



Committee on Economic, Social and Cultural Rights**Concluding observations on the initial report of
South Africa***

1. The Committee 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 2 and 3 October 2018, and adopted the present concluding observations at its 58th meeting, held on 12 October 2018.

A. Introduction

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

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 appreciates the significant progress achieved since the ratification of the Covenant, many examples of which are referred to in the present concluding observations.

C. Principal subjects of concern and recommendations**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 through the Constitutional Court's interpretation of its provisions. The Committee notes, however, that the Constitution has not fully incorporated the rights enshrined in the Covenant, such as the right to work and the right to an adequate standard of living, and that, although the Constitution provides in its article 39 (1) (c) that its Bill of Rights should be interpreted taking into consideration international law, the provisions of the Covenant are not considered to be directly applicable by the courts, other tribunals or administrative authorities.

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



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, prosecutors, lawyers and public officials on the Covenant and strengthen the capacity of the South African Judicial Education Institute to that 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 continues to maintain its declaration in relation to articles 13 (2) (a) and 14 of the Covenant. It takes note in this regard of the judgment delivered on 11 April 2011 by the Constitutional Court in the case *Governing Body of the Juma Masjid Primary School and Others v. Ahmed Asruff Essay N.O. and Others* (CCT 29/10; [2011] ZACC 13), which states that the right to a basic education under section 29 (1) (a) of the Constitution is "immediately realizable" and that there is "no internal limitation requiring that the right be 'progressively realized' 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 to promote and protect the rights enshrined in the Covenant, as well as the contributions of the Commission for Gender Equity and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Committee is concerned at the insufficient budgetary resources allocated to the South African Human Rights Commission to effectively carry out its mandate.

9. **The Committee recommends that the State party allocate sufficient 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 those of indigenous peoples, which makes it difficult to monitor the extent to which these rights are enjoyed 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 rights covered by the Covenant, particularly among disadvantaged and marginalized individuals and groups, including indigenous peoples. It also recommends that the State party enhance the capacity of Statistics South Africa to that end.**

Human rights defenders

12. The Committee is concerned at reports of human rights defenders, particularly those working to promote and defend the rights under the Covenant 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 owing 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 human rights 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;**

(c) **Reviewing the Regulation of Gatherings Act No. 205 (1993) with a view to preventing it from being abused to suppress peaceful protests and 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, which recognizes the Khoi and the San as indigenous peoples, the Committee is concerned that indigenous peoples continue to be marginalized and discriminated against, thus preventing them from enjoying the rights enshrined in the Covenant (art. 1 (2)).

15. **The Committee recommends that the State party intensify its efforts to ensure the equal enjoyment by indigenous peoples of the rights enshrined in the Covenant, as well as their participation and opportunities to consult 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 (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

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; 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 ending 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 about such unacceptably high levels of economic and social inequality. Although it welcomes the National Treasury's introduction in 2017 of rurally focused indicators, it 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 as it relates to personal and corporate income taxes, capital gains and transaction taxes, inheritance tax and property tax, does not enable it to mobilize the resources required to reduce such inequalities; and it is not sufficiently progressive in that regard. The Committee notes that the recent increase in the value added tax was not preceded by a human rights impact assessment, and although certain items, including 19 basic food items, farming inputs, educational services, and rents were exempted, the Committee remains concerned about the impact of this increase on low-income households. It is also concerned at the prevalence 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 with a view to improving its capacity to mobilize the domestic resources required to bridge existing gaps and to increasing its redistributive effect;**

(b) **Consider revising the provincial and local government equitable share formulas to reduce regional disparities in the enjoyment of the rights under the Covenant;**

(c) **Assess the impact of the increase in value added tax, 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;**

(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 time frame within which such austerity measures should be re-examined or lifted. It is also 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 enjoyment of the rights under the Covenant, or even reverse the gains made, particularly in the health and education sectors. The Committee notes that such fiscal consolidation measures have been adopted even though the auditor general has identified instances of irregular expenditure (made in violation of procurement laws) and fruitless and wasteful expenditure, and even though instances of mismanagement of State-owned enterprises have been identified, thereby 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; should not result in discrimination and increased inequalities; and should 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 the areas of 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 covered by the Covenant;**

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

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 of 2000, which imposes the obligation on all members of society to promote equality, including those in the private sector, has still not been implemented (art. 2 (2)).

