

JUMPING IN MUDDY PUDDLES: PROTECTING THE RIGHT TO A STANDARD OF LIVING OF INTERNALLY DISPLACED CHILDREN WITH DISABILITIES IN KWAZULU-NATAL, SOUTH AFRICA

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Summary

Internal displacement occurs when persons involuntarily flee from their homes or places of habitual residence but stay within their State's borders to avoid the destructive and harmful effects of natural or man-made disasters. This is a recurring human rights issue in South Africa, with internal displacements occurring frequently in various parts of the country. However, this article focused on the severe floods that occurred in KwaZulu-Natal (KZN) in April and May 2022, which resulted in the internal displacement of 40 000 persons who required urgent intervention and humanitarian support from the State. Due to the trauma and harm caused by displacement, internally displaced persons are generally vulnerable to human rights violations; and children with disabilities are already vulnerable. Therefore, internally displaced children with disabilities require special protection from the State as they are doubly vulnerable and at risk of human rights violations. Thus, this article aimed to evaluate the State's protection of the right to a standard of living of internally displaced children with disabilities in KZN against benchmark standards to determine if the State's response adequately protected the right to a standard of living of these children. The article developed benchmark standards through doctrinal research that relied on the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the African Charter on the Rights and Welfare of the Child, the South African Constitution and Children's Act and drew best practices from the Kampala Convention and the Guiding Principles on Internal Displacement; as well as various secondary legal sources and media articles related to the KZN floods. For the adequate protection of a standard of living for internally displaced children with disabilities, a common

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thread of respect for dignity, non-discrimination, and the provision of special measures to meet the needs of shelter, healthcare and education during and after displacement for children with disabilities was found through both the international treaties and domestic laws.

1 Introduction

Internal displacement refers to ‘the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders’. As such, internally displaced persons are:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognised State border.¹

Internal displacements are not new to South Africa, having been largely experienced during the apartheid era, but also frequently experienced in various impoverished informal settlements around South Africa.² In April 2022, the issue of internal displacement received nationwide attention with severe floods and landslides in the province of KwaZulu-Natal (KZN), which destroyed homes and forced thousands of South African families to leave their residential homes and seek refuge elsewhere in KZN.³ The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that more than 40 000 persons were internally displaced because of the floods.⁴ Many of these persons were children with disabilities who were seriously impacted by the sudden displacement and destruction of their homes. Research has shown that internally displaced persons face severe deprivation and discrimination.⁵ Displacement has a highly traumatic and devastating effect on children as it uproots everything they know and exposes them to risks they would not otherwise be exposed to.⁶ These risks include healthcare and education deprivation during and

1 African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 23 October 2009, art 1(k) and (l).

2 E Wickeri ‘Grootboom’s legacy: Securing the right to access to adequate housing in South Africa’ Centre for Human Rights and Global Justice Working Paper 5 (2004) 7.

3 South African Government ‘President Cyril Ramaphosa: Declaration of a national state of disaster to respond to widespread flooding’ (18 April 2022) <https://www.gov.za/speeches/president-cyril-ramaphosa-declaration-national-state-disaster-respond-widespread-flooding> (accessed 4 September 2022).

4 Reliefweb ‘South Africa: Floods and landslides’ (April 2022) <https://reliefweb.int/disaster/fl-2022-000201-zaf> (accessed 4 September 2022).

5 United Nations Guiding Principles on Internal Displacement: Introductory Note by the Representative of the Secretary-General on Internally Displaced Persons, Mr Frances M Deng, para 1.

6 E Mooney & D Paul ‘The rights and guarantees of internally displaced children in armed conflict’ Office of the Special Representative of the Secretary-General for Children and Armed Conflict Working Paper 2 (September 2010) 11.

after displacement.⁷ It is well known that children with disabilities ordinarily face issues related to deprivation in their daily lives. Still, when internally displaced, their disabilities exacerbate a traumatic and challenging situation.⁸

Further floods in May 2022 aggravated the already dire situation, leaving even more children with disabilities internally displaced.⁹ Many informal settlements had been destroyed by the April and May floods, which resulted in the destruction of and severe damage to 8 300 residential dwellings and homes. In addition to the damage to residences, there was extensive damage to public infrastructure. Over 600 schools were damaged, and 66 public healthcare facilities.¹⁰ Due to the tremendous social and economic impact of the floods, the South African government responded quickly with the declaration of a national state of disaster on 18 April 2022. This was necessary to ensure a swift response from and intervention by all government spheres.

