



Economic and Social Council

Distr.: General
12 October 2018
**ADVANCE UNEDITED
VERSION**

Original: English

Committee on Economic, Social and Cultural Rights

Concluding observations on the initial report of South Africa*

1. The Committee on Economic, Social and Cultural Rights considered the initial report of South Africa on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/ZAF/1) at its 42nd, 43rd and 44th meetings (E/C.12/2018/SR.42, 43 and 44) held on 2nd and 3rd October 2018. It adopted the following concluding observations at its 58th meeting, held on 12 October 2018.

A. Introduction

2. The Committee welcomes the timely initial report submitted by the State party and the supplementary information provided in the replies to the list of issues (E/C.12/ZAF/Q/1/Add.1). The Committee also appreciates the constructive dialogue held with the State party's high-level inter-ministerial delegation. It notes with appreciation the active role played by the South African Human Rights Commission and by civil society both in consultations for the preparation of the report and in the review process of the State party's report.

B. Positive aspects

3. The Committee notes with appreciation the efforts made by the State party to address the disparities inherited from the apartheid era. The Committee also appreciates the significant progress achieved since the ratification of the Covenant, many instances of which are referred to the observations below.

C. Principal subjects of concern and recommendations

The status of the Covenant in the domestic legal order

4. The Constitution in force since 4 February 1997 is particularly progressive in the area of economic, social and cultural rights, and its impact has been further strengthened by the interpretation of the Constitutional Court. The Committee notes, however, that the Constitution has not fully incorporated the rights enshrined in the Covenant, such as rights to work and to an adequate standard of living, and that, although the Constitution provides that its Bill of Rights should be interpreted taking into consideration international law (article 39(1)(c)), the provisions of the Covenant are not considered to be directly applicable by the courts, other tribunals or administrative authorities.

5. The Committee recommends that the State party ensure that the rights enshrined in the Covenant are fully recognized in its Constitution and domestic legislation and that the provisions of the Covenant can be directly invoked before domestic courts. It also recommends that the State party enhance training for judges,

* Adopted by the Committee at its sixty-fourth session (24 September–12 October 2018).

prosecutors, lawyers and public officials on the Covenant and strengthen the capacity of the South African Judicial Education Institute to this end. The Committee draws the State party's attention to its General Comment No. 9 (1998) on the domestic application of the Covenant.

Declaration

6. The Committee is concerned that the State party maintains its declaration in relation to articles 13(2) (a) and 14 of the Covenant. It notes in this regard the judgment delivered on 11 April 2011 by the Constitutional Court in the case of *Governing Body of the Juma Masjid Primary School and Another v Ahmed Asruff Essay No and Others* (CT 29/10) ([2011] ZACC 13), which states that the right to a basic education under section 29(1)(a) of the Constitution is 'immediately realisable' and that there is 'no internal limitation requiring that the right be progressively realised within available resources subject to reasonable legislative measures'.

7. The Committee recommends that the State party withdraw its declaration in relation to articles 13(2) (a) and 14 of the Covenant.

South African Human Rights Commission

8. While appreciating the efforts of the South African Human Rights Commission (SAHRC) to promote and protect the rights enshrined in the Covenant, as well as the contributions of the Gender Commission and of the Commission for Religious and Cultural Rights, the Committee is concerned at the insufficient budgetary resources allocated to the SAHRC to effectively carry out its mandate.

9. The Committee recommends that the State party allocate a sufficient level of financial resources to the South African Human Rights Commission to enable it to effectively carry out its mandate.

Data collection

10. The Committee is concerned at the lack of disaggregated statistical data relating to the fulfilment of economic, social and cultural rights, particularly of indigenous peoples, which makes it difficult to monitor the level of enjoyment of these rights in the State party.

11. The Committee recommends that the State party improve its data collection system with a view to collecting comprehensive and reliable data, disaggregated by race, gender, province and other relevant criteria, in order to enable the assessment of the level of enjoyment of Covenant rights, particularly by disadvantaged and marginalized individuals and groups including indigenous peoples. It also recommends that the State party enhance the capacity of Statistics South Africa to this end.

Human rights defenders

12. The Committee is concerned at reports of human rights defenders, particularly those working to promote and defend the Covenant rights in the mining and environmental sectors, being threatened and harassed. It is also concerned at the overly broad and vague definition of "public violence", which may have a deterrent effect on participants in peaceful protests. It is further concerned at the high number of rejections of protest applications due to deliberate restrictions or inadequate understanding of legislation by public officials.