22. **The Committee recommends that the State party speed up the review of the Act to ensure that the provisions contained in its chapter 5 are implemented without further delay.**

Persons with albinism

23. The Committee is concerned that persons with albinism continue to be subjected to attacks and face discrimination in enjoying their rights under the Covenant, including the right to work and the right 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, as well as by facilitating the access of persons with albinism to work and education by providing them with the necessary support and assistance.

Asylum seekers

25. The Committee appreciates the State party's hosting of a large number of refugees and asylum seekers who have been forced to flee their countries. However, it remains concerned that the right of asylum seekers to work has been denied by means of section 22 (8) of the Refugees Amendment Act, giving effect to section 11 (h) of the Refugees Act. While noting the significant progress made in processing applications for asylum, the Committee is also concerned at the reportedly large backlog of asylum applications pending in the appeal process and the proposal to establish asylum-processing centres in border areas, which may restrict the access of asylum seekers to legal assistance, health care, education and social assistance allowances (arts. 2 (2) and 6).

26. The Committee recommends that the State party:

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

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

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

27. The Committee draws the attention of the State party to its statement on the 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 per cent among the general population and at 39 per cent among young people, and grows further, to 37 per cent and 67 per cent, respectively, once those who are discouraged from seeking employment are included in the calculation. While taking note of the range of programmes already in place to help job seekers find employment, the Committee is concerned at such high rates of unemployment. It is also concerned at the low level of employment of persons with disabilities and the inadequate implementation of the 2 per cent 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 rates of unemployment, including by improving both opportunities for vocational training and the educational curriculum, as well as by developing programmes, particularly for young people, to meet current labour market demands and by providing employers with incentives to hire young people. It also recommends that the State party effectively implement the 2 per cent employment quota for persons with disabilities, particularly in the private sector, and ensure that such 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 those who are self-employed, are working in the informal economy without labour rights and sufficient social protection. It is also concerned that there is no legislative framework regulating the informal economy, thus exposing workers therein to the risk of abuse by employers and law enforcement authorities. It is further concerned at the increasing casualization of employment in the formal economy and 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, including by law enforcement officials;**

(b) **Extend 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 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;**

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

Sex workers

32. While taking note of the ongoing debate and the recommendations made by the South African Law Reform Commission on the issue of sex workers, the Committee is concerned that such workers, most of whom are women, do not enjoy the rights covered by the Covenant, particularly the right to work, the right to health and trade union rights, and is also concerned about their exposure to frequent harassment and arbitrary arrest and detention, as well as their being coerced into free sex and the giving of bribes by the police owing to the 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 the legal status of sex work 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 victims of harassment, violence and exploitation;**

(d) **Take measures to curb the demand for prostitution and provide sex workers with alternative livelihood opportunities.**

Domestic and farm workers

34. While noting that the Basic Conditions of Employment Act and Sectoral Determination 7 provide some level of labour and social protection, 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 Injuries and Diseases Act;

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

(d) The law provides neither for unannounced labour inspections carried out in domestic settings nor for effective mechanisms allowing domestic workers to make formal complaints 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 protections, including by:

(a) **Further strengthening the legislative framework by extending to domestic workers the application of the Compensation for Occupational Injuries and Diseases Act for occupational injuries and deaths, and by providing legal guidance on the standard of accommodation;**

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

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

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

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

Mining sector

37. The Committee is concerned at the working conditions of mineworkers and the lack of labour inspections in the mining sector, which have led to a high incidence of occupational injuries and diseases. It is also concerned that most mineworkers live in informal settlements around mines without water, sanitation facilities or electricity, and that social and labour plans are often not implemented by employers. It is further concerned at the vulnerable situation of female mineworkers, who are constantly subjected 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 the working and living conditions of mineworkers, especially those who are women, in the light of lessons learned 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 regular risk assessments of hazards to the safety and health of mineworkers, in particular temporary or contract workers;**

(e) **Promoting the safety and dignity of female 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 mineworkers' access to adequate housing, water, electricity, sanitation, health care, education and other social services;**

