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Children's Rights Organisations Submission to the Universal Periodic Review of South Africa – 13th Session in 2012

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I. BACKGROUND AND FRAMEWORK

1. This submission has been prepared through a collaboration of civil society organisations working in various children's rights sectors (Care Excellence Development Centre, Mthatha Child Abuse Resource Centre and Save the Children Southern Africa Regional Office). Several other organisations provided input in the drafting process.
2. As at 2010¹, South Africa's population stood at 49.9million people, 37% of who are estimated to be children (18.6 million). The under five mortality rate stands at 62 per 1000 live births and children and young people 15-24 years represent just over 50% of adult HIV prevalence with 330,000 children under 15 years living with HIV². Although classified a middle income country, South Africa has one of the world's highest Gini Coefficient levels and has a significant number of children and families living in poverty and with limited access to social services.

A. Scope of international obligations

3. South Africa signed and ratified the Convention on the Rights of the Child (CRC) in 1995 and has also ratified the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention on the Rights of People with Disabilities (CRPD) and its Optional protocol were ratified in 2007.

B. Institutional and legislative framework

4. Legislative reform has been taking place in the children's rights sector, with Laws and Policies being regularly reviewed and brought in line with Regional and International Human Rights Instruments. However, the pace of coordinating policy implementation processes between Government Departments is slow.
5. Prior to the establishment of a central coordinating department for children's rights – the Department of Women, Children and People with Disabilities (DWCPD), child rights were addressed by the Office on the Rights of the Child in the Presidency with satellite Provincial offices. Though not always visible, they operated at provincial and local level. The DWCPD is playing a role in establishing a children's advisory structure to inform the Department's consultations with civil society organisations. The Department has availed its plan of action to civil society organisations and has provided information on the Department's priorities, objectives and role as a coordinating body in relation to other Government departments which are responsible for direct service provision to children.
6. In a related matter, there is increased acknowledgement of the role that the South African Human Rights Commission plays in the promotion and protection of children's rights. In 2011, the SAHRC nominated a dedicated commissioner to address children's rights. In March 2011, the SAHRC and UNICEF issued a position statement reaffirming and recognising children's rights to survival, development, protection and participation³.

¹ Statistics sourced from UNICEF South Africa Annual Report of 2010

² UNAIDS Global Report on the AIDS Epidemic 2010.

³ Statement of the Seminar on Equity in the Realisation of Child Rights in South Africa – SAHRC and UNICEF, Midrand, March 2011.

Recommendations

7. We urge the Government's Department for Women, Children and People with Disabilities (DWCPD) to streamline the review and development of child specific law and policy and to expedite processes of enacting child specific legislation in order to meet obligations set in the UNCRC and related international human rights treaties.

C. Institutional Monitoring on the Status of children's rights

8. There has been inconsistent reporting on the status of children's rights by both the Government and Civil Society Organisations (CSOs). The process of monitoring children's rights is ad hoc as there doesn't exist a standing framework or body that coordinates reporting processes, thus reports to the UNCRC have been inconsistent and submitted late. Children's issues have also neither featured prominently in the Social Economic Development nor the Democracy and Political Governance aspects of the African Peer Review Monitoring reporting frameworks.

Recommendations

9. The Government should establish a mechanism that will coordinate reporting around child rights to treaty bodies and the UPR.
10. The Government, in particular the Department of Women, Children and People with Disabilities (DWCPD), should comply with reporting deadlines of all treaty bodies including 2012 UPR reporting and 2013 UNCRC reporting.
11. We encourage Government to establish and fund a formal machinery to promote the participation of as many CSOs in consultations and to make reporting processes more participatory.
12. The Government should improve monitoring and reporting on children's rights, including through collaboration with the Monitoring and Evaluation and National Planning Commission housed in the Office of the President.