13. The Committee recommends that the State party provide a safe and favourable environment for the work of these defenders to promote and protect economic, social and cultural rights, including by:

(a) Ensuring that all reported cases of intimidation, harassment and violence against human rights defenders are promptly and thoroughly investigated and the perpetrators are brought to justice;

(b) Ensuring that law enforcement personnel are appropriately trained so as to prevent the excessive use of force against protesters; and

(c) Reviewing the Regulation of Gatherings Act No. 205, 1993, with a view to preventing it from being abused to suppress peaceful protests and also ensuring that

the Act and its related regulations are adequately enforced by public officials. The Committee draws the attention of the State party to its statement on Human Rights Defenders and Economic, Social and Cultural Rights (E/C.12/2016/2).

Indigenous peoples

14. While welcoming the adoption of the Traditional and Khoi-San Leadership Bill that recognizes the Khoi and the San as indigenous peoples, the Committee is concerned that indigenous peoples continue to be marginalized and discriminated in their enjoyment of the Covenant rights. (art.1(2))

15. The Committee recommends that the State party intensify its efforts to ensure the equal enjoyment of the rights enshrined in the Covenant by indigenous peoples as well as their participation and consultation in the implementation of the Traditional and Khoi-San Leadership Bill and other matters concerning them. It also encourages the State party to ratify the International Labour Organization Convention No. 169 on the Indigenous and Tribal Peoples, 1989.

Maximum available resources

16. With a Gini coefficient of 0.63 and a Palma ratio of 7.1, the State party is among the most unequal countries in the world; and market inequalities, before tax and redistribution, are even more striking. While the Committee is well aware of the historical roots of such inequalities and welcomes the efforts pursued since the end of apartheid, the persistence of such inequalities signals that the model of economic development pursued by the State party remains insufficiently inclusive. The Committee is deeply concerned by such unacceptably high levels of economic and social inequalities. Although welcoming the introduction in 2017 by the National Treasury of rural-focused indicators, it also regrets the significant geographical disparities in the State party, both between provinces and between rural and urban municipalities. The State party's fiscal policy, particularly relating to personal and corporate income taxes, capital gains and transaction taxes, inheritance tax, and property tax, do not enable it to mobilize the resources required to reduce such inequalities; and it is not sufficiently progressive to this end. The recent increase in the value added tax (VAT) was not preceded by a human rights impact assessment. Although the Committee notes that certain items, including 19 basic food items, farming inputs, educational services, and rents were exempted, the Committee remains concerned about the impacts of this increase on low-income households. It is further concerned at the large amount of illicit financial flows and tax avoidance, which has a serious impact on the ability of the State party to meet its obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights (art. 2 (1)).

17. The Committee recommends that the State party:

(a) Review its fiscal policy in order to improve its capacity to mobilize the domestic resources required to bridge existing gaps and to increase its redistributive effect;

(b) Consider revising the Provincial and Local Government Equitable Share Formulas to reduce regional disparities in the enjoyment of the Covenant rights

(c) Assess the impact of the VAT increase, particularly on low-income households, and take corrective actions as necessary;

(d) Intensify its efforts to combat illicit financial flows and tax avoidance with a view to raising national revenues and increasing reliance on domestic resources, including by combating trade mispricing within multinational corporations; and seek international cooperation with relevant international organizations as well as the countries of origin of multinational corporations to this end; and

(e) Re-examine its growth model in order to move towards a more inclusive development pathway.

Austerity measures

18. The Committee is concerned that the State party has introduced austerity measures to relieve the debt level without defining the timeframe within which such austerity measures should be re-examined or lifted. It is concerned that these measures have resulted in significant budget cuts in the health, education and other public service sectors, and that they may further worsen inequalities in the areas covered by the Covenant rights and even reverse the gains made, particularly in the health and education sectors. The Committee notes that such fiscal consolidation measures have been adopted while the Auditor General has identified instances of irregular expenditure (made in violation of procurement laws) and of fruitless and wasteful expenditure, and while instances of mismanagement of state-owned enterprises have been identified, reducing the capacity of the State party to adequately finance public services (art. 2 (1)).

