

AFRICAN UNION

*African Committee of Experts on the Rights  
and Welfare of the Child (ACERWC)*



UNION AFRICAINE

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

الاتحاد الأفريقي

*"An Africa Fit for Children"*

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P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa, Ethiopia  
Telephone: (+ 251 1) 551 3522 [Internet : http://acerwc.org](http://acerwc.org) Fax: (+ 251 1) 553 5716

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**CONCLUDING RECOMMENDATIONS BY THE AFRICAN COMMITTEE OF EXPERTS  
ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC) ON THE REPUBLIC  
OF SOUTH AFRICA REPORT ON THE STATUTS OF IMPLEMENTATION OF THE  
AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD**

## **I. INTRODUCTION**

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) extends its compliments to the Government of South Africa and wishes to acknowledge with thanks receipt of the initial report on the status of implementation of the African Charter on the Rights and Welfare of the Child. The ACERWC, during in its 1st Extra Ordinary Session which was held in 6-11, considered South Africa's initial report which was submitted in accordance with the State Parties obligation under Article 43 of the African Charter on the Rights and Welfare of the Child.
2. The Committee takes note of the written replies to its list of issues and commends the State Party for its delegation led by Her Excellency Hendrietta Bogopane Zulu, Deputy Minister of Social Development and Her Excellency Makhotso Maggie Soty, the Deputy Minister of Police for the open and constructive dialogue.
3. The Committee notes with appreciation that the State Party ratified the African Charter on the Rights and Welfare of the Child and took various initiatives to implement the rights and duties enshrined in the Charter. However, the Committee regrets that the report was submitted with considerable delay, which prevented the Committee from reviewing the implementation of the Charter by South Africa for some years after the ratification.

## **II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER**

4. The Committee commends the State Party on the following achievements;
  - a. The adoption of the Children's Act and Child Justice Act which are in line with the African Charter on the Rights and Welfare of the Child.
  - b. The establishment of the Ministry and Department of Women, Children and People with Disabilities
  - c. The development of a revised National Plan of Action for children.
  - d. The development of new National Development Plan: Vision 2030 with the view of reducing poverty and inequality by 2030.
  - e. The ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Pornography (OPSC); the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC); and the Convention on the Worst Forms of Child Labour.
  - f. The development of the White Paper on Families to mainstream family issues into government-wide, policy-making initiatives with the view of fostering positive family well-being and overall socio-economic development.

## **III. AREAS OF CONCERN AND RECOMMENDATIONS**

## **A. General measures of implementation**

5. The Committee commends the State Party for its comprehensive constitution that generously deals with human rights issues in general and on children right in particular and for the progressive judiciary system in place.
6. Taking note of the fact that the State Party has broad range of legislations and policies which are protective of the rights of children, the Committee is still concerned that the context of South Africa, particularly the prevalence of violence, corruption, poverty and inequality are affecting the realization of these laws and policies for the advantage of children. The Committee urges the State to fill this gap by promoting legislations guaranteeing children's rights including the African Children's Charter to its officials and the community, by allocating the necessary budget for the promotion and protection of children rights, and holding accountable officials that are involved in corruption.
7. The Committee recognizes the South Africa's endeavor to put in place the necessary legislations and institutions. However, there is a problem of proper implementation of the various laws. The State Party should take all the necessary measures including resource mobilization to enhance and make effective implementation of the laws.
8. Further the Committee recommends the State Party to ratify international instruments including the International Convention on Economic, Social and Cultural Rights and the Optional Protocol to the UN Convention on the Rights of Persons with Disability.
9. The Committee congratulates the State Party for the economic growth it has attained and its action for poverty reduction. The Committee hopes that this growth will positively contribute to address major economic challenges faced by children and recommends the State Party to address the income equality that exists between whites and blacks, and urban and rural communities.
10. The Committee further urges the State Party to put in place a comprehensive data collection and keeping system and to include an aggregated statistical data in its next report to be submitted to the ACERWC.
11. The Committee welcomes the position of the government of South Africa towards CSOs and the efforts made to include them in policy dialogues. However the Committee has concerns on the limited involvement of the CSOs in the coordinated implementation of the Charter and the Children's Act. The Committee recommends South Africa to devise a more broad mechanism to involve CSOs in the development of policies, budgets and programs on the issues of children.
12. The Committee commends the State Party for celebrating the Day of the African Child (DAC) dedicating a whole month of June as months of the child and encourages the State Party to continue commemorating and celebrating the DAC with the objective of bringing impact on the life of children.