While the media hype has died down, the disruptive and destructive effect of the KZN floods is ongoing, which has resulted in a significant need to evaluate the protection of the standard of living of internally displaced children with disabilities. Therefore, this article aims to assess the State's protection of the right to a standard of living of internally displaced children with disabilities in KZN in response to the effect of the recent floods. Benchmark standards have been developed based on the international obligations to protect a standard of living for displaced children with disabilities to assess the State's response to the internal displacement against the benchmark standards. This is necessary to determine if the State's response adequately protected the right to a standard of living for internally displaced children with disabilities. This research uses doctrinal methodology conducted via a desktop study that includes South African and international primary and secondary sources of law.

7 R Adeola & B Mezmur 'The protection of internally displaced children in Africa: A doctrinal analysis of article 23(4) of the African Children's Charter' (2021) 65 *Journal on African Law* 115 at 117.

8 DSD, DWCPD & UNICEF *Children with Disabilities in South Africa: A situation analysis: 2001-2011* (2012) 6 <https://www.unicef.org/southafrica/media/1336/file/ZAF-Children-with-disabilities-in> (accessed 12 September 2022).

9 UNICEF 'Children's lives and rights at risk due to KwaZulu-Natal floods: UNICEF responds to the humanitarian crisis caused by severe flooding, exacerbated by climate change' (20 April 2022) <https://www.unicef.org/southafrica/press-releases/childrens-lives-and-rights-risk-due-kwazulu-natal-floods> (accessed 5 September 2022).

10 SA Government (n 3).

2 Defining disability and the limitations of this study

For the purpose of this article, the definition of disability provided in the United Nations Convention on the Rights of the Child's General Comment 9 on the rights of children with disabilities will be relied upon. The definition provided is as follows:

Persons with disabilities include those with long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹¹

The most recent statistics indicate that 8.6 per cent of the population of KZN presents with disabilities.¹² This amounts to approximately 120 000 persons with disabilities,¹³ while 10.4 per cent of those persons with disabilities are children.¹⁴ Unfortunately, exact data on the number of children with disabilities displaced by the floods are unavailable. However, statistics indicate that thousands of children with disabilities lived in areas severely affected by the KZN floods. Therefore, it can be deduced that the severe floods in KZN displaced many children with disabilities. This article is limited by the lack of specific data related to children with disabilities that were displaced because of the floods and has relied on general data related to internally displaced children and persons with disabilities.

This article is limited in its scope to focus only on its purpose, which is to evaluate the State's response in protecting a standard of living for children with disabilities who were internally displaced because of the KZN floods. In doing so, the article will focus on the rights to shelter, healthcare and education, as these rights form the basis of an adequate standard of living for children.

Another limitation of the article is that despite various provisions protecting the rights of refugees internationally and domestically, the provisions related to refugees could not be relied upon to evaluate whether the State has adequately protected the rights of internally displaced children with disabilities because at both the international and domestic

11 UN Committee on the Rights of the Child (CRC), General Comment 9 (2006): The rights of children with disabilities, 27 February 2007, UN Doc CRC/C/GC/9 (2007) para 7.

12 See STATS SA 'Provincial profile: KwaZulu-Natal Community Survey 2016: Report 03-01-10' (2018) <http://cs2016.statssa.gov.za/wp-content/uploads/2018/07/KZN.pdf> p35 (accessed 27 September 2022).

13 The total population in KZN amounts to 10 267 300; see STATS SA 'Census 2011' https://www.statssa.gov.za/?page_id=964 (accessed 27 September 2022).

14 See STATS SA (n 12) Table 4.3 indicating the percentage of persons between the ages of 5 and 18 with disabilities in KZN.

level the definition of a refugee provides a requirement that when fleeing their residential home or area the person has crossed the border of their home country into another.¹⁵ This is not the case with internally displaced persons who stay within their country's borders but are forced to leave their homes or areas.

