

*SUBMISSION*

**UNICEF SOUTH AFRICA**

***Universal Periodic Review – South Africa - Second Cycle 2012***

**I. Introduction**

1. This report was drafted by the United Nations Children’s Fund (UNICEF) in South Africa. The report will focus mainly on matters pertaining to the promotion, protection and fulfilment of children’s rights in South Africa. Where needed, additional information will be provided as Annexes to this report or through internet links. Significant parts of the text are drawn from existing publications by UNICEF South Africa, and are referenced as such.

**II. Background and Framework**

***A. Scope of international obligations***

2. The Republic of South Africa ratified the United Nations Convention on the Rights of the Child in 1995, at the advent of the new democracy. This was followed by the ratification of the Optional Protocol Prohibiting the sale of children, child prostitution and pornography in 2003 and Optional Protocol on Involvement of Children in Armed Conflict in 2009.

3. South Africa has also ratified the following international treaties that have either direct or indirect an impact on the promotion, protection and fulfilment of children’s rights:

- The International Covenant on Civil and Political Rights
- The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Optional Protocol to CEDAW
- The 1951 Convention Relating to the Status of Refugees
- The Convention on the Rights of People with Disabilities
- Optional Protocol to the Convention on the Rights of People with Disabilities

4. However, South Africa has not ratified the International Covenant on Economic, Social and Cultural Rights, though this was signed in 1994 by the country. It should nevertheless be noted that South Africa has through its Constitution committed itself to protecting a large number of the rights covered in the International Covenant on Economic, Social and Cultural Rights.

5. Furthermore, South Africa ratified the following treaties related to the African Union, which impacts on the promotion, protection and fulfilment of children’s rights:

- African Charter on the Rights and Welfare of the Child
- African Charter on Human and People’s Rights
- The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa

## ***B. Constitutional and legislative framework***

6. The South African Constitution is the supreme law of the country that shapes legislation and its interpretation as well as developments around common law in the courts of the country. The South African Constitution is inspired by the principles of constitutionalism; the rule of law, democracy and accountability; separation of powers and checks and balances; co-operative government and devolution of power<sup>1</sup>. The Constitution provides for the promotion, protection and fulfilment of human rights in South Africa through the Bill of Rights (Chapter two), which apply equally to adults and children. It also provides for additional rights to children through section 28, which focuses on children's particular vulnerabilities.

7. South Africa has developed a comprehensive legislative framework towards the advancement of child rights in the country, which includes the South African Schools Act No. 84 of 1996, the National Education Policy Act No. 27 of 1996, the National Health Act 61 of 2003, the Domestic Violence Act 116 of 1998, the Children's Act 38 of 2005, Child Justice Act 75 of 2008, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Abolition of Corporal Punishment Act 33 of 1997, Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996, the Natural Fathers of Children Born out of Wedlock Act 86 of 1997. These pieces of domestic legislation give effect to international treaty obligations as well as the South African Constitution.

8. Recent developments indicate that certain provisions in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 are not harmonised with the provisions of the Children's Act 38 of 2005. While both pieces of legislation were drafted with the protection of children in mind, the provisions of the Children's Act provides for children access to information on sexuality and reproduction as well as access to contraceptives from the age of 12, while the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 criminalises children between the ages of 12 and 16 years of age if they consent to acts of sexual penetration (section 15) and criminalises the same age group of children if they consent to sexual activity that includes kissing and "petting" (section 16). The law requires that both child participants should be charged and the prosecuting authority does not have discretion not to charge them. There have been incidents where children in this age group have been charged. This is now being challenged in the courts by civil society to declare these provisions as unconstitutional. The proposal is that children between the ages of 12 and 16 should not be criminalised when they engage in consensual sex for a variety of good reasons, but that only persons older than 16 years can be charged for consensual sexual acts (statutory rape or sexual violation) of children between 12 and 16 years<sup>2</sup>.

9. Notwithstanding the very rich and enabling legislative environment, many structural and systemic issues pose challenges for the full implementation and monitoring of the implementation of legislation in the country. Thus, the benefits of legislation are not always experienced by all children.

## ***C. Institutional and human rights structure***

10. The South African democracy is based on four pillars i.e. the Legislature, the Executive, the Judiciary and State Institutions Supporting Democracy<sup>3</sup>.