## **B. Definition of child**

13. The Committee applauds the State Party for the compliance with the standards set by the Charter in relation to the age of majority; the minimum age for labour, the age of contracting and litigating, the minimum age for alcohol use and gambling, and the minimum age for defense force recruitment. However, it has concerns in relation to absence of minimum age for customary marriage; different age for marriage under civil law, common law and customary law; the minimum age of criminal responsibility which is at the age of 10 and the retaining of the *doli incapax* presumption for children between the ages of 10 to 14; and the age of medical consent under the 2012 Integrated School Health Policy (ISHP). Thus the Committee urges the Government of South Africa to harmonize its civil, customary, and common law definition of the child in line with article 2 of the Charter and to make effective article 21(2) of the Charter which prohibits child marriage and set the minimum age of marriage to be 18.
14. The Committee also calls upon the State Party to expedite the redrafting of section 15 and 16 of the Sexual Offence Act which has been ordered by the Constitutional Court in the matter of *Teddy Bear Clinic and RAPCAN v The Minister of Justice and Constitutional Development and another* [2013].

## **C. General principles**

### ***On non-discrimination***

15. The Committee urges the State Party to improve and promote laws and policies that promote equality of children in general and particularly in relation to girls, children with disability, and children from marginalized groups.
16. Appreciating legislative measures taken by the State Party to accommodate the principle of non-discrimination in national laws, the Committee notes with concern the refugees' equal access to basic services, which is heavily dependent on being in possession of valid refugee/asylum-seeker documentation issued by the Department of Home Affairs (DHA). Thus the State Party is urged to take all the necessary measures which include avoiding barriers to access basic services to guarantee the equality of refugee children.

### ***On the Best Interest of the Child***

17. The Committee recommends the State Party to respect and promote the principle of the best interest of the child not only in the law but also in practice in all settings including in a family setting overriding all other interests.

### ***On Survival and Development***

**18.** It has been reported that there is a high rate of violence, malnutrition that cause child mortality, and road accidents in South Africa. Thus, the Committee recommends the State Party to put in place all the necessary measures in all settings to protect children from violence that affect their right to life, survival and development; to reduce child mortality and malnutrition through de-worming campaigns and supply of nutritional supplements; and to address road accidents by setting in place rigorous safety standards on drivers as a way of protecting children's right to life

### ***On Child Participation***

- 19.** The Committee appreciates the inclusion of the principle of the best interest of the child in various laws affecting children, the support for child parliament and welcomes with high regards the presence of children representatives within South Africa's delegation. The Committee calls upon the government of South Africa to continue strengthening its effort to promote child participation; to give due consideration to children's view in making plans and policies in general and to children's parliament in particular by allocating the necessary budget and extending technical support.
- 20.** The Committee regrets that statistics of cases where children participated in the criminal procedure and the criminal justice system as victims and witnesses under the State Party report is limited only to the preliminary inquiries. The absence of this information hinders the Committee from assessing the discharge of South Africa's obligation to respect child participation in courts. Hence, the State Party should take all the necessary measures to keep record of cases in which children participated as victims and witnesses and to assure children's rights to express their opinion freely in all matters that affect them.

## **D. Civil Rights and Freedoms**

### ***On Name, Nationality and Birth Registration***

**21.** The Committee appreciates the State party on its work in relation to name, nationality and registration of children. However, the fact that foreign children born to undocumented migrant women and unaccompanied foreign children without asylum claims and doesn't have birth certificate is a concern for the Committee as it may result in making the children stateless persons when they attain majority. Thus the Committee recommends the State Party to avoid barriers such as the requirement of documents to register and also to give nationality to refugee and migrant children. Further the Committee would like to advise the State Party that the implementation of the Birth and Death

Registration Act and Regulation of 1<sup>st</sup> March 2014, not to be a hindrance for registration of children in South Africa.

22. It has been reported that in South Africa declaration of birth can be made by mothers only. Thus, the Committee encourages the State Party to create a mechanism for fathers and other extended families that has custody of a child to make declaration of birth.
23. Moreover, the Committee recommends the State Party to remove fees and penalties attached to birth registration to make sure birth registration is free and to consult General Comment No.2 on Article 6 of the Charter for full realization of children's right to name, nationality and birth registration.

### ***On Protection of the Child against Abuse and Torture***

24. Appreciating the effort of the State Party prohibition of corporeal punishment in all spheres of the public life of the child, the Committee recommends the State Party to expedite the process of amending the Children's act to explicitly ban corporeal punishment in all settings including in home and alternative care centers. The Committee also calls upon the State Party to encourage positive disciplining, to support families through awareness raising, and to train those who are working for and with children such as teachers and care givers.
25. Moreover, the Committee advises the Government of South Africa to harmonize its national laws such as the common law which entitle parent to reasonably punish their children in line with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and to ratify the Optional Protocol on the Convention against Torture.

