

AFRICAN UNION

**African Committee of Experts on the
Rights and Welfare of the Child**



UNION AFRICAINE

**Comité Africain d'Experts sur les Droits et
le Bien-être de l'Enfant**

الاتحاد الأفريقي

UNIÃO AFRICANA

*"An Africa Fit for
Children"*

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia
Tel: (+251 1) 551 3522 Fax: (+251 1) 553 5716 Website : www.acerwc.org

**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS OF THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD TO
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON ITS FIRST
PERIODIC REPORT ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON
THE RIGHTS AND WELFARE OF THE CHILD**

March 2019

I. Introduction

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of the Republic of South Africa for submitting its first periodic report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter).
2. During the 32nd Ordinary Session which was held from 12 to 22 November 2018, the Committee considered the periodic report of South Africa which was submitted in compliance with the State Party's obligation under Article 43 of the Charter.
3. The Committee congratulates and appreciates the Republic of South Africa for sending its Delegation, which was led by Hon. Ms Constance G Nxumalo, who had a productive discussion with the Members of the ACERWC. The discussion indeed helped the Committee to better understand the measures that the state Party has undertaken towards the implementation of the Charter as well as the challenges it is facing. After careful consideration of the facts in the reports and the information provided during the constructive dialogue, the Committee has developed and adopted the following concluding observations and recommendations which provide guidance to better enhance the implementation of the Charter.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee would like to recognise and appreciate the Government of the Republic of South Africa for undertaking a number of measures to realise the implementation of the provisions of the African Children's Charter. In particular, the Committee recognises the following measures as they meaningfully contribute to the country's journey towards the full implementation of the African Children's Charter:
 - i. Enactment of Prevention and Combating of Trafficking in Persons Act, 2013 (Act 7 of 2013);
 - ii. Enactment of Basic Conditions of Employment Amendment Act, 2013 (Act 20 of 2013);
 - iii. Enactment of Prevention and Combating of Torture of Persons Act, 2013 (Act 13 of 2013/the Torture Act);
 - iv. Adoption of the Maintenance Amendment Act, 2015 (Act 9 of 2015);
 - v. The creation of a schools-based prevention programme which educates learners about the dangers and consequences of violence;
 - vi. The development of the White Paper on the Rights of Persons with Disabilities;
 - vii. The development of a government-wide early childhood development (ECD) policy.

III. AREAS OF CONCERN AND RECOMMENDATIONS

A) General measures of implementation

5. The Committee, while commending the constitutional, legal and policy framework for the protection of children's rights, encourages the Government to also consider taking other measures, such as community engagement and education, to promote and protect children's rights.
6. The Committee notes with appreciation that South Africa has ratified International Convention on Economic, Social and Cultural Right (ICESCR) which immensely contributes to the realisation of socio-economic rights of children in the State Party. However, the Committee notes with concern that the Government has made a reservation to this Convention the result of which is a state of events where the right to basic education is made progressively realisable. The Committee, therefore, encourages the State Party to consider withdrawing this reservation so that basic education is made immediately realisable, as is also required by Article 11(3) (a) of the African Children's Charter. Moreover, the Committee encourages the Government of South Africa to consider ratifying the Third Protocol to the Convention on the Right of the Child on a Communication Procedure.
7. The Committee notes with appreciation that the South African Human Rights Commission (SAHRC) has designated one commissioner to handle issues of children's rights. However, the Committee notes with concern about reports that the amount of budget allocated to children's right issues by the SAHRC is declining. As the Committee understood from the Government's response to list of questions submitted to it following the preliminary examination of the first Periodic State Party Report of South Africa, the SAHRC allocated R376, 177 in 2017 and R 63 286.80 in 2018 to office of Commissioner dealing with issues of children's right to promote children's rights in the Country. This decline seriously hampers the SAHRC's efficacy to discharge its mandate of protecting and promoting children's right in South Africa. On this basis, the Committee recommends to the Government of South Africa to allocate adequate and specific budget targeting children's right to the SAHRC to enable it play an effective role in the protection and promotion of children's rights in the country. Furthermore, the Committee reiterates its previous recommendation to give due consideration to various options, including the possibility and added value of establishing a Children's Ombudsperson.