D. Budgeting

13. Despite the progressive nature of laws and policies, there has been limited expenditure of monies allocated for the implementation of programmes and provision of services in order to achieve children's rights. In 2008, an allocation of R12 billion was made for social grants; in 2009, the allocation for social grants remained at 12 billion and there was an additional R4 billion availed for the school nutrition programme. In 2010, the budget allocation towards social security was R12.2 billion in order to allow for the extension of the child support grant up to a child's 18th birthday and R2.7 billion was allocated towards the provision of literacy and numeracy workbooks. In 2011, R8.2 billion was allocated towards improving school facilities, R7.9 billion to improve primary health care, and R8.9 billion for social security benefits and social grants. The Government provides accessible, popular guides to the national budget but we note with concern the difficulties in tracking and monitoring expenditure due to the absence of a detailed budget which illustrates the allocations made towards programmes targeting children.

Recommendations

14. The Government should take all appropriate measures to increase budget allocations towards promoting the rights of children including providing direct funding to Civil Society Organisations that provide services to children.
15. The Government should monitor and track budget allocation and expenditure on children by 2013, including through local budget analysis, budget tracking for all service providers as well as the publication of a children's budget illustrating the budget proportion spent on realising children's rights.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND: IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS AND FOLLOW-UP TO UPR RECOMMENDATIONS

In the 8th session of the UPR reporting cycle (2008), the Human Rights Council (HRC) made recommendations to the Government of South Africa on criminalising corporal punishment; combating violence against women and children; police handling of rape cases; protecting the rights of immigrants; provision of comprehensive post sexual assault care and treatment; improving rural access to HIV and AIDS treatment and support; decreasing HIV and AIDS prevalence in teenager, the right to education, the promotion of school attendance and Strengthening the prevention of discrimination in the education system. Some of these issues were addressed and implemented to different degrees as indicated below.

2.1 Right to equality and non-discrimination: Access to social security services

The Children's Act has recently undergone its periodic⁴ review in 2011 specifically examining the current framework and seeking to improve service delivery mechanisms. It is a holistic instrument covering many aspects of children's lives and setting standards on the type and quality of support and services to be provided to children, and we commend the Government's wide public consultations process for this review process.

Amendments to the **Social Assistance Act** saw the definition of 'disability' expanded to include children with temporary and moderate chronic disabilities. Amendments to the Act also saw an increase in the threshold for eligibility for the **Child Support Grant** to 18years which means that the provision of the Child Support Grant has to be progressively implemented. Before this, only children up to the age of 15years were eligible. The new amendments require recipients to reapply for an extension of their grants in order to qualify, however, a policy directive stipulates that children over the age of 16 but under 18years in 2010 and those aged 17 but younger than 18years in 2011 are not eligible to receive Child Support Grants until 2011 and 2012 respectively. This 'reapplication' process has caused a lot of confusion and some children have not been able to get 'reinstated' as beneficiaries of the grant leading to a whole cohort of children being excluded from receiving social assistance.

Although the Government has been increasing the provision of services⁵ to more children, we are concerned at the process and slow progress by which leading social service providing institutions

⁴ The next review will be held in 2013.

⁵ In 2008, there were about 437,000 children receiving the Foster Care Grant and 8,1million children receiving the Child Support Grant. In 2011, these numbers decreased dramatically to 356,000 children receiving the FCG and 5,7million the CSG. South African Social Security Agency (SASSA) Statistical reports 2008 (2) and 2011. www.sassa.gov.za.

have failed to act timeously and prevent the further exclusion and attrition⁶ of children who need to have access to the Child Support Grant.

The government declared Social Work as a scarce skill in 2003. It also mandated the recruitment and retention strategy for Social Workers to be developed and implemented. The Occupation Specific Dispensation (OSD) has since been implemented but its impact seems to alienate Social Workers rather than motivate and retain them. Despite this, there is a backlog in the granting of **foster care grants** due to the long legal processes of applying for foster care and adoption, as well as the shortage of Social Workers and their excessive case loads. Social Workers' dissatisfaction with the implementation of OSD poses a risk to children in need of care and has also created a crisis which results in a significant number of children and their families being excluded from receiving foster care grants due to poor service delivery. In urban settings such as Johannesburg, the State has recently⁷ tried to address this by recruiting retired Social Workers and those working outside the social services sector

For children to access social services, they need to be in possession of a birth certificate or identity book to prove their identities. We recognise the Government's introduction of the 2010 **Births and Deaths Registration Amendment Act**, which allows the birth of a child to be registered after the first 30 days. We however, note that there are increased instances where undocumented children and children of migrants are denied access to social services because they do not possess these documents. South Africa lacks an integrated national policy on fulfilling the rights of migrant children and there is no coordination of the humanitarian and social assistance services that are provided to children of migrants. Many communities also find it difficult to access service points to obtain enabling documents as they are not in proximity with where they stay and often, social service points are not integrated and are located in different localities depending on the demarcations for judicial services and municipal services.