(g) **Strictly enforcing social labour plan-related obligations and imposing penalties on employers in cases of non-compliance, including by revoking their licences.**

Minimum wage

39. While welcoming the introduction of a national minimum wage, the Committee is concerned that the current 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 have been set at a level even lower than that for the interim period; 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 minimum wage across all sectors, including the domestic, farm and retail sectors;**

(b) **Raise 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 full compliance with the 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 will design a composite index to regularly assess the cost of living, in order to support its efforts to guarantee that wages provide workers with a decent standard of living for themselves and their families (general comment No. 23 (2016) and para. 48 (a) of the present concluding observations).**

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 per cent, owing to persistent vertical and horizontal occupational segregation by gender, as well as at the predominance of women in precarious employment and its effect on their enjoyment of their rights under the Covenant throughout their lives. It is also concerned that labour laws and collective agreements do not incorporate 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 into labour laws and collective agreements and is effectively implemented.**

Labour inspections

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

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

(a) **Increase the level of funding allocated to the Directorate of Inspection and Enforcement Services;**

(b) **Secure a sufficient number of qualified labour inspectors and ensure that the wages and resources provided to labour inspectors serve to 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 than others to be excluded from the collective bargaining process. It is also concerned at certain proposals

made in the process of amending the Labour Relations Act that 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 for in the Constitution and labour laws. It also recommends that the State party ensure that the amendments to the Labour Relations Act provide for 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 stood at the unacceptably high level of 55.5 per cent in 2018:

(a) There is no composite index on the cost of living that provides 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 for 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 who are 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 Fund benefits remains low and excludes workers in the informal economy, seasonal workers and the self-employed;

(e) Data and bank accounts belonging to social grant recipients have been misused and a large number of unauthorized deductions from social benefits have 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 cost 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 that those between the ages of 18 and 59 with little or no income have access to social assistance;**

(d) **Establish a social protection floor in line with the rights-based definition provided in the ILO Social Protection Floors Recommendation, 2012 (No. 202);**

(e) **Expand the coverage of the Unemployment Insurance Fund benefits 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 (2007) 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 in hospitals when a child is born, and that the fees normally required for late registration are no longer being applied, the Committee is concerned that 10 per cent of children in the State party remain unregistered and that birth registration is hindered, particularly for those with one or more foreign parents and those of single fathers, owing to extra requirements

such as paternity testing, aimed at avoiding instances of fraudulent registration of children trafficked into the country. It is also concerned that section 4 (3) of the Citizenship Amendment Act (2010) 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 registration procedure and helping parents meet the requirements. This could include reimbursing the costs of proof-of-paternity tests where such tests have established paternity, and decentralizing the facilities 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 (2005) (as regards the age of consent) and the stipulations of the Marriage Act No. 25 (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 whose Muslim marriages are not officially registered (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, while providing 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 No. 38 (2005) 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 the 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 testing, including by raising awareness of the negative impacts of such practices on girls and women throughout their lives, and ensure that such 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, in the State party, 12 per cent of children lived in hunger in 2017 and 27 per cent of children suffered from stunting in 2016, the Committee is particularly concerned that the child support grant (at 400 rand per month) has been set far below the food poverty line and that an estimated 18 per cent of eligible children do not benefit from the grant, owing 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 of 2018 to increase the level of child support grants for orphaned and abandoned children living with relatives, for which it has already earmarked funds;**
- (d) **Adopt framework legislation protecting the right to adequate food and nutrition, and develop a national food and nutrition security strategy, taking into account the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security of 2004 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 the excessive use of force during evictions, as well as evictions taking place without municipalities offering suitable alternative accommodation. While noting the imminent adoption of the Extension of Security of 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 of Tenure Act No. 62 (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 increasing demand, including by continuing to provide adequate social housing in urban areas and to upgrade housing conditions in informal settlements;**
- (b) **Ensure that evictions are carried out only as a last resort, without the use of force and in compliance with international standards;**
- (c) **Encourage farmers to improve the housing and living conditions of farm dwellers, and ensure that the Extension of Security of Tenure Amendment Act (2018) is implemented in full compliance with the Covenant and other international human rights standards, especially as regards the requirement that evicted occupiers can acquire suitable alternative accommodation.**