B) Definition of a child

8. The Committee appreciates the fact that the South African Constitution and the Children's Act define a child as 'any person below the age of 18'. However, the Committee observed that the definition of the child under civil, customary and common law is not yet harmonised in a way that is consistent with the African Children's Charter. In this regard, the Committee reiterates its previous

recommendation where the it strongly recommended that the Government of South Africa harmonize the definition of the child under civil, customary, and common laws in line with article 2 of the Charter and to ensure the effective implementation of article 21(2) of the Charter which prohibits child marriage and sets the minimum age for all types of marriages to be set at 18.

C) General Principles

i. Non-Discrimination

9. The Committee notes with great concern that Migrant children and children of foreign parents in South Africa are discriminated against and face xenophobia from their peers, teachers and are sometimes barred from accessing schools and other basic services because of reported illegal entry or stay in the country. The Committee has learned that at the beginning of each school year, a number of groups of children including undocumented migrant children, documented refugee and asylum seeker children are denied admission to school. The Committee also notes with concern that the barriers and/or denial of service to these children is not limited to education and includes healthcare, child protection services, and birth registration services. Therefore, the Committee reiterates its previous recommendation and calls upon South African government to eliminate all forms of discrimination against these groups of children by avoiding defacto and de jure barriers hindering them from accessing basic services such as education, health care, birth registration, child protection services and so on. In particular, the Committee urges the Government of South Africa to take legislative and other necessary measures to ensure that asylum seekers, migrant, refugee and stateless children access basic services without requirement of presenting document.

II. Best interests of the child

10. The Committee notes with appreciation the State Party's Report on the effort that the Government is employing to consider the principle of best interest of the child in matters of criminal procedure, as well as the manner in which the principle is used by the judiciary, among others. However, the Committee notes with concern the lack of information of efforts made by the Government in other areas to ensure that the best interests of the child are always considered. Thus, the Committee recommends that the Government survey other areas and document the efforts made, as well as their results and provide information to the Committee in the next periodic State Party report.

III. The Right to Life, Survival and Development

11. The Committee appreciates that the Government has developed and rolled out the National School Safety Framework (NSSF), which is a tool for School Management Teams (SMT) and School Governing bodies (SGBs) for promoting holistic safety

in schools. The Committee also notes the implementation of the schools-based crime prevention programmes. However, the Committee notes with concern that the overall child homicide rate in South Africa remains high. The Committee has learned from one of the South African Police reports to the South African Parliament that there were 846 murder cases reported against children in the 2013/14 financial year and this number rose to 969 child murders in the 2014/2015 financial year. Therefore, the Committee recommends to the South African Government to intensify its efforts towards lowering these homicide and mortality rates. The Committee also urges the Government of South Africa to reduce road accidents taking lives of considerable number of children by setting in place rigorous safety standards on drivers and include in its next report measures taken and progresses achieved in this regard.

IV. Respect for the views of the child

12. The Committee notes with appreciation that the State Party has taken legislative as well as administrative measures to ensure that the views of children are respected. Building on the positive achievements, the Committee recommends that the Government expedite adoption of Draft Child Participation Framework and ensure its implementation. The Committee further recommends that the Government of South Africa record the impact of initiatives intended to boost child participation on policy and law development.