11. The Parliament of South Africa is independent with elected representatives from multiple political parties. Parliament established committees to oversee the implementation of children's rights by the Executive in both houses. i.e. the Portfolio Committee on Women, Youth, Children and People with Disabilities in the National Assembly and the Select Committee on Women, Children and People with Disabilities in the National Council of Provinces.

12. The Ministry and Department of Women, Children and People with Disabilities was created in 2009 as part of the executive branch of government. The mandate of the Ministry and Department is to monitor

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<sup>1</sup> Currie, I. & De Waal, J. 2005. *The Bill of Rights Handbook*. 5<sup>th</sup> edition. Cape Town: Juta & Company Ltd

<sup>2</sup> Media release: Teddy Bear Clinic and RAPCAN. 2010

(<http://www.centreforchildlaw.co.za/images/files/frontpage/TBC%20and%20Rapcan%20MEDIA%20RELEASE%20291110.pdf>)

<sup>3</sup> See South African Constitution, 1996.

other government departments to ensure the mainstreaming of gender, children's rights, and disability considerations into all programmes of government. The understanding is that this will help government to respond to issues of these targeted groups in an integrated and coherent manner<sup>4</sup>.

13. The South African Human Rights Commission (SAHRC) was established in terms of section 184 of the South African Constitution as a State Institution Supporting Democracy. Its core mandate is to promote respect for human rights and a culture of human rights in South Africa and has certain constitutional powers afforded to it to investigate and report on observances of human rights; to take steps to for appropriate redress where human rights have been violated; to research; and to educate. The SAHRC has one commissioner designated to children's rights and has established a special advisory committee (Section 5 Committee) to advise the commission on issues related to child rights and education.

14. The judiciary is independent and accessible to all South Africans. Recent years have seen many case law related to child rights emerged<sup>5</sup>. These include high court as well as constitutional court judgements, which provide for policy changes, protection of rights, and enforcement of laws, amongst others.

#### ***D. Policy measures***

15. The Government of South Africa has produced, in addition to its wealth of legislation related to children, a significant number of policies related to children and young people<sup>6</sup>. Some overarching policies that relate to children and cover more than one department include:

- The National Integrated Plan for Early Childhood Development (2005 to 2010), which is currently under review.
- The National Action Plan for Orphans and Other Children made Vulnerable by HIV and AIDS in South Africa (2009 to 2012).
- HIV & AIDS and STI National Strategic Plan (2007 to 2011), which is currently under review towards a new plan.

16. The Department of Women, Children and People with Disabilities together with other Government Departments has embarked on the process to develop a *National Plan of Action for Children* by 2012 as an overarching framework of the government's commitments and obligations towards the promotion, protection and fulfilment of children's rights in the country.

### **III. Promotion and protection of human rights on the ground**

#### ***A. Cooperation with international human rights mechanisms***

17. The Government of South Africa works effectively with the United Nations System in South Africa. In particular the Government has a positive and constructive relationship with the United Nations Children's Fund (UNICEF), which works with several government departments, including the Department of Basic Education, Department of Health, Department of Social Development, the Department of Women, Children and People with Disabilities, National Treasury, in the advancement of children's rights in the country<sup>7</sup>.

18. South Africa is late with reporting to various treaty bodies. The country submitted its initial report to the Committee on the Rights of the Child in 1997, and has subsequently not submitted any reports to the Convention or the Optional Protocols to the Committee. However, under the leadership of the Department of Women, Children and People with Disabilities, the submission of these reports is being given attention.

19. South Africa submitted a combined CEDAW Report (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Reports) in 2009 to the Committee on the Elimination of All Forms of Discrimination against Women. However, some in respect of

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<sup>4</sup> Presidential decree upon the establishment of the Department of Women, Children and People with Disabilities. 2009

<sup>5</sup> See <http://www.centreforchildlaw.co.za/index.php/cases/south-african-cases> for detailed information

<sup>6</sup> Specific sectoral policies can be found in: Martin, P. 2010. Government-funded programmes and services for vulnerable children in South Africa. Cape Town: HSRC Press. Accessible [http://www.unicef.org/southafrica/resources\\_8143.html](http://www.unicef.org/southafrica/resources_8143.html)

<sup>7</sup> See UNICEF South Africa Annual Report for 2010: [http://www.unicef.org/southafrica/SAF\\_resources\\_annual2010.pdf](http://www.unicef.org/southafrica/SAF_resources_annual2010.pdf)

treaty obligations are outstanding for the International Covenant on Civil and Political Rights (initial, second and third periodic reports); Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (second periodic report); and Convention on the Rights of People with Disabilities (initial report).