19. The Committee reminds the State party that, where austerity measures are unavoidable, they should be temporary, covering only the period of the crisis; necessary and proportionate; not result in discrimination and increased inequalities; and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected. The Committee recommends that the State party:

(a) Increase the level of funding in social security, health and education;

(b) Task the Department of Planning, Monitoring and Evaluation, with ensuring that public policies are directed towards the realization of the rights of the Covenant;

(c) Ensure the Standing Committee on Public Accounts in the national parliament (and its equivalents in provincial parliaments) take such rights into consideration in assessing the budgetary choices of the national and provincial governments respectively.

20. The Committee refers the State party to its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis.

Non-discrimination

21. The Committee is concerned that Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000, which imposes obligations on all members of society to promote equality, including the private sector, still awaits implementation (art. 2(2)).

22. The Committee recommends that the State party speed up the review of the PEPUDA to ensure that Chapter 5 of the Act be implemented without further delay.

Persons with albinism

23. The Committee is concerned that persons with albinism continue to be subject to attacks and face discrimination in enjoying the Covenant rights, including rights to work and to education. It is also concerned about the lack of a comprehensive legal and policy approach to the situation of persons with albinism. (art. 2(2)).

24. The Committee recommends that the State party intensify its efforts to eliminate discrimination and violence against persons with albinism, including by strengthening the legal framework, raising public awareness and engaging with traditional leaders and healers in a coordinated and coherent manner, and by facilitating their access to work and education by providing them with necessary support and assistance.

Asylum seekers

25. The Committee appreciates the State party's hosting of a large number of refugees and asylum seekers forced to flee their countries. However, it remains concerned that the right of asylum seekers to work has been denied through Section 22(8) of the Refugees Amendment Act, giving effect to Section 11(h) of the Refugee Act. While noting the significant progress made in processing applications for asylum, it is also concerned at the

reportedly large backlog of asylum applications pending in the appeal process and at the proposal of establishment of asylum processing centres in border areas, which may restrict access of asylum seekers to legal assistance, healthcare, education and social assistance grants (arts. 2(2) and 6).

26. **The Committee recommends that the State party:**

(a) **Expediently clear the backlog of asylum applications in the appeal process;**

(b) **Ensure that asylum seekers are guaranteed effective access to legal assistance, basic healthcare and education and other social services and supported in their applications for social assistance allowances;**

(c) **Ensure, to the fullest extent possible, that asylum seekers can support themselves and enjoy the right to work, including through amending Section 22(8) of the Refugees Amendment Act.**

27. **The Committee draws the attention of the State party to its statement on Duties of States towards refugees and migrants under the Covenant (E/C.12/2017/1)**

Unemployment

28. Unemployment in the State party stands at 27.5 percent for the general population and at 39 percent for young people, and further grows to 37 percent and 67 percent, respectively, once those who are discouraged from seeking employment are included. While noting the range of programmes already in place to help job-seekers find employment, the Committee is concerned at such high unemployment rates. It is also concerned at the low level of employment of persons with disabilities and the inadequate implementation of the two percent employment quota for persons with disabilities in the private sector. (arts. 2(2) and 6)

29. **The Committee recommends that the State party make every effort to reduce the high unemployment rates, including by improving the opportunities for vocational training and the educational curriculum and developing programmes, particularly for young people, to meet current labour market demands and providing employers with incentives to hire young people. It also recommends that the State party effectively implement the two per cent employment quota for persons with disabilities, particularly in the private sector and ensure that these workers are provided with reasonable accommodation in the workplace, which the provision of financial incentives to employers could facilitate. The Committee draws the attention of the State party to its general comments Nos. 18 (2006) on the right to work, and 23 (2016) on the right to just and favourable conditions of work.**

Precarious employment in the formal and informal economies

30. The Committee is concerned that a large number of workers, including the self-employed, are working in the informal economy without labour rights and with insufficient social protection. It is also concerned that there is no legislative framework regulating the informal economy, exposing workers therein to the risk of abuse from employers and abuse from law enforcement authorities. It is also concerned at the increasing casualization of employment in the formal economy and at the fact that the measures taken to mitigate the situation, including the Amendments to the Labour Relations Act, remain insufficient. It regrets the lack of information on the scale of the informal economy and the situation of workers therein (arts. 6 and 7).