D) Civil rights and freedoms

i. Name, nationality and registration at birth

13. The Committee appreciates the measures taken by the State Party to ensure the right to name, nationality and birth registration of children. However, the Committee notes with concern that Regulations accompanying the new Births and Deaths Registration Act (BDRA) have introduced a fee for late registration of births. Moreover, the Committee has also learned that the Government of South Africa has issued a directive requiring all children who are born to one foreign parent to produce proof of paternity in the form of a DNA test if the birth is registered late. The Committee is of the view that attaching penalty and other similar preconditions that have the effect of serving as a barrier to late birth registration may discourage parents from registering birth of their children and hinder registration of some birth that can be declared late. As the Committee elaborated in its General Comment 2, the State Party should, in all circumstances, provide for late registration where children's birth has not been registered immediately. The late registration should be without any precondition. On this basis, the Committee recommends to the Government of South Africa to review the BDRA regulations and remove the penalty fee for late registration of birth. Furthermore, the Committee calls upon the South African Government to consider the withdrawal of the requirement of DNA tests to be done at late registration of children born to one foreign parent birth and rely on other evidence to prove paternity as this precondition discriminates against

a child whose one of his/her parents is foreigner and highly hampers birth registration of these children.

14. The Committee notes with concern that the BDRA (in regulation 3, 4 and 5) lists the requirements and documents, without which no application for birth registration will be accepted. These include, amongst others, a valid passport and permit of the parent; the fingerprints of the parents if alive; an affidavit by a South African citizen if the birth occurred outside a hospital; and the presence of the mother if the child is born out of wedlock. The Committee notes with great concern that this hinders birth registration of specific groups of children such as children of undocumented parents (whether South African or foreign) or parents whose permits have expired; Children who are in the care of next-of-kin where the parents are alive; Children born at home where there was no witness or the only witness was a foreign national; and Children in the care of single fathers where the mother has abandoned the child or is undocumented. Therefore, the Committee calls upon the Government of South Africa to amend regulation 3, 4 and 5 of the BDRA to remove such stringent requirements and ensure that these group of children are not left at risk of being unregistered.
15. The Committee notes that in order for stateless children to get South African nationality, their births should be registered. However, due to existence of a number of challenges faced by stateless children to get their birth registered, many stateless children cannot benefit from this provision. The Committee has also learned that there is no regulation to implement this section. Therefore, the Committee recommends to the State Party to:
 - a) Ensure that all barriers hindering stateless children from getting their birth registered are removed;
 - b) Ensure that there is regulation facilitating implementation of the relevant Sections of the Citizenship Act which provides application platform enabling every stateless child to go to a relevant office to apply for citizenship; and
 - c) Consider ratifying the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in order to end childhood statelessness.

i. On Violence, Child Abuse, Torture and Sexual Exploitation

16. The Committee notes with appreciation the fact that corporal punishment has been legally banned in schools of the State Party since 1996. However, it notes with concern that still corporal punishment is inflicted in schools. The Committee calls upon the South African Government to expedite adoption of the draft Protocol developed to reduce Incidences of Corporal Punishment in Schools and ensure its implementation in order to fully eliminate this practice in schools.
17. The Committee also notes with concern that corporal punishment is practiced in home setting in South Africa under the Common Law defense of 'reasonable

chastisement'. In this regard, the Committee reiterates its previous recommendation where it stated that the South African Government to expedite the process of amending the Children's Act to explicitly ban corporal punishment in all settings including in the home. The Committee also calls upon the State Party to promote positive disciplining through awareness creation, training those who are working for and with children such as teachers and care givers. Furthermore, the Committee recommends that the Government puts in place mechanisms to criminalise and hold accountable educators and caregivers who still inflict corporal punishment.

18. The Committee appreciates measures taken by the State Party to tackle violence against children. However, it notes with concern that violence against children remains to be at alarming rate in South Africa. Statistics reveal that significant number of children were murdered in the country over the last few years alone. Of all rape crimes committed in the past three years, studies show that, 41% were committed against children. Studies also show that despite a comprehensive legal and policy framework, the child protection system is not addressing the high rate of violence against children owing to poor implementation, absence of effective prevention and early intervention programmes catering for all families and inaccessibility of appropriate therapeutic interventions for most children. Therefore, the Committee recommends to the Government of South Africa to:

- A) Adopt and implement a coordinated, resourced and evidence-based violence prevention strategy;
- B) Ensure that specialised policing and court services for child victims are adequately resourced and implemented as a matter of urgency;
- C) Ensure proper coordination among all role-players to tackle consequences of violence against children;
- D) Make available appropriate and effective therapeutic services for children who are victims of violence;

19. The Committee also notes with concern the widespread challenges of Violence against Children, including including sexual abuse and exploitation, in the Country and recommends that the Government enhances its awareness raising programs, establish accountability against perpetrators, training the police on violence against children and its responses, and allocating adequate budget to address the challenge.