20. South Africa's first UPR report was considered in 2008 and 22 recommendations were adopted (See Annex A), of which all are pending (neither accepted nor rejected).

21. South Africa actively participates in the African Peer Review Mechanism and submitted its second progress report for the APRM in November 2010. It covers the countries progress in accordance with the set plan of action<sup>8</sup>.

## ***B. Implementation of international human rights obligations with regard to:***

### **a) Equality and non-discrimination**

22. The right to equality and non-discrimination is enshrined in section 9 of the South African Constitution, which amongst others state that discrimination on the basis of age is not allowed.

23. Inequality together with poverty remains major obstacles to equitable human development in the country. South Africa is one of the most unequal societies in the world with a Gini Coefficient of 0.70<sup>9</sup>. This directly impacts on the well-being of children in the country, e.g.<sup>10</sup>

- The poorest 20% of the population earns only 1.8% of the national household income.
- A child in the poorest quintile is 2 times less likely to have access to adequate sanitation compared to a child in the richest quintile.
- A child in the poorest quintile is 3 times less likely to complete secondary education compared to a child in the richest quintile.
- A child in the poorest quintile is 17 times more likely to experience hunger compared to a child in the richest quintile.
- A child in the poorest quintile is 25 times less likely to be covered by a medical aid scheme compared to a child in the richest quintile.

### **b) Right to life, liberty and security of the person**

24. The right to life for all is guaranteed in Section 11 of the South African Constitution. Yet, South Africa is not on track for meeting the health targets of the 2015 Millennium Development Goals. The under-five mortality rate is at the same level it was in 1990, i.e. 62 deaths per 1,000 live births, and the infant mortality rate is 43 per 1,000 live births.<sup>11</sup> Each year, approximately 4,300 mothers die due to complications of pregnancy and child birth. About 20,000 babies are stillborn and another 23,000 die before they reach one month of age. In total, some 75,000 children die before their fifth birthday. This toll of over 270 maternal and child deaths every day is mainly due to HIV and AIDS and poor implementation of existing packages of care<sup>12</sup>.

25. The right to liberty and security of the person is safeguarded in section 12 of the South African Constitution.

26. Many South African children are exposed to violence, abuse and exploitation. According to the South African Police Service, 54,225 children were reported to be victims of violent crime in 2010/11,<sup>13</sup> yet many more crimes remain unreported.

<sup>8</sup> The report can be accessed at: <http://www.info.gov.za/view/DownloadFileAction?id=140228>

<sup>9</sup> OECD (2010). Trends in South African income distribution and poverty since the fall of apartheid. Analysis of SALDRU 1993, IES 2000 and NIDS 2008 data sets.

<sup>10</sup> South African Human Rights Commission and UNICEF. 2011. South Africa's Children: A review of equity and child rights. UNICEF: Pretoria

<sup>11</sup> UN Inter-agency Group on Child Mortality Estimation (2010). Levels and Trends in Child Mortality.

<sup>12</sup> The Lancet (2009). Saving the lives of South Africa's mothers, babies, and children: can the health system deliver?

<sup>13</sup> South African Police Service (2011) Crime Situation in South Africa.

27. Although corporal punishment has been outlawed in schools, nearly 1 in 5 children experience corporal punishment at school<sup>14</sup>, while nearly one-third feel unsafe in schools<sup>15</sup>. Corporal punishment as a means of discipline by parents towards their children has not been outlawed and is still practiced. Research indicated that 1 in 3 parents use severe corporal punishment in the form of beatings<sup>16</sup>.

### **c) Administration of justice and rule of law**

28. Matters pertaining to the administration of justice are safeguarded in section 28(1) (g) and sections 33 to 35 of the South African Constitution, with section 28(1)(g) making special provisions for children in conflict with the law.

29. The Child Justice Act 75 of 2008 creates criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the country. This Act came into operation on 1 April 2010 and as applicable to all children in the country.

