenges facing the ECD sector, and in some cases, exacerbate existing challenges. Moreover, the Bill also fails to respond to the imminent shift of responsibilities in respect of ECD services from the Department of Social Development to the DBE.</p>	
<p><b>(8) High drop-out rate and exclusion of pregnant learners.</b></p>	<p>Findings presented during a recent meeting of the Portfolio Committee on Basic Education, cite teenage pregnancy as one of the contributing factors for school drop-out.<sup>34</sup> There are ongoing reports of pregnant learners being excluded from school due to inconsistent school policies.</p>	<p>Teenage learners who fall pregnant are less likely to complete their schooling. This has a discriminatory effect. When learners do not complete their schooling, they are less likely to access meaningful employment.</p>	<p>The draft National Policy on the Prevention and Management of Learner Pregnancy in Schools was published for public comment in 2018 (“<b>draft policy</b>”). There are concerns that the draft policy does not provide sufficient information to facilitate effective implementation. Amongst other things, the</p>	<p>1. When will the South African government finalise the draft policy, including finalising and publishing the accompanying proposed Implementation Plan?</p>

<sup>34</sup> Portfolio Committee on Basic Education. Meeting summary: Zero-dropout Campaign. Available at: <https://pmg.org.za/committee-meeting/31112/>

			<p>draft policy does not contain detail on how the draft policy is to be funded, it does not detail the reasonable accommodations to be provided to pregnant learners before and after delivery, and the draft policy is silent on the protection of the rights of learner fathers.</p> <p>Concerningly, a final policy has still not been published and it is unclear to what extent the issues raised will be addressed in the final policy.</p>	
<p><b>(9) Ongoing incidences of corporal punishment in schools.</b></p>	<p>There are ongoing reports of learners being subjected to degrading and inhumane forms of punishment in schools despite the fact that corporal punishment is a criminal offence in terms of the South African Schools Act, 84 of 1996.</p>	<p>There are severe physical and psychological effects on learners subjected to degrading and inhumane forms of punishment in school.</p>	<p>Despite the publication of the Protocol to Deal with Instances of Corporal Punishment in Schools, there has been inadequate monitoring of implementation of the protocol.</p> <p>Ongoing training of educators is required to ensure schools are aware of</p>	<p>a. What monitoring mechanisms are in place to ensure implementation of the Protocol to deal with Instances of Corporal Punishment in Schools?</p> <p>2. What plans are in place to ensure educators, learners and parents are aware of the prohibition</p>

			the prohibition of corporal punishment and are educated on the effects of corporal punishment on learners.	on corporal punishment and the effects of corporal punishment on learners?
<b>(10) Private involvement in public education</b>	<p>The increasing involvement of private or non-state actors in the ownership and management of schools has brought with it a range of concerns relating to equity, access, quality and equality in education in South Africa.</p> <p>In its work, the EELC frequently assists clients in situations where independent schools withhold reports, refuse to provide transfer documents, or expel learners for the non-payment of fees. These steps are often taken without due process and with little regard for the learners' right to education.<sup>35</sup> Moreover, trends are emerging where schools require parents to enter into one year contracts to avoid the consequences of cancelling the contract.</p> <p>Evidence of the need for a clearer legal framework can also be seen in the Western Cape province, where last year, despite critical concerns previously raised by Equal Education</p>	The failure to properly regulate private involvement in education has resulted in an infringement of the right to education for learners' in independent schools.	<p>Poor regulation of private involvement in education results in failure to ensure adequate standards are implemented in schools owned and managed by private actors.</p> <p>In October 2018, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) adopted its concluding observations on the South African government's initial report to the CESCR, noting this uncertainty and the lack of guidance on the roles and responsibilities of private</p>	<p>a. What measures are being taken by government to implement the recommendations of the CESCR to regulate private involvement in education and to provide adequate guidance to provinces in their regulation of private actors?</p> <p>b. Has South Africa considered the Abidjan Principles. Will steps be taken to ensure their implementation?</p> <p>c. When will national legislation be published</p>

<sup>35</sup> The judgments in *A B v Pridwin Preparatory School* and *Mhlongo v John Wesley* heard in superior courts in South Africa considered a range of questions, including, how private involvement in education may potentially infringe the rights of learners, and therefore, how such involvement should be regulated by the state.