Recommendations

The Government must implement an effective, coordinated child rights based policy on migrant children. We also urge the Government to carry out outreach specifically targeted at providing enabling documents and providing services to unaccompanied minors and children of migrants to fulfil its obligations under Article 7 of the UNCRC.

- 2.1.1 Government should allocate sufficient resources to ensure access to integrated quality social services for all children, and provision of services to the most vulnerable and poorest children throughout the country.
- 2.1.2 The Government should adopt a simplified policy on universal access to the Child Support and Foster Care Grants that is easy to understand for both beneficiaries and service providers.
- 2.1.3 We encourage the Government to develop a long term strategy for increasing support, supervision, mentoring, training and retention of social service professionals, in particular Social Workers. This should include assessing the impact of OSD on Social Workers and

⁶ In 2008, an estimated 440,000 CSG lapsed, whilst 470,000 lapsed in 2009 and about 510,000 in 2010. A decline was seen in 2011 (480,000) grants lapsed. They lapsed because every year, the grants of children turning 18years are terminated. The Children's Act introduced changes in the way the foster care orders are extended and instead of only relying on a Social Worker's report, now requires a review from a Children's Court in Addition to the Social Worker's report. Since introduction of this amendment in 2010, the number of lapsed foster care grants grew from less than 10,000 in 2009, to almost 40,000 in 2010.

K Hall & P Proudlock (2011) *Orphaning and the Foster Child Grant: A return to the 'care or cash' debate. Children Count Brief*. Cape Town: Children's Institute, University of Cape Town.
http://www.childrencount.ci.org.za/uploads/Policy%20brief%20FCG_final.pdf

⁷ Since September 2011.

service delivery, supporting Social Workers in NGOs and retaining them to provide community-based services.

2.2 Civil rights and freedoms : Child participation

In general, there has been limited meaningful involvement of children in planning programmes, reviewing legislation and policy implementation. There are limited formal structures that exist to allow regular participation of children around issues affecting their lives thus South Africa is not complying with UNCRC provisions nor responding to the CRC General Comment No.12 (2009) on promoting children's rights to be heard.

Recommendations

- 2.2.1** The Government should establish a formal structure that will enable children to meaningfully participate in all sectors of development that affect their lives and urge the Government to put more focus on the inclusion and participation of marginalised children (migrants, children with disabilities and children in rural and poor urban areas).
- 2.2.2** We encourage the Government to develop a child participation tool that can be used in schools and social settings to educate around child rights, child participation principles and methods.
- 2.2.3** The Government should start producing material around human rights instruments into accessible, child-friendly formats that are easy to understand in order to impart information to children and to empower them to participate in an informed, meaningful manner.

2.3 The right to life and health : Access to health services

Vaccines against diseases such as polio and measles⁸ are widely administered and children have access to Ante Retroviral Therapy (ART) from birth to prevent them from contracting HIV from their mothers⁹. Although a comprehensive, integrated health system does not yet exist, the Government must be lauded for re-introducing school based health inspections by professionals who examine children's overall health, weight, teeth, hearing and eyesight.

Although HIV and sex education has been part of school curriculum since 2002, teacher's survey reported discomfort in teaching due to perceived contradictions with their own values and beliefs. We note that the Government is developing¹⁰ a health approach that focuses on providing information and support to children and young people around Sexual and Reproductive Health and Rights (SRHR) and services including HIV testing, access to condoms, contraceptives, contraceptive advice and termination of pregnancies. We commend the Government for working with civil society to provide a platform for children and young people to participate in and provide input into the new National Strategic Plan (NSP) on HIV and AIDS (2012-2016). This addresses recommendations made in 2008 on the need to provide comprehensive HIV and AIDS care and treatment particularly for young people.