30. It sets the age for criminal capacity establish at 14 years and older. Though it does provide that a “child who is 10 years or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless the State proves that he or she has criminal capacity...”. Children under the age of 10 years are regarded as not having criminal capacity and are dealt with within certain clearly stipulated provisions.

### **d) Right to privacy, marriage and family life**

31. The right to privacy is protected in section 14 of the South African Constitution. In all court cases in which children are involved, whether civil or criminal, the identity of a child shall not be revealed under any circumstances. Civil, administrative and criminal court proceedings which involve a child are held *in camera* and access to be public is not allowed.

32. The right to family life for children is safeguarded in section 28(1)(a) of the South African Constitution. In South Africa only 1 in 3 children lives with both biological parents and 1 in 5 children has lost one or both of her/his parents. Poor children are less likely to live with their biological parents. The AIDS epidemic in South Africa is an important driver of the growing number of orphans and it has been noted that 1,9 million children have lost one or both parents due to AIDS from 2000 to 2009<sup>17</sup>.

33. In 2009/10 over 88,600 children were declared to be in need of care by children’s courts in South Africa, and close to 500,000 children were living with foster parents and benefitted from a foster child grant in January 2011. In 2009/10 there were 5,853 adoptions in the country and 845 intercountry adoptions. Furthermore, about 13,250 children stay in registered child and youth care centres and 45% of these children were in the child youth care centre because of abandonment or neglect; 14% because of abuse; and 14% because they are orphaned<sup>18</sup>.

### **e) Freedom of religion or belief, expression, association and peaceful assembly and the right to participate in public and political life**

34. Rights of children to freedom of religion, belief, expression, association and peaceful assembly are enshrined in sections 15, 16, 17 and 18 of the South African Constitution respectively. Children have the same political rights as adults according to the South African Constitution, except for the right to vote.

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<sup>14</sup> Statistics South Africa (2010). General Household Survey 2009.

<sup>15</sup> Medical Research Council (2010). Youth Risk Behaviour Survey 2008.

<sup>16</sup> Dawes, A., De Sas Kropiwnicki, Z., Kafaar, Z. and Richter, L. (2005). Corporal punishment of children: a South African national survey.

<sup>17</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa’s Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>18</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa’s Children: A review of equity and child rights*. UNICEF: Pretoria

35. Children's right to participation is also safeguarded in section 10 of the Children's Act 38 of 2005 that states: "Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration". The South African Schools Act 84 of 1996 also allows for the participation of older children (grade 8 and above) to participate in the School Governing Bodies of schools, amongst others. Further legislative provisions for the participation of children are made in National Education Policy Act 27 of 1996, the Choice of Termination of Pregnancy Act 92 of 1996, Prevention and Treatment for Substance Abuse Act 70 of 2008, National Health Act 61 of 2003, Child Justice Act 75 of 2008 and the National Youth Development Agency Act 54 of 2008. Despite these provisions in the South African Constitution and national legislation, and obligations to international treaties, children's participation is often *ad hoc* and not institutionalised in the broader government programmes and society as a whole<sup>19</sup>.

#### **f) The right to work and just, favourable conditions of work**

36. The South African Constitution states (section 18(1)(f)) that "[E]very child has the right not to be required or permitted to perform work or provide services that (i) are inappropriate for a person of that child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development." The Basic Conditions of Employment Act 75 of 1997, prohibits the employment of children under the age of 15 or who is under the minimum school leaving age (section 43). The same Act also prohibits the employment of children of 15 years and older if such the employment is inappropriate for the age of the child or if the work places the child's well-being, education, physical or mental health, or spiritual, moral or social development at risk or has been otherwise prohibited by the Minister of Labour through regulations. The Government of South Africa has developed a national Child Labour Action Plan (2003) under the leadership of the Department of Labour.

37. South Africa ratified the ILO's *Minimum Age for Admission to Employment Convention* of 1973, and the *Worst Forms of Child Labour Convention* of 1999 in 2000.