E) Family Environment and Alternative Care

20. The Committee notes with appreciation the development of the White Paper on Families and the programmes put in place to address issues such as absent fathers and teen pregnancy. However, the Committee notes with concern the lack of and need for the collection of data which reflects the number of children living with their parents, next of kin or care centres. The Committee also notes the ever-present disparities in the economic status and delivery of social services between the nine provinces. In this regard, given that the protective laws already exist, the

Committee would suggest that the Government should take other measures to ensure that these gaps are closed, or at least shrunk.

21. The Committee commends the Government for the creation and provision of social grants to those in need. However, the Committee also takes note of the fact that the amount of money offered through the child support grant is insufficient to address the issue of poverty and inequality as it remains an amount below the food poverty line. Furthermore, the Committee notes that the number of beneficiaries of the foster care grant has declined significantly. The Committee, therefore, recommends the following:

- A) that the Government revises the amount given in the child support grant and that the new amount be above the food poverty line;
- B) that the Government investigate the reasons for the decline in the number of the foster care grant beneficiaries, with a view to ensure that those that are eligible for the grant are not denied access as a result of various barriers.

22. The Committee also notes with appreciation the presence of Care Dependency Grant (CDG) for children with disabilities. However, many children with disabilities in need of support face challenge to access the care dependency grant due to existing inconsistencies between the Social Assistance Act and its Regulations. Although care dependency grant was extended to children with disabilities who require support services in 2004 regardless of the nature or severity of their disabilities, the Regulations under the Social Assistance Act, which are meant to guide the implementation of the law, do not reflect this extension. In this regard, the Committee recommends to the Government to ensure that all children with disabilities in need of support access care dependency grant regardless of the nature or severity of their disability by aligning the Regulations under the Social Assistance Act with the Social Assistant Act.

23. The Committee notes with appreciation the existence of child and youth care centres (CYCCs). The Committee takes this opportunity to recommend that the Government direct efforts towards determining the number of such facilities that exist, their registration status, as well as do a quality audit to ensure that they comply with minimum standards to ensure the rights of children living there are protected. Furthermore, the Committee recommends to the Government to make available effective reunification services to ensure that children having biological parents reunify with their parents instead of staying in CYCCs.

F) Education, leisure and cultural activities

24. The Committee notes with appreciation the measures taken by the State Party to ensure access to high quality education, inter alia, provision of support materials, which are key to improve curriculum delivery. However, the Committee notes with great concern that the inequality within the South African education system has

not been effectively addressed. The Committee came to learn that schools which have historically catered for black learners are still characterised by giving low quality education. It is reported that an examination of the poorest 60% of schools in South Africa reveals that these schools are unable to provide learners with the skills needed to read, write and calculate at the correct grade level. The reasons for this include lack of qualified teachers, lack of adequate school infrastructure, absent of transport for students and etc. Therefore, the Committee recommends to the Government of South Africa to:

- A) train adequate teachers and ensure equal distribution of qualified teachers by giving special attention to schools found in rural areas;
- B) regularise the ordering, procurement and delivery process of learner teacher support materials to ensure that each learner receive every textbook required prior to starting the part of the curriculum to which that textbook relates;
- C) ensure that students in rural areas access transport by introducing schemes like conditional grant for scholar transport that take in to account, among other things, the rural terrain of some provinces;
- D) strengthen implementation of Accelerated Schools Infrastructure Delivery Initiative and urgently equip schools with relevant infrastructures;
- E) ensure that the various government departments and agencies co-ordinate their activities in a way that proper planning and implementation can take place to ensure schools provide quality education.