31. **The Committee recommends that the State party**

(a) **Introduce a legislative framework to regulate the informal economy with a view to protecting workers therein from abuse and harassment, including by law enforcement officials;**

(b) **Expand the coverage of the labour and social security legislation to these workers;**

(c) **Facilitate the transition of workers in the informal economy to the formal economy, taking into account the International Labour Conference Recommendation No. 204 on the transition from the informal to the formal economy;**

(d) **Prevent and mitigate the casualization or externalization of work in the formal economy;**

(e) **Strengthen the enforcement of the Amendments to the Labour Relations Act to this effect; and**

(f) **Collect information on the informal economy, including its scale and working conditions of workers therein, on a regular basis.**

Sex workers

32. While noting the on-going debate and the recommendations made by the South African Law Reform Commission on the issue, the Committee is concerned that sex workers, mostly women, do not enjoy their rights under the Covenant, particularly the rights to work and to health and trade union rights, as well as on their exposure to frequent harassment and arbitrary arrest and detention, and bribery and free sex coerced by the police due to criminalization of the sale of sex, which makes it difficult to report physical and sexual violence against them. (arts. 2(2), 6 and 8).

33. **The Committee calls upon the State party to impose an immediate moratorium on arrests of sex workers until their future legal status is determined. It also recommends that the State party:**

(a) **Consider decriminalizing the sale of sex;**

(b) **Protect sex workers from police harassment as well as from sexual and physical violence, and exploitation by traffickers, establishment owners and others;**

(c) **Provide support and assistance to those who are victims of harassment, violence and exploitation;**

(d) **Take measures to curb demand for prostitution and to provide alternatives to sex workers.**

Domestic and farm workers

34. While noting that The Basic Conditions of Employment Act (BCEA) and Sectoral Determination 7 provide some level of labour and social protections, the Committee is concerned that:

(a) Domestic workers and farm workers often labour under exploitative conditions;

(b) Domestic workers are not covered for occupational injuries and deaths under the Compensation for Occupational Injury and Death Act (COIDA);

(c) While the accommodation provided is a core component of the wage received, the standard of accommodations is not regulated;

(d) The law provides neither for unannounced labour inspections carried out in the domestic setting nor for effective mechanisms allowing domestic workers to complain about their working conditions. (arts. 6 and 7).

35. **The Committee recommends that the State party intensify its efforts to protect domestic and farm workers from exploitation and to provide them with enhanced labour and social protection, including by**

(a) **Further strengthening the legislative framework to extend to domestic workers the application of the COIDA for occupational injuries and deaths and to provide legal guidance on the standard of accommodations;**

(b) **Regularly carrying out unannounced labour inspections in domestic settings (without a notice or warrant);**

(c) **Ensuring domestic and farm workers have access to effective complaints mechanisms;**

(d) **Raising public awareness of rights of domestic workers.**

36. **The Committee draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 47 (f) and (h).**

The mining sector

37. The Committee is concerned at the working conditions of mineworkers and the lack of labour inspections in the sector, which have led to a high incidence of occupational injuries and diseases. It is also concerned that most mine workers live in informal settlements around mines without water, sanitation facilities or electricity; and that social and labour plans (SLP) are often not implemented by employers. It is further concerned at the vulnerable situation of women mineworkers, who are constantly subject to discrimination and exposed to sexual violence (arts. 3, 7 and 11).

38. **The Committee recommends that the State party intensify its efforts to improve working and living conditions of mineworkers, especially women mineworkers, in light of lessons drawn from the Marikana incident, in particular by:**

(a) **Ensuring the strict enforcement of the Mine Health and Safety Act and the Occupational Health and Safety Act in the mining sector;**

(b) **Strengthening labour inspections in the mining sector;**

(c) **Ensuring that injured mineworkers and mineworkers with occupational diseases, regardless of their status, have access to effective remedies, including through liability actions against their employers;**

(d) **Carrying out a regular assessment of hazardous risk of safety and health of mineworkers, particularly temporary or contract workers;**

(e) **Promoting the safety and dignity of women mineworkers, addressing gender inequalities and violence, and eradicating the male-dominant work culture in the sector;**

(f) **Improving living conditions in mineworker communities and ensuring their access to adequate housing, water, electricity, sanitation, healthcare, education and other social services; and**

(g) **Strictly enforcing SLP obligations and imposing penalties on employers in cases of non-compliance, including by the cancellation of their licences.**

Minimum wage

39. While welcoming the introduction of a national minimum wage, the Committee is concerned that the current level of the hourly minimum wage (20 Rand) does not ensure workers and their families an adequate standard of living; that the minimum wages for domestic workers and farm workers are set during the interim period even below that level; and that a large number of workers are not covered by the minimum wage bill (art. 7).