### **E. Family Environment and Alternative Care**

26. It has been reported that there are a number of children who live and work in the streets particularly in the Western Cape. The Committee urges the government of South Africa to build up a system of aggregate data collection on children deprived of family environment and living in the street, and also to provide the children the necessary psychosocial and material support. Moreover, the Committee urges the State Party to develop and effectively implement norms and standards to cater for those that are deprived of family environment and to this effect call the State Party to consult the UN guidelines for the alternative care of children.
27. Due to lack of family reunification programs, in South Africa a number of children live in the Children and Youth Centers (CYC). However, there are unregistered CYCs. Thus the Committee recommends the State Party to consider independent oversight mechanisms and to take all the necessary measures to ensure the registration of unregistered CYCs.

28. The Committee notes that the subsidies paid by the government to registered CYCCs vary from province to province. The Committee proposes for the consistency of the subsidies to all the provinces. The Committee further notes that the subsidies to the CYCs and the Child Support Grant fall below the actual cost of providing the service. Thus the government of South Africa within its resources boundaries and taking into account the global inflation and the cost of living vis-à-vis actual feeding and care services cost, shall increase the amount of grant and the subsidy. In addition the Committee, recommend the State Party to provide for care and dependency grants for children with disability.
29. The Committee, appreciating the promulgating of legislations that ensure the best interest of the child in the issuance of maintenance advises the State Party to ensure the implementation of maintenance orders granted by courts as a way of safeguarding the best interest of the child in practice.
30. In relation to adoption the Committee advises the State Party to consult the Guideline for Action on Inter-country Adoption in Africa in measures it undertakes in relation to inter-country adoption and to expedite the ratification of the Convention on Protection of Children and Co-Operation In Respect of Inter-country Adoption.
31. The Committee would like to congratulate South Africa for the 500,000 foster care grants..... **Prof. Benyam would like to frame the recommendation under this issue.**
32. Taking into account the context of South Africa which is characterized by the prevalence of violence, the Committee advises the Government of South Africa to set in place a close supervision measures, community based protection systems and neighborhood watch to protect children from violence.

## **F. Health and welfare**

33. The Committee calls upon the State Party to safeguard children's right to basic nutrition in its health programs and actions. In addition the Committee advises the State Party to secure access to medical care to all children without any discrimination on the basis of race.
34. The Committee commends the establishment of the National Committee on Confidential Enquiries into Maternal Deaths (CEMD)'s. However the National Committee report only maternal deaths in health care facilities. As the wellbeing and understanding the cause of mothers' death is essential to the welfare of children, the Committee urges South Africa to extend the reach of the National Committee to all provinces and settings.
35. The Committee urges the State Party to promote exclusive breast feeding for the first six months of children's life as one mechanism of ensuring their healthy

growth and development, and to regulate and control commercials of complementary products.

36. Even though there is a progress in the dissemination of anti-retro viral medications, it has been reported that HIV and TB remains to be the main causes of child mortality in South Africa and there is a shortage of vaccines and anti-retro viral treatments due to the stock out of the drugs. It is the responsibility of the State Party to control the stock outs to safeguard children's access to the vaccines and the treatment and to take all the necessary prevention actions accompanied by effective campaigns.
37. The Committee applauds the development of the White Paper 6: Towards an Inclusive Education and Training System and calls the government of South Africa to strengthen its efforts to implement it and to improve the quality of education provided under the program.

### **G. Education, Leisure and Cultural Activities**

38. The Committee appreciates the efforts of the State Party takes to improve the quality and access to education and calls upon the State Party to strengthen and continue improving access and quality of education to all children. The Committee also recommends the State Party to ensure that no child is left uneducated by lifting barriers such as the requirement of documents for refugee and stateless children and guaranteeing access to education for pregnant girls. The Committee notes with a concern the inadequate number of schools and infrastructure, high level of school absenteeism, the poor capacity of school regulating bodies, the high cost of education, shortage of materials, and insufficiency of home language teachers as incumbent of children's right to education. Thus the Committee urges the government of South Africa to address the concern areas and through allocation of sufficient budget for the education sector, construction of schools and basic infrastructure in the rural areas, training of teachers and regulatory bodies, subsidizing the education system, provision of materials, and incorporation of home language training in teachers education.
39. The Committee commends the State Party for its effort to ensure migrant children's right to education. However there is constraint due to the requirement of documents, lack of education materials, and insufficient teachers. Thus the Committee recommends the State Party to facilitate migrant children's access to education by lifting barriers related with submission of documents and provision of the necessary resources.
40. Moreover, the Committee recommends the State Party to ensure the realization of inclusive education by taking all the necessary measures. The manner and form of inclusive education must be dictated by the individual educational needs of the child. The State Party should not apply inclusive education by simply