38. Statistic South Africa's *Survey of Activities of Young People* in 2010 indicates of the 10,8 million children aged 7 to 17 years 24,2% were involved in economic activities – either for market production or for production of goods and services for household use. The survey also found that Black African children engaged in economic activities more than children in other population groups and that children who were not attending school were more involved in economic activities than those who were attending school. Of the children engaged in economic activities, 41,6% were exposed to at least one hazardous condition and boys (43,1%) were slightly more likely to be exposed to such conditions than girls (40,2%)<sup>20</sup>.

#### **g) Right to social security and an adequate standard of living**

39. The right to social security is firmly entrenched in Section 27(1) of the South African Constitution and supported by national legislation.

40. South Africa has a social security system that aims to reach poor and vulnerable children in the country. Children's access to social grants has expanded dramatically and in 2011 more than 10,3 million received the Child Support Grant. Yet, it is estimated that in 2008 about 2 million children who were eligible for this grant did not receive it<sup>21</sup>. Research has shown that the Child Support Grant, which existed as part of a well-functioning social protection system before the global financial crisis was important for protecting the

<sup>19</sup> Jamieson, L., Bray, R., Viviers, A., Lake, L., Pendlebury, S. and Smith, C. 2011. *South African Child Gauge 2010/2011*. Cape Town: University of Cape Town and the Children's Institute. This edition in particular deals with children's right to participation in social dialogue in South Africa and can be accessed at [http://www.unicef.org/southafrica/resources\\_9146.html](http://www.unicef.org/southafrica/resources_9146.html)

<sup>20</sup> Statistics South Africa. 2011. *Survey of Activities of Young People: 2010*. Government Printers: Pretoria ([www.statsa.gov.za](http://www.statsa.gov.za))

<sup>21</sup> Coetzee (2010). *Finding the Benefits Evaluating the Impact of the South African Child Support Grant*. Analysis of National Income Dynamics Survey (NIDS) 2008.

poor and making poor households less susceptible to the effects of the shock<sup>22</sup>. The care dependency grant, aimed at children with severe disabilities, is reaching about 120,000 beneficiaries<sup>23</sup>.

41. Using per capita income at 40<sup>th</sup> percentile as poverty line shows that 65% of children live in poverty (about 12 million children); this compares with 45% of adults living in poverty. Thus children are far more affected by poverty than adults. Child poverty is highest among Black African children (71% of African children live in poverty)<sup>24</sup>. Child poverty has decreased by an average of 3.2% between 2004 and 2008 in all declining by just 13 % over the period<sup>25</sup>.

42. Nationwide, 1 in 3 children experience hunger or at risk of hunger. Children in the poorest households and female headed households are significantly more likely to experience hunger. Current data shows that the progress made since 2002 in the reduction of hunger amongst children are at risk of being reversed<sup>26</sup>.

43. In South Africa, 1.7 million children (9% of all children) live in informal housing such as shacks in backyards or squatter settlements. Children from poorer households are less likely to live in formal housing. It is noted that about 2,8 million (15% of all children) have been reached with RDP or state subsidised housing<sup>27</sup>.

44. In South Africa, 4 out 10 children do not have access to piped water inside the dwelling or on site, and almost 1.4 million children (8% of all children) live in households relying on rivers or streams as their main source of drinking water. The majority of these children live in the provinces of the Eastern Cape and KwaZulu-Natal<sup>28</sup>.

45. Access to adequate sanitation has improved over the past decade, yet, nearly 1,5 million children (8% of all children) live in households with no toilet facility at all. Amongst the children in the poorest 20% of households, just 50% have access to adequate sanitation.

#### **h) Right to education and to participate in cultural life of community**

46. The right to basic education is guaranteed in the South African Constitution (section 29). The Department of Basic Education has adopted a policy that children attending schools in the bottom three poorest quintiles are exempted from school fees, so call no fee schools. A fee exemption policy also exists for poor children attending schools outside these three quintiles – one in two children receives free education. School attendance is compulsory by law until the age of 15 years.