40. **The Committee recommends that the State party:**

(a) **Apply the same level of minimum wage across all sectors, including the domestic, farm and retail sectors;**

(b) **Raise the level of the national minimum wage and regularly adjust it to the cost of living so as to ensure an adequate standard of living for workers and their families;**

(c) **Ensure the full compliance with minimum wage (General comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 18-24). This presupposes that the State party design a composite index to regularly assess the costs of living, in order to support its efforts to guarantee that wages provide workers with a decent living for themselves and their families (see para. 48, (a)).**

Gender pay gap and equal pay for work of equal value

41. The Committee is concerned at the gender pay gap, which stands at 27 percent, due to the persistent vertical and horizontal occupational segregation by gender; and at the predominance of women in precarious employment and its effect on their enjoyment of the Covenant rights throughout their life. It is also concerned that labour laws or collective agreements do not include the principle of equal pay for work of equal value. (arts. 3, 6 and 7).

42. **The Committee recommends that the State party intensify its efforts to close the gender pay gap and to address vertical and horizontal segregation; and ensure that the principle of equal pay for work of equal value is incorporated in labour laws and collective agreements and effectively implemented.**

Labour inspections

43. The Committee is concerned at the insufficient level of funding allocated to the Directorate of Inspection and Enforcement Services (IES) and at the chronic shortage of qualified labour inspectors, which restricts its effective functioning. It is also concerned at the lack of follow up to its findings. (art. 7).

44. **The Committee recommends that the State party:**

- (a) **Increase the level of funding allocated to the Labour Inspectorate;**
- (b) **Secure a sufficient number of qualified labour inspectors and ensure that wages and resources available to labour inspectors reduce the high rate of turnover;**
- (c) **Ensure that the compliance orders of labour inspectors are duly implemented.**

Trade union rights

45. The Committee is concerned that some categories of workers – domestic workers, farmworkers and workers in precarious employment – are more likely to be excluded from the collective bargaining process. It is also concerned at some proposals made in the process of amending the Labour Relations Act, which would weaken the right to strike in general (art. 8).

46. **The Committee recommends that the State party ensure that all workers, including those in precarious employment, effectively participate in the decision-making process relating to their working conditions and exercise their legitimate rights, as provided in the Constitution and labour laws. It also recommends that the State party ensure that the Amendments to the Labour Relations Act provide for a stronger protection of labour rights, including the right to strike.**

Social security

47. The Committee notes that social grants have been an important instrument in reducing poverty in the State party and that significant progress has been made in this regard in recent years. It remains concerned, however, that, while the poverty ratio in the State party stands at an unacceptably high level of 55.5 percent in 2018,:

- (a) There is no composite index on the costs of living, providing the State party with a benchmark to adequately set the levels of social benefits consistent with the requirement to ensure an adequate standard of living to all;
- (b) The levels of all non-contributory social assistance benefits are too low to ensure an adequate standard of living for recipients and their families;
- (c) Those with no or little income between the ages of 18 and 59 and are capable of working are not covered by existing schemes;
- (d) The coverage of the Unemployment Insurance remains low and excludes workers in the informal economy, seasonal workers and the self-employed; and

(e) Data and bank accounts belonging to social grant recipients have been misused and a large number of unauthorized deductions from social benefits has been recorded. (arts. 9, 10 and 11).