	<p>and the EELC, provincial education law was amended to introduce, as new “types” of public schools, “collaboration schools” and “donor-funded public schools”. In these schools, operating partners (in the case of collaboration schools) and donors (in the case of donor-funded schools) are afforded significant representation and governance powers in public schools, without adequate mechanisms of accountability and transparency.</p> <p>The Abidjan Principles, which were adopted in 2019, are guiding principles on the human rights obligations of states to provide public education and to regulate private involvement in education, in accordance with human rights obligations and standards. They offer promising guidance to states and other actors when navigating growing privatisation in education.</p>		<p>actors in education in South Africa. The Committee recommended that South Africa intensify its efforts to improve the existing regulatory framework to define the roles and responsibilities of private sector actors and its efforts to monitor the education provided by such actors.</p>	<p>to regulate private involvement in education?</p>
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- <sup>i</sup> Statistics South Africa. Sustainable Development Goals (SDGs). Country Report 2019 – South Africa. Pretoria
- <sup>ii</sup> Shung-King M, Lake L, Sanders D & Hendricks M (eds) (2019) *South African Child Gauge 2019*. Cape Town: Children’s Institute, University of Cape Town.
- <sup>iii</sup> [https://nurturing-care.org/wp-content/uploads/2019/09/South\\_Africa.pdf](https://nurturing-care.org/wp-content/uploads/2019/09/South_Africa.pdf)
- <sup>iv</sup> Quarterly Labour Force Survey
- <sup>v</sup> Shung-King M, Lake L, Sanders D & Hendricks M (eds) (2019) *South African Child Gauge 2019*. Cape Town: Children’s Institute, University of Cape Town.
- <sup>vi</sup> National Income Dynamics Study (NIDS) – Coronavirus Rapid Mobile Survey (CRAM). <https://cramsurvey.org/wp-content/uploads/2020/10/1.-Spaull-et-al.-NIDS-CRAM-Wave-2-Synthesis-Report.pdf>
- <sup>vii</sup> African Union. 2019. Stolen futures: the impact of corruption on children in Africa. [http://www.aumaticorruption.org/uploads/The\\_Impact\\_of\\_Corruption\\_on\\_Children\\_-\\_Final\\_report.pdf](http://www.aumaticorruption.org/uploads/The_Impact_of_Corruption_on_Children_-_Final_report.pdf)
- <sup>viii</sup> African Union. 2019. Stolen futures: the impact of corruption on children in Africa. [http://www.aumaticorruption.org/uploads/The\\_Impact\\_of\\_Corruption\\_on\\_Children\\_-\\_Final\\_report.pdf](http://www.aumaticorruption.org/uploads/The_Impact_of_Corruption_on_Children_-_Final_report.pdf)
- <sup>ix</sup> <https://freedomhouse.org/country/south-africa/freedom-world/2020>
- <sup>x</sup> Jamieson L, Berry L, Lake L (Eds), *South African Child Gauge 2017*. Cape Town: Children’s Institute, UCT
- <sup>xi</sup> Department of Social Development and UNICEF. 2016. Towards a more comprehensive understanding of the direct and indirect determinants of violence against women and children in South Africa with a view to enhancing violence prevention. Cape Town, Safety and Violence Initiative, University of Cape Town.
- <sup>xii</sup> Department of Social Development and UNICEF. 2016. Towards a more comprehensive understanding of the direct and indirect determinants of violence against women and children in South Africa with a view to enhancing violence prevention. Cape Town, Safety and Violence Initiative, University of Cape Town.
- <sup>xiii</sup> Centre for Justice and Crime Prevention and the University of Cape Town. 2015. *The Optimus Study on Child Abuse, Violence and Neglect in South Africa*. Cape Town: UBS Optimus Foundation
- <sup>xiv</sup> Department of Social Development and UNICEF. 2016. Towards a more comprehensive understanding of the direct and indirect determinants of violence against women and children in South Africa with a view to enhancing violence prevention. Cape Town, Safety and Violence Initiative, University of Cape Town.
- <sup>xv</sup> Department of Social Development and Department of Women, Children and People with Disabilities. 2012. *Violence against children in South Africa in A Skelton and Z Hansungule*. 2015. *The rights and welfare of children with disabilities in South Africa: An analysis of law, policy and implementation*
- <sup>xvi</sup> Centre for Child Law. 2017. *Advocacy brief: Advancing the rights of children with disabilities*.
- <sup>xvii</sup> L Richter, L Biersteker, J Burns, C Desmond, N Feza, D Harrison, P Martin, H Saloojee & W Slemming. 2012. *Diagnostic Review of Early Childhood Development*. DPME, Pretoria
- <sup>xviii</sup> Centre for Child Law. 2017. *Advocacy brief: Advancing the rights of children with disabilities*.
- <sup>xix</sup> National Income Dynamics Study (NIDS) – Coronavirus Rapid Mobile Survey (CRAM). <https://cramsurvey.org/wp-content/uploads/2020/10/1.-Spaull-et-al.-NIDS-CRAM-Wave-2-Synthesis-Report.pdf>
- <sup>xx</sup> Human Rights Watch, 2015. “Complicit in exclusion”: South Africa’s failure to guarantee an inclusive education for children with disabilities. Available at: [https://www.hrw.org/sites/default/files/report\\_pdf/southafricaaccessible.pdf](https://www.hrw.org/sites/default/files/report_pdf/southafricaaccessible.pdf).
- <sup>xxi</sup> Human Rights Watch, 2019. *South Africa: Children with disabilities shortchanged*. Available at: <https://www.hrw.org/news/2019/05/24/south-africa-children-disabilities-shortchanged>.
- <sup>xxii</sup> Section27. *Basic Education Rights Handbook: Education Rights in South Africa*. 2017. Available at: <https://section27.org.za/basic-education-handbook/>