25. The Committee also notes with concern that education in the State Party has been affected by various protest actions in South Africa. It is reported that the South African Human Rights Commission found that learners are disadvantaged by certain protest-related action in that they are consequentially (a) physically barred or intimidated from attending school; and (b) infrastructure on which learners rely to access education is damaged or destroyed. The Committee recommends that State Party should ensure that there is safe environment in order for children to exercise their right to education. Hence the Committee calls upon the South African Government to:

- A) put in place a plan to regulate protests happening in and around school premises to ensure that education is not interrupted and school infrastructures are not damaged.
- B) put in place coping mechanism to ensure that there is necessary catch-up where learners have been deprived of basic education due to protest;
- C) ensure that different government departments have clear responsibilities where school infrastructure and buildings have been damaged or destroyed due to protest and effectively respond to ensure that the learning environment is normalised as soon as possible and provision of education continues;

D) sensitise the community and relevant government bodies on the impact of unregulated public protests on the right to basic education and the role of the police and other government bodies in such cases.

26. The Committee also notes with great concern that Violence faced by children in schools still remains rife in South Africa. In this regard, the Committee recommends to the Government of South Africa to:

- A) ensure that anti-bullying policies and peer mediation structures are developed and implemented in schools;
- B) allocate resources and implement a national programme of training on positive disciplining.

27. The Committee appreciates measures taken by the State Party to ensure inclusive education for children with disabilities. However, the Committee notes with concern that children with disabilities remain experiencing discrimination as they attempt to access ordinary schools and special schools. Special schools in South Africa have not also been listed as 'no fee-paying schools', therefore learners with disabilities that attend special schools do not have access to free basic education. Furthermore, provision of school transport does not take in to account the needs of students with physical disabilities. Although braille workbooks are being provided to learners with visual impairments in special schools, there is no programme for provision of braille textbooks, which are considered by the Department of Basic Education to be an essential component of the curriculum. On this basis, the Committee recommends to the Government of South Africa to:

- A) Immediately waive education fee attached to accessing special needs schools;
- B) Ensure that children with disabilities access free basic education in free, non-fee paying, mainstream schools;
- C) Amend the Screening, Identification and Assessment and Support (SIAS) Policy to allow for a more streamlined school placement procedure of children currently not in the education system;
- D) Adopt comprehensive norms and standards that guide the provision of transport to students with disabilities;
- E) Develop a comprehensive programme for provision of learner teacher support materials to learners with disabilities, in particular blind learners, that respond to those learners' needs in special schools, full service schools and public ordinary schools;
- F) Fund and resource, implement, monitor and evaluate inclusive education policies and guidelines to address learner diversity and provide appropriate support to teachers and learners to achieve quality learning outcomes;
- G) Focus on the early identification of barriers to learning and intervene with appropriate support in the earlier years;
- H) Budget the conditional grant envisaged in Education White Paper 6 for non-personnel expenditure in special schools.

G) Health and welfare

i. On Children with Disabilities

28. The Committee appreciates measures taken by the State Party to address concerns of children with disabilities. However, it notes with concern that access to the full range of services for the majority of children with disabilities remains compromised. Hence the Committee recommends to the Government to:

- A) Put in place mechanisms to ensure accountability for actions (including budget allocations and expenditure) undertaken to protect the rights of children with disabilities.
- B) Ensure Inter-departmental and inter-sectoral coordination and collaboration to ensure that existing barriers preventing children with disabilities from accessing needed services are removed;
- C) bolster Data collection efforts on the prevalence of disability amongst children in order to account for all children with disabilities and to give a more accurate profile of the support that they require;
- D) Ensure that children below the age of five are included in the disability prevalence data and other disability related data collections.