⁸ In (2007/8) 84.2% of children received their immunisation and the number went up sharply in (2008/9) to 89.5% . Maylene Shung-King (2010) Statistics on Children in South Africa <http://www.childrencount.ci.org.za/indicator.php?id=5&indicator=28>

⁹ According to UNICEF South Africa country statistics on Paediatric infections, an estimated 330,000 children under the age of 14years are living with HIV. http://www.unicef.org/infobycountry/southafrica_statistics.html#76 .

In 2007/8 36.9% of children were receiving ARV's Leigh Johnson (2010) Statistics on Children in South Africa <http://www.childrencount.ci.org.za/indicator.php?id=5&indicator=28>

¹⁰ 2010 HIV and AIDS Counseling and Testing (HCT) campaign also informs the roll out of HCT in schools and .

We note with concern, however, the increased reports on the deteriorating quality of health services and infrastructure, the increase in infant and maternal mortality rates, as well as the increase in child deaths due to diseases that can otherwise be prevented¹¹. We also decry the deteriorating health conditions of children – most of whom live in poverty, are malnourished, do not receive meals at schools because feeding schemes are dysfunctional and have poor access to school health programmes as not all schools have such programmes.

Recommendations

- 2.3.1 In order to meet the provisions of achieving children's rights to health as stipulated in the UNCRC (Article 24), the Government should develop holistic strategies by 2013, which take into account children's physical, mental and spiritual health needs. This should include improving health infrastructure and systems, increasing the number of health professionals in rural and hard to reach areas, reviving school health programmes at all primary and high schools and ensuring their integration into the primary healthcare system.
- 2.3.2 The Government should put in place more rigid health and safety standards in the health system and take appropriate measures to reduce infant, child and maternal mortality by 2015 in accordance with Article 24 of the UNCRC and to ensure that commitments made in the Millennium Development Goals (MDGs) are realised.
- 2.3.3 The Government should increase the health budget in terms of the Abuja Declaration by 2013, prioritising maternal and child health and ensuring that all children have access to adequate nutritious foods, clean-drinking water and sanitation.
- 2.3.4 The Government should implement recommendations made in the NSP (2012-2016¹²) regarding the role of education and retaining children in schools as well as providing youth specific interventions for learners transitioning out of school as a critical HIV prevention strategy and a factor for mitigating the impact of HIV and TB on orphans, vulnerable children and youth. We therefore encourage the Government to prioritise, from 2012, teacher training and teacher training curriculum development on the provision of comprehensive sexuality education with support of parents and community leadership to address the gaps in children's knowledge on sexual and reproductive health and HIV and how to prevent its sexual transmission.

2.4 The right to protection from abuse and torture

The Child Justice Act was enacted in 2009 and it adopts a human rights approach to enforcing restorative justice processes with children found to be in conflict with the law. The Act also provides for criminal cases involving children to be undertaken through a child friendly process in Child Justice Courts.

There have been increasing numbers of unaccompanied minors¹³ who cross the South African border on their own and are forced to take care of themselves and to meet their own needs. **The Prevention and Combating of Trafficking in Persons Bill** was tabled in 2010 and has not yet been enacted. It details actions to be taken when repatriating children with the best interest of the

¹¹ Save the Children, EVERY ONE Campaign for Newborn and Child Survival http://www.savethechildren.net/alliance/what_we_do/every_one/index.html

¹² The South African National Strategic Plan for HIV, STIs and TB, 2012-2016, (2011) Pg 32 – 34.

¹³ Save the Children, (2010) Baseline on National Child Protection Systems (NCPS): South Africa country report.

child, child care and safety being the core principles the Bill is based on. The failure to pass this Bill means the 2008 recommendations to protect the rights of immigrants and especially the rights of migrant children, has not been adequately addressed.