47. Near universal primary education (7 to 13 years) has been achieved in all provinces (99%), where-as secondary school (14 to 18 years) attendance is at 89% nationally. Thus, school attendance among children has increased steadily over the past 15 years, but less so for older age groups. Gender parity has been achieved both in primary and secondary education. Nationwide, about 662,000 children are out of primary and secondary school and lack of many seems to be the most important reason why children are not attending school. Disability is a serious barrier to access basic education and some 10% of children with disabilities do not attend school. Repetition rates are high, especially for grades 10 and 11, and it is notable that children in poorer households are more likely to repeat the same grade. Children in the poorest households are three times less likely to complete secondary schooling than children in the richest households.<sup>29</sup>

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<sup>22</sup> UNICEF South Africa and the Financial and Fiscal Commission of South Africa (2010), *The Impact of the International Financial Crisis on Child Poverty in South Africa*, Pretoria & UNICEF South Africa and Department of Social Development (2010), *Vulnerability of children and poor families to the economic recession of 2008-2009 in South Africa*. Pretoria

<sup>23</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>24</sup> UNICEF and Department of Social Development. 2011. *Policy Brief: The Global Economic Recession and Child Well-Being in South Africa*. UNICEF: Pretoria & South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>25</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>26</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>27</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>28</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>29</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

48. The performance of children in national assessments is an area of concern. National assessments done in 2011 indicate that 53% of grade 3 learners has not achieved and 16% only partially achieved the desired results in literacy); while 66% has not achieved and 17% only partially achieved the desired results in numeracy. Similarly, for South Africa's Grade 6 learners 70% did not achieve and 15% only partially achieved the desired results for literacy; while 69% did not achieve and 19% only partially achieved the desired result for mathematics (.<sup>30</sup>

49. South Africa developed a National Integrated Plan for early Childhood Development for 2005 to 2010, which is currently under review. The Children's Act 38 of 2005 makes provision early childhood development services and programmes, where-as the South African Schools Act, makes provisions for children to attend a reception year (Grade R) prior to the start of formal schooling. Only 43% of children under the age of 5 years are exposed to an early childhood development programme at home, a centre or elsewhere; and children in the poorest households are half as likely to benefit from an early childhood development intervention as children in the richest households. Enrolment into Grade R (the first year of the foundation phase of outcomes-based education in public primary schools, meant for children of four-and-a-half to five-and-a-half years old) has increased from 15% in 1999 to 60% in 2009.<sup>31</sup>

50. Violence in schools is a barrier to quality education and 27% of high school learners feel unsafe at school, while 16% have been threaten with a weapon.<sup>32</sup>

#### **i) Migrants, refugees and asylum seekers**

51. In 2008, violence broke out against foreign nationals in South Africa, with about 62 people killed and at least 100,000 people displaced<sup>33</sup>. There were reports of sexual and gender-based violence committed against women and girls, although the scope of this was difficult to determine.<sup>34</sup> Sporadic reports of violence against foreigners continue to make news headlines in South Africa, and while foreign children are not deliberately targeted by such violence, they are nonetheless affected in terms of access to some social services, stigma and discrimination, and psycho-social impact.

## **IV. Achievements, best practices, challenges and constraints**

52. South Africa has made enormous strides in the past seventeen years to overcome the legacy of an apartheid system and progress towards a transformed society based on equality. Most profound are constitutional protection of children's rights and the development of progressive policies and laws to promote children's rights and to protect children against child rights violations. However, there seems to be on-going structural challenges in the implementation of policies and legislation, especially to the benefit of those children most left behind. This requires a deliberate policy shift with a focus on equity in the realisation of children's rights in the country. There are ongoing issues around the quality of service delivery at the local level, including notably health, education, and sanitation services. All of these have a direct bearing on the living conditions of children in the affected areas.

53. The Portfolio Committee on Women, Youth, Children and People with Disabilities in the National Assembly and the Select Committee on Women, Children and People with Disabilities in the National Council of Provinces, together with the South African Human Rights Commission play an important role in the oversight regarding promotion, protection and fulfilment of children's rights in the country, and in holding the executive branch of government accountable in this regard. It is of critical importance that the role of these structures in supporting the human rights (children's rights) obligations be recognised and supported to their full extent.

<sup>30</sup> Department of Basic Education. 2011. *Report of the Annual National Assessments of 2011*. Department of Basic Education. Pretoria

<sup>31</sup> South African Human Rights Commission and UNICEF. 2011. *South Africa's Children: A review of equity and child rights*. UNICEF: Pretoria

<sup>32</sup> Medical Research Council (2010). *Youth Risk Behaviour Survey 2008*.

<sup>33</sup> IOM Regional Office for Southern Africa 2009. *Towards Tolerance, Law and Dignity: Addressing Violence against Foreign Nationals in South Africa*. IOM: Johannesburg.