II. On health and health services

29. The Committee notes with appreciation measures taken by the State Party to realise children's right to health, inter alia, implementation of the Child Healthcare Problem Identification Programme's (Child PIP) audit of hospital deaths which helps to identify problems faced by children at hospital, clinic and community levels including transfers between facilities; as this in turn reduces child mortality and morbidity. The Committee also notes with appreciation that case fatality rates for diarrhea and pneumonia are decreasing. However the Committee notes with concern that more than half of child deaths occur outside hospitals in South Africa. Therefore, the Committee recommends to the Government of South Africa to:

- A) Ensure country wide implementation of the Child Healthcare Problem Identification Programme by expanding the program to all hospitals and clinics of all provinces;
- B) Strengthen efforts to narrow the difference in quality of health service received in the rural and urban hospitals and clinics by giving special attention to rural areas;
- C) Extend the role of community health workers to include not only prevention, but also treatment for diarrhea and pneumonia by amending legislation/regulations around the prescribing, dispensing and storage of drugs.

30. The Committee welcomes the implementation of the Mother Baby Friendly Initiative (MBFI) which helps mothers initiate breastfeeding. The Committee encourage the State Party to ensure full national coverage of the MBFI.
31. The Committee notes with concern that considerable number of children in South Africa suffer from malnutrition. The 2016 South African Demographic and Health Survey (DHS) report confirmed that 23% of children 6 to 23 months received a minimum acceptable diet. Children in poor households continue to be adversely affected by rising costs of food. Although there is Child Support Grant, given the high rate of inflation, the child support grant is not adequate to fulfil nutritional need of children. Therefore, the Committee recommends to the Government of South Africa to take additional measures to ensure food security through improved employment, social assistance and land and agrarian reform in combination with regulation of prices of healthy foods.
32. The Committee also notes with concern that considerable number of children are not taking all basic vaccines in the State Party. The percentage of children who have never taken any form of vaccination and children who have taken all basic vaccines remain low. The 2016 South African DHS Report revealed that only 61% of children age 12-23 months received all basic vaccinations and only 53% received all age-appropriate vaccinations. Among children 24-35 months, only 42% had received all the age-appropriate vaccinations. The Committee is of the view that universal immunisation of children against common vaccine-preventable diseases is crucial to reduce infant and child mortality. Therefore, the Committee recommends to the Government of South African to take all necessary measures to ensure universal immunization of children against common vaccine-preventable diseases.
33. The Committee appreciates various interventions implemented to prevent transmission of HIV to children and to protect children from TB. The Committee encourages the State Party to ensure the provision of preventive TB therapy to all children exposed to an infectious source, increased training, awareness and linkages between MCH and TB services to improve diagnosis of childhood TB, child-friendly TB formulations and access to MDR-TB prevention and treatment when appropriate. The Committee further encourages the Government to prioritise Children and adolescents in HIV budgetary allocations.

H) Special protection measures

i. Administration of Juvenile Justice

34. The Committee congratulates the Government for implementing the decision to no longer place child sexual offenders on the National Register of Sexual Offenders. The Committee recommends that the Government also remove the names of those children who had already been placed on the Registry. The Committee also notes with appreciation the creation of a system through which children can be placed in child and youth care centres instead of correctional

centres as well as the increase in number of cases of child offenders taken up by the Legal Aid office. The Committee, encourages the Government to offer representation to more children who need this service. The Committee further encourages the Government to introduce an option of 'early release' for the children who are placed in child and youth care centres, just as those who are placed in correctional centres may have the option of parole.

35. The Committee also notes that the minimum age of criminal responsibility is set at the age of 10 under South Africa's Laws. The Committee notes that chances of a child living up to the moral and psychological components of criminal responsibility is low when the child's age is also low. Hence, the Committee recommends to the Government of South Africa to raise the age of criminal responsibility to at least 12 years of age.

