



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### **Information received from South Africa on follow-up to the concluding observations on its initial report\***

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\* The present document is being issued without formal editing.



## I. Introduction

1. The Committee on Economic, Social and Cultural Rights (hereafter the Committee) after considering the initial country report and presentation by the country delegation, has requested that South Africa in accordance with the follow-up procedure, provide it with comprehensive information, within 24 months of the adoption of the concluding observations and recommendations, pertaining to 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).
2. Hereunder are the specific recommendations and Government responses elicited from the various South African Government Departments, whose mandates is relevant to the above-mentioned concluding observations and recommendations, namely, Statistics South Africa, Department of Social Development and Department of Basic Education.

## II. Specific recommendations and government responses

### **Follow-up information relating to paragraph 48 of the concluding observations (E/C.12/ZAF/CO/1) to design and regularly update a composite index on the cost of living**

3. South Africa's official consumer price index (CPI) is compiled as a cost of living index and as a macro economic indicator of inflation. The CPI publishes indices for expenditure deciles each month, thus reflecting changes in the cost of living of all income levels of society. Indices for rural residents are also published each month. The South African CPI is compiled in accordance with international standards and serves as an instrument to inform economists and public policy makers in terms of evidence-based policy making decisions in matters such as adjusting social grants, children's maintenance and broader monetary policy.
4. The CPI is a current social and economic indicator constructed to measure changes over time in the general level of prices of consumer goods and services that households acquire, use, or pay for. The index aims to measure the change in consumer prices over time and how that impacts on the cost of living. This is done by measuring the cost of purchasing a fixed basket of consumer goods and services of constant quality and similar characteristics. The products in the basket are selected as being representative of households' expenditure during a year or other specified period.
5. The South African CPI serves three equally important objectives, namely:
  - (a) To measure inflation in the economy so that macroeconomic policy is based on comprehensive and up-to-date price information;
  - (b) To provide a deflator of consumer expenditure in the expenditure national accounts and other economic data;
  - (c) To measure changes in the cost of living of South African households to promote equity in the measures taken to adjust wages, grants, service agreements and contracts.
6. It is the view of the Government of South Africa that the CPI serves as the composite index on the cost of living that provides the Government and other interested users with a benchmark to adequately set the levels of social benefits and salaries consistent with the requirement to ensure an adequate standard of living for all.

### **Follow-up information relating to paragraph 48 (c) of the concluding observations to ensure that those between the ages of 18 and 59 with little or no income have access to social assistance**

7. The Department of Social Development has commenced policy work for income support for those between the ages of 18 to 59 with little or no income, including the

consideration of a universal Basic Income Grant. A discussion paper on income support for unemployed people between 18–59 years of age has been drafted and initial consultations have commenced. Social partners within the National Economic Development and Labour Council (NEDLAC) have also commenced their own work on the matter with the view to persuade government to include this in the Comprehensive Social Security Reform proposals.

**Follow-up information relating to paragraph 57 (c) of the concluding observations to 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**

8. The Social Assistance Amendment Bill was adopted by Parliament in October 2020. The Bill is currently with the President for assenting. Once it is assented, the Minister of Social Development will publish regulations enabling access of orphans living with family members, to a higher value Child Support Grant. This is expected to be concluded by April 2021.

**Follow-up information relating to paragraph 73 (c) of the concluding observations to 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**

9. The Covenant in Article 13 (1) (2) (a) states that: “The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:(a) “Primary education shall be compulsory and available free to all.”

10. The Convention on the Rights of the Child, in Article 28 makes it mandatory for States Parties to recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. It further requires that they, in particular, make primary education compulsory and available free of charge to all.

11. Article 24, section 2 (a) (b) of the Convention on the Rights of People with Disabilities equally recognises the rights of persons with disabilities and requires States to ensure that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; and that persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.

12. General Comment No.13 (1999), of the Committee on Economic, Social and Cultural Rights (CESCR) confirmed that the principle of non-discrimination “extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status” (at para 24). The Committee further noted, in its General Comment No. 20, that “all children within a State, have a right to receive education” (at para 30).

13. The Constitution of the Republic of South Africa, 1996 sets out in the Bill of Rights in section 29 (1) that everyone has the right to basic education [...]. Section 29 does not discriminate or limit the rights to education in any way. This right is however subject to the limitation clause in section 36 which states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.<sup>1</sup> The Constitutional Court has also recognised that

<sup>1</sup> (a) the nature of the right;  
(b) the importance of the purpose of the limitation;  
(c) the nature and extent of the limitation;

while the right to a basic education is universal, it is not absolute and may be limited in terms of section 36 of the Constitution.<sup>2</sup> The law of General Application means that the law must be applied equally and must not be arbitrary or aimed at specific individuals.

14. In the case of the *Centre for Child Law & Others v Minister of Basic Education* the High Court found that Clauses 15 and 21; of the School Admission Policy for Ordinary Public Schools; were inconsistent with the Constitution and therefore invalid.<sup>3</sup> The Court further directed that where a learner cannot provide an official birth certificate, the principal of the relevant school is directed to accept alternative proof of identity such as an affidavit or a sworn statement deposed to by the parent, care giver or guardian of the learner wherein the learner is fully identified.

15. The Court stated that Section 29 of the Constitution of the Republic of South Africa, 1996 provides that: “Everyone has a right to basic education” was a salient point raised in the judgment. The High Court declared that the right to education is an immediately realisable right and stands on a higher pedestal. The judgment further expatiated that the right to education extends to everyone within the boundaries of South Africa irrespective of nationality and immigration status.

16. Following the High Court ruling in the *Centre for Child Law and Others v. Minister of Basic Education and Others* case,<sup>4</sup> the Department of Basic Education and the Department of Home Affairs have removed all requirements of the submission of legal documents as condition for the admission of learners in schools. Circular 1 of 2020, signed by the Minister of Basic Education and based on the above judgment, the Bill of Rights and international law, instructs all school principals and School Governing Bodies to admit undocumented children and help them to obtain the necessary documents. The circular issued by the Minister of Basic Education is attached as Annexure A.

### III. Conclusion

17. The Government of South Africa reiterates its commitment to perform treaty obligations in good faith in accordance with international law and in particular in accordance with Article 26 of the Vienna Convention on the Law of Treaties, including giving serious and good faith consideration to assessments by duly appointed supervisory bodies. In this regard, the Government has published the concluding observations and recommendations on the Department of Justice and Constitutional Development website for consideration by the broader public and other line function government departments. The Government is seized with the implementation of all the concluding observations and recommendations and will provide comprehensive response to the Committee on the implementation of all the observations and recommendations in its next periodic country report to be submitted in 2023.

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(d) the relation between the limitation and its purpose; and  
(e) less restrictive means to achieve the purpose.

<sup>2</sup> *Governing Body of the Juma Masjid Primary School & Others v. Essay N.O. and Others* 2011 (8) BCLR 761 (CC) at para 37.

<sup>3</sup> *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) (12 December 2019).

<sup>4</sup> *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG) (12 December 2019).