integrating children with disabilities into the regular system regardless of their challenges and needs. Rather it should cater for the children's' specific needs by re-evaluating its education curriculum to address challenges faced by children with disability, incorporating special needs education in teachers and other personnel involved in the education system trainings, and providing and improving basic infrastructures suitable to children with disability.

41. It has been reported that there is recruitment of children from and in schools to make them involved in gang and drug dealing groups. The State Party shall combat this recruitment through close supervision and investigation around schools.

## **H. Special Protection Measures**

### ***On Refugee, Returnee and Displaced Children***

42. It has been reported that refugee children experience difficulties to access basic services due to stringent requirement of documents. The Committee recommends the government of South Africa to remove inessential document requirements and the implementation of the Refugee Act of 1998.
43. The Refugee Act doesn't provide for the issuance of identification cards to unaccompanied children and who cannot be returned to their country of origin. The Committee urge the State Party to take immediate legislative and administrative measures to address the issue.

### ***On Children in the Justice System***

44. The Committee recommends the State Party to come up with victim empowerment law to address the issue of trauma faced by victims in and after the incident of the violence.
45. In relation to victims of violence, in South Africa it is Non-profit Organizations that provide psychosocial, counseling and referral services. The State Party shall support the Non-profit Organizations in the provision of services to victims.
46. The Committee appreciates the State Party for the enforcement of the Child Justice Act in 2010. However there is still a problem in relation to setting diversion programs for juvenile offenders. The Committee recommends the State Party to implement the Child Justice Act and to set in place diversion programs.

### ***On Children of Imprisoned Mothers***

47. The Committee urges the State Party to consult General Comment No.1 of the ACERWC on article 30 of the African Charter on the Rights and Welfare of the Child and to extend special treatment for mothers taking into account the best interest of the child beginning from arrest, up to the ultimate conviction, sentencing, imprisonment and reintegration phase of the criminal justice system.

48. The Committee further recommends the State Party to build separate penitentiary for mothers and to provide basic facilities such as playing area, equipment's, and cribs for the holistic development of children.

***On Protection from Substance Abuse***

49. The Committee commends the State Party for banning the advertising of alcohol, raise the legal drinking age, limit hours for alcohol sales, and lower the legal alcohol limit for drivers and advise the government of South Africa to continue its efforts through supervision of alcohol producers and sellers.

***On violence, sexual exploitation and sexual abuse***

50. The Committee notes with concern the high rate of violence in South Africa and the lack of evidence based planning to address the causes and consequences of the high level of violence. Thus, the Committee urges the State Party to undertake evidence based planning to tackle the high rate of violence and to mitigate its long term effect of children. Further, the State Party should empower the police and build up child protection units in all provinces.
51. During the constructive dialogue between the State Party and the Committee it has been indicated that the rape of children under the age of seven has increased and perpetrators are not always brought to justice. The Committee recommends the State Party to entrench effective penalties and to establish a child friendly reporting mechanisms.
52. The Committee, appreciating the introduction of specialized policing and court services within the South African Police Service and the establishment of specialized Sexual Offences Courts (SOCs), further recommends the State Party to expand the both the specialized court and the specialized policing across the country.

***On harmful traditional practices***

53. The Committee calls upon the Government of South Africa to take all the necessary measures to combat the practice of *ukuthwala* which subject girls to forced marriage. Further, the Committee recommends the State Party to address the issue of death and mutilation of boys as a result of botched circumcision. In addition the State Party shall ban virginity testing of children.

**I. Responsibility of the Child**

54. The Committee appreciates the State Party for the Bill of Responsibilities and for encouraging children to carry out solidarity activities through Children's Parliament. With this, the Committee calls upon the State Party to continue its efforts in promoting the responsibility of the child as it contributes towards the

provision of a forum of participation for children allowing them to be involved in matters which might affect their interests.

## **J. Conclusion**

**55.** The African Committee of Experts on the Rights and Welfare of the Child appreciates with satisfaction the efforts invested by the Government South Africa and aspires for the implementation of these recommendations. The Committee would also like to indicate that it will undertake a follow up Mission to ascertain the implementation of the recommendation in the foreseeable future. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of South Africa the assurances of its highest consideration.