Over the past 3 years, South Africa has seen an increase in the number of **child abuse** cases. Reports from the Police¹⁴ service indicate that reported crimes against children increased by 16 per cent between 2008/09 and 2009/10 to a total of 57,000 cases. The 2011 statistics also indicated an increase in rape and violence against children and number over 50,000 cases. In 2008 the Human Rights Council recommended implementing measures to combat violence against women and children and improving the manner in which the police service handles rape cases. The Government of South Africa reinstated (in 2010) the dedicated family violence, child protection and sexual offence units in the Police Department. The Government also provides comprehensive post sexual assault care and treatment through the provisions of the Criminal Law (Sexual Offences and Related Matters) Act; children who have been sexually violated also have access to counselling and Post Exposure Prophylaxis (PEP¹⁵).

Although **corporal punishment** has been outlawed, it continues to be practiced within the home, schools and other social settings. A 2008 recommendation from the HRC was that of criminalising corporal punishment, however this has not been done and research¹⁶ indicates that the frequent use of corporal punishment is compounded by the absence of an express provision that prohibits corporal punishment in the Children's Act, and this makes it more difficult to coordinate responses against corporal punishment.

Recommendations

2.4.1 The Government should enact the Prevention and Combating of Trafficking in Persons Bill by end 2012 and to ensure that the Departments of Social Development and Justice and Constitutional Development review the provisions on trafficking as contained in the Sexual Offences Act and the Children's Act to ensure the provision of responsive, child friendly services for child victims as well as providing procedures and guidelines for the lawful and dignified deportation of foreign unaccompanied children from South Africa.

2.4.2 We encourage the Government to continue extensively training personnel in the Justice Administrative Structures including Social Workers, Police Officers, Magistrates and Advocates on the prevention of child abuse; by putting in place more coordinated programmes which bring all stakeholders together to address issues of violence against children by 2013.

2.4.3 The Government should abolish corporal punishment in all settings by 2013 and put in place programmes that assist in promoting Positive Discipline and alternatives to corporal punishment.

2.5 The right to education: Access to quality education services

The Government introduced State-subsidised Early Childhood Development (ECD) programmes and services to promote the holistic physical, mental and cognitive development of children. However, ECD centres are very few and often fall short of reaching children living in poverty or those who are marginalised.

¹⁴ South African Police Services http://www.saps.gov.za/statistics/reports/crimestats/2011/crime_stats.htm

¹⁵ Drugs that counter and lower the chances of contracting HIV if administered within 72 hours of direct contact with the virus.

¹⁶ Save the Children, (2010) Baseline on National Child Protection Systems (NCPS): South Africa country report.

The Education Laws Act was amended to incorporate the State's commitments towards ensuring reasonable accommodation for children with disabilities in order to make schools and learning centres more accessible to children with disabilities. This is in line with the 2008 HRC recommendations to strengthen the prevention of discrimination in the education system. However, the understanding and implementation of Inclusive Education is limited and this has contributed to further marginalisation and exclusion of children with disabilities from mainstream schools.

In the past 36 months, several problems within the education sector, particularly poor learner attendance and late coming, poor access to schools, dysfunctional school feeding programmes and children's limited access to books, have been highlighted. Learner underperformance in the Matric Examinations has also been noted, particularly in less resourced provinces. The 2008 HRC recommendations included that the Government should promote school attendance and help children realise their right to education and, in 2011, the Department of Basic Education introduced a **national policy aimed at promoting school attendance**. This policy highlights the duty and responsibility of parents, teachers and learners in improving the retention of learners and school performance. We commend the Government for putting in place a policy which promotes responsibilities and accountability between different role players, encouraging them to work together in supporting children to excel at school. What is now required is the full implementation of this policy to benefit learners.

Recommendations

2.5.1 The Government should support more community based Early Childhood Development facilities by 2013, so that more children can have access to early basic education. All three tiers of government i.e. national, provincial and local government should integrate their efforts in fast-tracking the registration, funding and monitoring of all ECD services i.e. formal, informal and private. The registration of all partial care services, including aftercare services and drop-in centres should be fast-tracked in line with the new Children's Act.

2.5.2 The Government should develop and implement a detailed framework for the provision of services, support, assistive devices and other tools to be used by children with a range of disabilities to enable all children with disabilities to be integrated into mainstream schools by 2014. The Government should ensure access to quality education and implement measures to increase school attendance by 2013.

2.5.3 The Government should construct schools within reasonable proximity and implement policies which provide learner transportation to children so that they do not have to walk long distances, attend classes late or miss school.

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