48. **The Committee recommends that the State party:**

- (a) **Design and regularly update a composite index on the costs of living;**
- (b) **Raise the levels of non-contributory social assistance benefits to a level that ensures an adequate standard of living for recipients and their families;**
- (c) **Ensure those with no or little income between the ages of 18 and 59 have access to social assistance;**
- (d) **Establish a social protection floor in line with the rights-based definition provided under the ILO Social Protection Floors Recommendation, 2012 (No.202);**
- (e) **Expand the coverage of the Unemployment Insurance to all workers, regardless of their status;**
- (f) **Consider the possibility of introducing a universal basic income grant;**
- (g) **Rectify the situation brought about by the outsourcing of the social grants payment system and ensure that all the payments are made in a timely manner during the transition period.**

49. **The Committee draws the attention of the State party to its general comment No. 19 (2008) on the right to social security and to its statement on social protection floors: an essential element of the right to social security and of the sustainable development goals (E/C.12/54/3).**

Birth registration

50. While it welcomes the fact that registration of children may now be done directly in hospitals at birth, as well as the non-collection of the fees normally required for late registration, the Committee is concerned that 10 per cent of children in the State party remain unregistered and that the birth registration is hindered, particularly for those with one or more foreign parents and those of single fathers, due to extra requirements such as paternity testing, in order to avoid instances of fraudulent registration of children trafficked into the country. It is also concerned that Section 4(3) of the Citizenship Amendment Act is interpreted restrictively to benefit only children born after 1 January 2013, exposing many of those born before that date to the risk of statelessness (arts. 3 and 10).

51. **The Committee recommends that the State party facilitate birth registration by streamlining the procedure and assisting parents to meet the requirements. This could include reimbursing the costs of paternity tests where such tests have established paternity, and decentralizing the services of the National Health Laboratory Service where paternity tests can be performed. It also recommends that the State party apply section 4(3) of the Citizenship Amendment Act, 2010 to all children of foreign nationals, including those born before the Act came into force in 2013.**

Marriage

52. The Committee is concerned about the discrepancy between the Children's Act No. 38 of 2005 (as regards the age of consent) and the stipulations of the Marriage Act No. 25 of 1961 setting the minimum age for marriage at 18 years for boys and 16 years for girls and providing for the possibility of exceptions with the written permission of the Minister. It is also concerned at the lack of legal recognition of Muslim marriages and its negative consequences for women in Muslim marriages without official registration. (arts. 3 and 10)

53. **The Committee recommends that the State party harmonize all its relevant legislation to ensure that the minimum age for marriage for boys and girls is brought into line with international standards. It also recommends that the State party facilitate the recognition of Muslim marriages, including appropriate safeguards for women's rights.**

Harmful practices

54. While it is mindful that section 31 of the Constitution protects the rights of cultural, religious and linguistic communities, the Committee is concerned that section 12(5) of the Children's Act allows virginity testing of children above the age of 16 if the child has given consent in the prescribed manner and after proper counselling. The Committee is also concerned at the recent resurgence of the practice of *ukuthwala* in the Eastern Cape and KwaZulu-Natal provinces, while noting that in the absence of consent of the girl concerned this practice is considered as a form of trafficking, and may be prosecuted as such. (arts. 3 and 10)

55. **The Committee recommends that the State party:**

- (a) **Revise the Children's Act with a view to prohibiting virginity testing;**
- (b) **Combat harmful practices, such as ukuthwala and virginity test, including by raising awareness of their negative impacts on girls and women throughout their life, and ensure that these practices are completely prohibited.**

Malnutrition and the right to food

56. The Committee is concerned at the high incidence of food insecurity and malnutrition in the State party, particularly among children. Given the fact that 12 percent of children lived in hunger in 2017 and 27 percent of children were suffering from stunting in 2016, the Committee is particularly concerned that the child support grant (at 400 Rand/month) is set far below the food poverty line and that an estimated 18 percent of eligible children do not benefit from the grant due to a lack of documentation. It is further concerned at the lack of a framework law to ensure the right to food. (arts. 9 and 11)

57. **The Committee recommends that the State party:**

- (a) **Increase the child support grant at least up to the level of the food poverty line;**
- (b) **Ensure that all eligible children benefit from the grant;**
- (c) **Expedite the adoption of the Social Assistance Amendment Bill to increase the level of child support grant for orphaned and abandoned children living with relatives, for which it has already earmarked funds;**
- (d) **Adopt a framework legislation protecting the right to adequate food and nutrition and develop a national food and nutrition security strategy, taking into account the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security and the Committee's general comment No. 12 (1999) on the right to adequate food.**