<sup>34</sup> Mendy Marsh, "A Rapid Inter-Agency Assessment of Gender-based Violence and the Attacks on Non-Nationals in South Africa." Conducted July 2008. UNFPA and UNICEF.



54. It is important that child rights centred budgeting be implemented by key departments responsible for the advancement of children's rights in the country. In this respect parliament should play a central role through their budget oversight function to ensure that budgets address the rights of children

55. South Africa has a strong policy and legislative framework for the advancement of children's participation, which should create a conducive environment to ensure that children's civil rights and freedom to participation is afforded. Though this is institutionalised in the secondary school system, with some limitation in the implementation, there is a general lack of broader institutionalisation of children's participation in government and non-government institutions.

56. While South Africa continues to have the highest number of people living with HIV and AIDS in the world, it has made significant progress in the last two years, 2009 - 2011, with a steady decline in the rate of HIV transmission from the mother to the child and increasing numbers of HIV infected infants and children starting treatment.

57. In 2011, the Minister of Women, Children and Persons with Disabilities committed to nationally scaling up an innovative programme called *TechnoGirl*, which aims to promote the engagement of adolescent girls in sciences, maths, engineering and technology through partnerships and mentoring with the private sector in these areas. The programme, initially supported by UNICEF, has been adopted by the Government as a key tool to promote gender quality and increase the presence of women in these non-traditional professions.

## **V. Key national priorities, initiatives and commitments**

58. In the achievement of all rights for all children in the country, it is important that Government of South Africa through its sectoral departmental plans as well as through a National Plan of Action for Children ensure that there is a focus on equity in the realisation of children's rights. The focus should be on ensuring equitable service provision and ensuring that marginalised and vulnerable children access their entitlements and realise their rights.

59. Violence against children is a major concern in the country and Government leadership in addressing violence against children is essential. A particular challenge in this regard is coordination across all the different bodies responsible for various aspects of violence prevention and response, including the Police, judiciary, Department of Social Development, Department of Health, and local and provincial authorities. The initiative of the Minister of Women, Children and People with Disabilities in the establishment of a National Council that will focus on child abuse is a positive step in addressing this concern cross-sectorally. It is important that this commendable initiative be well resourced.

60. In June 2011 the National Planning Commission under the leadership of the Minister in the Presidency for National Planning issued a diagnostic review that identified the nine main challenges confronting the country their underlying causes, which include unemployment; standard of education; poor infra-structure; spatial patterns that exclude the poor; the economy is overly and unsustainably resource intensive; widespread disease burden that is compounded by a failing public health system; public services are uneven and often of a poor quality; corruption is widespread; and South Africa remains a divided society<sup>35</sup>. Subsequently the National Planning Commission issued the *National Development Plan: Vision 2030* in November 2011 that focuses on the creation of jobs and livelihoods; the expansion of infra-structure; transitioning to a low-carbon economy; transformation of rural and urban spaces; improving education and training; providing quality health care; building a capable state; fighting corruption and enhancing accountability and transforming society and uniting the nation<sup>36</sup>. The suggested plan is commendable and if fully implemented will have a positive impact on fulfilling the rights of children in the country in terms of quality education, quality health care and access to services. Nevertheless, such a long

<sup>35</sup> National Planning Commission. 2011. *Diagnostic Overview*. The Presidency: Pretoria

<sup>36</sup> National Planning Commission. 2011. *National Development Plan*. The Presidency: Pretoria

term plan could have been strengthened by more deliberately taking into account the rights and needs of children and young people.

## **VI. Capacity-building and technical assistance**

61. UNICEF is appreciative of the constructive partnership that it has with the Government of South Africa. UNICEF will continue to support efforts of the Government of South Africa for the realisation of children's rights in the country.

62. As a regional leader in Africa, and increasingly emerging as a global leader in areas such as social protection and child rights legislation, South Africa is ideally placed to share its knowledge and expertise in these areas with other countries. It is often called upon in regional or sub-regional forums to perform this role, which is highly appreciated. It would be useful to consider how the country can do even more to promote children's rights in Africa and globally, building upon its leadership roles in groups such as the African Union, BRICs, G20 and the UN General Assembly.

[End]