III. Protection against Harmful Social and Cultural Practices

36. The Committee notes with appreciation the effort made by the South African Government to fight against harmful practices violating rights of children, inter alia, the campaign against the practice of ukuthwala, investigating crimes relating to ukuthwala and other initiatives around cultural harmful practices. However, the Committee notes with concern the continuation of harmful practices such as ukuthwala and virginity testing affecting rights of girl child. The Committee also notes with concern that girls between 16 and 18 years of age are not protected from the practice of virginity testing. In this regard, the Committee would like to reiterate its previous recommendation on this issue and call upon the State Party to undertake measures with a view to ban virginity testing with respect to children of all ages in South Africa. Moreover, the Committee recommends to the Government of South Africa to:

- A) Amend both the Marriage Act and the Recognition of customary Marriages Act and ensure that the minimum age of marriage for all forms of marriage is 18 years and remove Any section that provide parental consent exception for a child to be married from all legislations relating to marriage and outlaw child marriage unconditionally;
- B) Intensify investigation and prosecution of cases of ukuthwala as incidences of girls being victim of this practice currently outnumber the cases investigated and prosecuted;
- C) Take forward the initiative of the South African Law Reform Commission and enact legislation that defines and criminalise ukuthwala and other forms of child forced marriages in all context as soon as possible;
- D) Review and where necessary amend, provincial legislation that directly or indirectly encourages harmful practices such as ukuthwala and virginity testing of children;

- E) Intensify awareness campaigns to educate the community on the effect of harmful practices such as ukuthwala and virginity testing on the rights of children.

37. The Committee also notes with concern that the practice of male initiation resulting in botched circumcision which in some cases results in death of initiates child as well as serious physical and psychological damage exists in South Africa. The Committee has learnt that considerable number of children are dying because of botched circumcision and compared to high number of deaths and injuries sustained, rate of investigation and conviction of perpetrators is low. Noting with appreciation measures taken by the State Party to eliminate this practice, the Committee recommends to the Government of South Africa to take further measures, inter alia:

- A) Adopt legislation outlawing unofficial initiation schools and criminalising the practice of male circumcision in unofficial initiation schools;
- B) Intensify investigation and prosecution of cases of kidnapping and taking boys to unofficial initiation schools as well as incidents of death of children in such schools as incidences of boys kidnapped and subjected to the practice of initiation without their consent as well as children dying from botched circumcision currently outnumber the cases investigated and prosecuted;
- C) Organise awareness campaigns to educate the community on the effect of botched circumcision on the rights and wellbeing of children.

IV. Asylum seekers, Refugee, and Migrant Children

38. The Committee notes with concern the difficulties that asylum seeking and refugee, children face when trying to access social services. The Committee especially notes the difficulty they face in the application for documentation and the added barriers which will come as a result of the Refugee Amendment Bill, should it be passed. The Committee would recommend that the Government create more refugee centres, in all nine provinces, remove all legal and non-legal barriers which refugee children face in accessing social services, such as education, and that processes of documenting refugee children are tailored to be more efficient, expedient and child-friendly.

39. The Committee notes with great concern that there is no dedicated mechanism to regularise the status of unaccompanied migrant children who are not refugees in the State Party. Therefore, the Committee recommends to the Government of South Africa to:

- A) Identify unaccompanied migrant children as a category of persons requiring special consideration in terms of section 31(2) (b) of the Immigration Act in order to allow unaccompanied children who meet the definition to apply for and be granted permanent residence in South Africa;

- B) Waive all fees applicable to applications for immigration permits for unaccompanied children so that these children benefit from provision of Section 31(2) (b) of Immigration Act;
- C) Fast track applications of unaccompanied children and in the meantime, allow children to go to school while they await the outcome of their application;
- D) Make accessible refugee reception offices in all provinces so that unaccompanied children can be able to apply for grant/renewal of asylum and refugee permits in the province where they live;
- E) Ensure that social worker is always assigned to assist unaccompanied children by amending section 32 of the Refugees Act which makes it discretionary for a Children's Court to order a social worker to assist such a child to make an application for asylum.

I) Conclusion

- 40.** The African Committee of Experts on the Rights and Welfare of the Child commends the Government of South Africa for its efforts to implement the African Children's Charter and aspires for the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to assess the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State party to submit its periodic reports in 2020 in accordance with the Committee's Guidelines of Consideration of State Party Periodic Reports.
- 41.** The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of South Africa the assurances of its highest consideration.