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<sup>xxiii</sup> *Head of the Department: Western Cape Education Department and Others v Saffer* (Women’s Legal Centre as Amicus Curiae) 2017. (1209/2016) SCA.

<sup>xxiv</sup> The Regulations relating to the exemption of parents from payment of school fees in public schools published under Government Notice No.1052 of 18 October 2006 in terms of the South African Schools Act, 84 of 1996 (“**Fee exemption regulations**”).

<sup>xxv</sup> Department of Basic Education. National Education Information Management System Standard Report. August 2020.

<sup>xxvi</sup> Implementing agents can support the governance of a provincial department of education and/or manage a school construction project. Equal Education, 2018. “Implementing Agents: The Middlemen in Charge of Building Schools”. Available at: <httpEs://equaleducation.org.za/wp-content/uploads/2018/11/Equal-Education-Implementing-Agents-Report-November-2018.pdf>.

<sup>xxvii</sup> Budget Justice Coalition. Submission to the Select and Standing Committees on Finance on the 2020 Medium-term Budget Policy Statement, pg 43-44. 3 November 2020. Available at: <https://iej.org.za/submission-by-the-budget-justice-coalition-in-response-to-2020-medium-term-budget/>

<sup>xxviii</sup> Equal Education Law Centre. A Report on the State of Education: Trends and issues characterising the education sector over the last 5 years (2014-2019), pg 35. Available at: <https://eelawcentre.org.za/wp-content/uploads-report-on-the-state-of-education-pdf/>

<sup>xxix</sup> Ilifa Labantwana’s analysis of the Stats SA *General Household Survey 2018*. Available at: [www.statssa.gov.za/publications/P0318/P03182018.pdf](http://www.statssa.gov.za/publications/P0318/P03182018.pdf).

<sup>xxx</sup> Ibid.

<sup>xxxi</sup> Portfolio Committee on Basic Education. Meeting summary: Zero-dropout Campaign. Available at: <https://pmg.org.za/committee-meeting/31112/>

<sup>xxxii</sup> Broughton, T & Eliseeva, A. 2019, December. South Africa: Undocumented Children Win Right to Basic Education. AllAfrica. Retrieved from <https://allafrica.com/stories/201912180171.html#:~:text=The%20court%20heard%20that%20there,They%20are%20black%20and%20poor.>

<sup>xxxiii</sup> South African Human Rights Commission Position Paper on Access to a Basic Education for Undocumented Learners in South Africa. 2019. Retrieved from <https://www.sahrc.org.za/home/21/files/SAHRC%20Position%20Paper%20on%20Access%20to%20a%20Basic%20Education%20for%20Undocumented%20Learners%20in%20South%20Africa%20-%202012092019.pdf>