Right to housing

58. While noting the continuous efforts made by the State party to provide social housing to low-income families, the Committee is concerned at the large number of people living in inadequate housing, including those in informal settlements, without access to basic services; the growing number of informal settlements in urban areas due to rapid urbanization; and the decrease in the number of social housing units provided by the State party. The Committee is also concerned at reports of illegal evictions and excessive use of force during evictions, as well as of evictions taking place without municipalities offering suitable alternative accommodation. While noting the imminent adoption of the Extension of Security Tenure Amendment Act, it is further concerned at the dire housing and living conditions of farm dwellers and the potentially negative consequences of the Extension of Security Tenure Act No. 62 of 1997 in this regard. (art. 11)

59. **The Committee recommends that the State party:**

- (a) **Intensify its efforts to improve housing conditions and to meet the increasing demand, including by continuing to provide adequate social housing in urban areas and in-situ in informal settlement upgrading;**

(b) **Ensure that evictions are carried out only as a last resort, without use of force and in compliance with international standards;**

(c) **Encourage farmers to improve housing and living conditions of farm dwellers and ensure that the Extension of Security Tenure Amendment Act is implemented in full compliance with the Covenant and other international human rights standards, especially as regards the requirement that occupiers evicted can acquire "suitable alternative accommodation".**

60. **The Committee draws the attention of the State party to its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on the right to adequate housing (forced evictions).**

Land rights

61. The Committee is concerned that, despite its efforts to ensure land redistribution (and restitutions for traditional communities expropriated since 1913), the State party remains significantly below the targets it has set for itself and that land concentration has in fact increased as white commercial farmers have ceded their farms. It is also concerned that, due to poor post-settlement support and lack of training in particular, many beneficiaries of land redistribution have failed to improve their livelihoods. It is further concerned that women own only 13% of agricultural land and that they still face discrimination in access to land due to traditional inheritance practices.

62. **The Committee recommends that the State party accelerate the implementation of the land redistribution and restitution policies and provide the beneficiaries with adequate support to productively use the land and improve their livelihoods. It also recommends that the State party ensure that women have equal access and ownership to land, consistent with para. 58 of the General Recommendation No. 34 on the rights of rural women (2016) of the Committee on the Elimination of Discrimination against women.**

Right to health

63. While noting that the State party aims achieving universal healthcare coverage through the adoption of the National Health Insurance (NHI) Bill, the Committee is concerned at the large disparities between the public and private healthcare system, with the public system disadvantaged in relation to the number of medical professionals, medical equipment and medical expenditures, as well as between rural and urban areas in registering with the NHI Fund and accessing healthcare services. It is particularly concerned at the acute lack of medical professionals, and limited range and at times inadequate quality of services provided in the public health sector, on which more than 85 percent of the population rely. While noting the progress achieved in making antiretrovirals accessible to HIV patients, the Committee regrets that significant numbers of patients still do not have access to such treatment.

64. **The Committee recommends that the State party:**

(a) **Expedite the adoption of the National Health Insurance Bill;**

(b) **Address the large disparities between the public and private healthcare systems as well as between rural and urban areas, by securing a sufficient number of medical professionals, improving medical equipment, and expanding the range of, and improving quality of public healthcare services, particularly the primary health care and community health care sectors and in the rural areas;**

(c) **Ensure that all people in need of life-saving treatment have access to affordable medicines, particularly antiretrovirals for people infected with HIV.**

Sexual and reproductive health

65. While noting that the Choice on Termination of Pregnancy Act No. 92 of 1996 allows for abortion under certain conditions, the Committee is concerned that only 7 percent of healthcare centres provide abortion services, hampered in practice owing to the invocation

by medical personnel of conscientious objection and the limited accessibility of facilities offering such services, particularly in rural areas. It is also concerned at the high incidence of teenage pregnancy, which leads to high drop-out rates among girls.

66. **The Committee recommends that the State party ensure that:**

(a) **Facilities and services for sexual and reproductive health, including for abortion, are available and accessible for all, in particular, in rural areas;**

(b) **Physicians' conscientious objection does not impede women's access to abortion services, by providing referrals within their own facility or to a nearby facility;**

(c) **Reduce the high teenage pregnancy rate and ensure access to and availability of sexual and reproductive health information and contraceptives for all, including teenage girls and boys, in particular in rural areas;**

(d) **Provide the necessary support services for pregnant adolescents, including measures to enable them to continue their education.**

67. **The Committee draws the attention of the State party to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

Cultivation of illicit crops

68. The Committee is concerned of the aerial fumigation of cannabis crops to control illicit production of cannabis in the Pondoland district, with the use of glyphosate, which was declared probably carcinogenic by the International Agency for Research on Cancer's (IARC) of the World Health Organisation.