60. **The Committee draws the attention of the State party to its general comments Nos. 4 (1991) on the right to adequate housing and 7 (1997) on forced evictions.**

Land rights

61. The Committee is concerned that, despite its efforts to ensure land redistribution (and restitution for traditional communities expropriated since 1913), the State party remains significantly below the targets it has set for itself in that regard and that land concentration has in fact increased as white commercial farmers have ceded their farms. It is also concerned that, owing 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 per cent of agricultural land and that they still face discrimination in access to land, owing 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 to land and land ownership, consistent with paragraph 58 of general recommendation No. 34 (2016) on the rights of rural women of the Committee on the Elimination of Discrimination against Women.**

Right to health

63. While noting that the State party aims to achieve universal health-care coverage through the adoption of the National Health Insurance Bill, the Committee is concerned at the large disparities between the public and private health-care systems, with the public system at a disadvantage in relation to the number of medical professionals, medical equipment and medical expenditure, as well as between rural and urban areas in registering with the National Health Insurance Fund and accessing health-care services. It is particularly concerned at the acute lack of medical professionals and the limited range and at times inadequate quality of services provided in the public health sector, on which more than 85 per cent of the population rely. While noting the progress achieved in making antiretroviral treatment accessible to HIV patients, the Committee regrets that a significant number 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 health-care systems, as well as between rural and urban areas, by securing a sufficient number of medical professionals, improving medical equipment and expanding the range and improving the quality of public health-care services, particularly in the primary and community health-care sectors and in rural areas;**
- (c) **Ensure that all people in need of life-saving treatment have access to affordable medicines, in particular antiretroviral drugs for people living 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 per cent of health-care 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 school dropout 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 to all, in particular in rural areas;**
- (b) **Physicians who invoke conscientious objection provide referrals within their own facility or to a nearby facility so that their objection does not impede women's access to abortion services;**
- (c) **Reduce the high rate of teenage pregnancy 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 adolescent girls, 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 about the use of glyphosate, which was classified as probably carcinogenic to humans by the International Agency for Research on Cancer of the World Health Organization, in the aerial spraying of cannabis crops to control the illicit cultivation of cannabis in the Pondoland region.

69. **The Committee recommends that the State party suspend such aerial spraying and instead offer alternative development programmes to the affected communities to encourage them to abandon the illicit cultivation of cannabis, including the possibility**

of participating in the medical cannabis market through a licensing programme for small-scale community farmers.

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 nearly universal access to primary and secondary education; the improved access to early childhood education benefiting 88 per cent of children aged 5 and 6 years (although access remains very limited among children from the poorest families); and the 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 public-school infrastructure is poor in the State party; a number of schools have limited or no access to water, sanitation facilities or electricity, owing to budgetary cuts and, in some cases, mismanagement of funds. It is also concerned at the high dropout rates among schoolchildren, 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 the discriminatory effects of fee exemptions in fee-paying schools, particularly on children of single parents. Furthermore, it is concerned about the lack of guidance on the roles and responsibilities of private sector actors in education. It is also concerned that, in spite of the efforts of the State party, the participation 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 and effectively managing a sufficient level 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 against or stigmatized;**
- (d) **Improve the regulatory framework to define the roles and responsibilities of private sector actors, and monitor the education provided by such actors;**
- (e) **Guarantee high-quality early education for all children, especially those from disadvantaged families.**

72. While noting the State party's indication 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 do not attend school and that such children, 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 per cent of undocumented migrant, refugee and asylum-seeking children are not enrolled in formal education.

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

- (a) **Immediately roll out the no-fee schools programme in 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 providing 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. The Committee refers in this regard to its statement on the duties of States towards refugees and migrants under the Covenant.**

Cultural rights

74. The Committee is concerned at the lack of protection of endangered languages and the lack of teaching of indigenous languages and knowledge systems 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 systems are taught in the school system;**

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

Access to the Internet

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

77. **The Committee recommends that the State party adopt relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools and 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 the Rights 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 cost 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 (2018)) and 73 (c) (concerning access to education for undocumented migrant, refugee and asylum-seeking children) 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).