69. **The Committee recommends that the State Party suspends this aerial spraying and instead offers development alternatives to the communities to encourage them to abandon the illicit production of cannabis, including the possibility to participate in the medical cannabis market through a program of small-scale community farmer licenses.**

Right to education

70. The Committee welcomes in particular the significant progress the State party has made in enhancing access to education. This includes the near universal access to primary and secondary education; the improved early childhood education that 88 percent of children of aged five to six years benefit from, although access remains very low for children from the poorest families; free higher education and training currently made available to first-year students from low-income families. It also welcomes the announcement of fully subsidized higher education and training for students from low-income families over a five-year period. The Committee is concerned, however, that the public school infrastructure is poor in the State party. A number of schools have no or limited access to water, sanitation facilities and electricity, due both to budgetary cuts and, in some cases, to mismanagement of funds. It is also concerned at the high school drop-out rates mainly due to weak learning foundations. It is further concerned at the practice of charging fees in the form of voluntary contributions in no-fee schools, and at discriminatory effects of fee exemptions in fee-paying schools, particularly on children of single parents. Furthermore, it is concerned at the lack of guidance on the role and responsibility of private sector actors in education. It is also concerned that in spite of the efforts of the State party, the attendance of children from low income families in early education remains low (arts.13 and 14).

71. **The Committee recommends that the State party intensify its efforts to:**

(a) **Improve school infrastructure and ensure that all schools have access to water, sanitation facilities and electricity, by allocating a sufficient level and effective management of funding;**

(b) **Reduce the school dropout rate by improving the acquisition of foundational numeracy and literacy;**

(c) **Ensure that no-fee schools stop charging parents fees and review the requirements for fee exemption in fee-paying schools, with a view to ensuring that disadvantaged and marginalized children are not discriminated and stigmatized;**

(d) Improve the regulatory framework to define the responsibilities of private sector actors and monitor the education provided by such actors;

(e) Guarantee high quality early education for all children, especially to those of disadvantaged families.

72. While noting the indication of the Delegation that state-run schools for children with disabilities would become no-fee schools, the Committee is concerned that a large number of children with disabilities are out of school and that the children with disabilities, particularly those from low-income families, do not benefit from no-fee schools. It regrets the lack of data relating to the education of children with disabilities. It is also concerned that about 30 percent of undocumented child migrants, refugee and asylum-seeking children are not in formal education.

73. The Committee recommends that the State party:

(a) Immediately roll out the no-fee schools programme to state-run schools for children with disabilities who cannot be accommodated in mainstream schools;

(b) Ensure that inclusive education is a guiding principle in all education plans and programmes, including by the provision of reasonable accommodation for children with disabilities;

(c) Ensure that all migrant, refugee and asylum-seeking children have access to education regardless of their immigration status. It refers in this regard to its statement on "The Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1).

Cultural rights

74. The Committee is concerned at the lack of protection for endangered languages and the lack of teaching of indigenous languages and knowledge in the public school system. (arts. 1(2), and 13-15)

75. The Committee recommends that the State party:

(a) Enhance its efforts to protect endangered languages and ensure that indigenous languages and knowledge are taught in the school system;

(b) Strengthen the mandate of the Pan South African Language Board to this effect.

Access to the Internet

76. The Committee is concerned at the low rate of Internet access, particularly in rural areas and in schools, and at the lack of affordability of the Internet for the most disadvantaged groups (art.15).

77. The Committee recommends that the State party adopts relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools, rural areas and for the most disadvantaged groups.

D. Other recommendations

78. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

79. The Committee recommends that the State party consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of All Migrant Workers and Members of Their Families.

80. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the

national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

81. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

82. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the South African Human Rights Commission, non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

83. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 48 (a) and (c) (concerning the preparation of a composite index on the costs of living and access to social assistance for adults between 18 and 59 years of age), 57 (c) (concerning the adoption of the Social Assistance Amendment Bill) and 73 (b) (access to education for children of undocumented migrants, refugees, asylum-seekers) above.

84. The Committee requests the State party to submit its second periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2023. In addition, it invites the State party to update its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).