3 The international and domestic obligations related to the standard of living of internally displaced children with disabilities in South Africa

A standard of living is more than simply ensuring that internally displaced children with disabilities are and remain alive during and after displacement. A standard of living refers to the quality of life of the internally displaced child with disabilities. It is closely linked to realising the child's right to shelter, healthcare and education. To develop benchmark standards that can be used to measure the adequacy of the State's protection of a standard of living for internally displaced children with disabilities in KZN, the article must explore the international and national laws containing human rights for children with disabilities. Therefore, this section of the article will rely on international treaties and domestic laws but will also reflect on the provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and the United Nations Guiding Principles on Internal Displacement (Guiding Principles on Internal Displacement) to determine best practices and what the standard of living of internally displaced children with disabilities entails.

3.1 The Kampala Convention and the Guiding Principles on Internal Displacement

A discussion on internal displacement usually centres around the Kampala Convention because the purpose of the Kampala Convention is to provide the obligations and responsibilities of member states to protect and assist internally displaced persons.¹⁶ Under their member status to the Kampala Convention, State Parties are conscious of the vulnerability of internally displaced persons and the special protection they require.¹⁷ Thus, member states are not only bound by the purpose of the Kampala Convention but

15 See definition of 'refugee' in the UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3; Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990); and the South African Refugee Act 130 of 1998.

16 Kampala Convention, art 2(d).

17 Kampala Convention, Preamble.

also by its obligations to protect and assist internally displaced persons.¹⁸ In addition, State Parties are also bound by the Guiding Principles on Internal Displacement.¹⁹ This aims to address the specific needs of internally displaced persons and identify rights necessary for the protection and assistance of the internally displaced during and after displacement.²⁰ The Kampala Convention and Guiding Principles on Internal Displacement complement each other as both provide for the protection of internally displaced persons. Only 33 African States are party to the Kampala Convention and the Guiding Principles on Internal Displacement. South Africa is not one of them, which means that South Africa is not bound by the provisions of the Kampala Convention, and, therefore, internally displaced children with disabilities in South Africa are not afforded special and specific protection for internally displaced persons. Instead, they need to rely on protection from other general international human rights treaties and domestic law. The State gives no authoritative reason why it has yet to ratify the Kampala Convention. Still, the author is of the view that ratifying the convention would signify a commitment by South Africa to uphold the rights and well-being of internally displaced persons, particularly internally displaced children with disabilities, and align its policies and practices with the convention's provisions. Some possible reasons for not ratifying the Kampala Convention include concerns about the compatibility of the Convention with the existing legal framework, the capacity to implement its provisions effectively, and the allocation of resources required for compliance. Additionally, political considerations, such as other priorities on the national agenda, may also influence the decision to ratify the Convention.

Nevertheless, the Kampala Convention contains critical provisions that are relevant and applicable to internally displaced children with disabilities and can therefore serve as best practices for the purpose of this article. Regarding the Kampala Convention, State Parties must respect the human rights of internally displaced persons, particularly the rights of non-discrimination and equality.²¹ Non-discrimination is a theme throughout the Kampala Convention and the Guiding Principles on Internal Displacement whereby State Parties are obligated to provide protection and assistance to internally displaced persons without discrimination.²² During displacement, State Parties must ensure that internally displaced persons are provided with adequate conditions of safety, dignity and security without discrimination. In doing so, the Kampala Convention ensures that State Parties provide internally displaced persons with food, water, shelter, health services, sanitation, education, and social services.²³

18 Kampala Convention, arts 3, 4 and 5.

19 Guiding Principles on Internal Displacement.

20 Guiding Principles on Internal Displacement, Introduction, para 1.

21 Kampala Convention, art 3(1)(d).

22 See Kampala Convention, art 5(1); See also Guiding Principles on Internal Displacement, principle 1.

23 See Kampala Convention, art 9(2)(a)-(b).

These provisions related to respecting, protecting, and assisting internally displaced persons without discrimination will apply to internally displaced children with disabilities. However, in addition to the general protection provided, the Kampala Convention recognises the vulnerability of persons with disabilities, and children with disabilities, by explicitly providing special protection to children and other persons with disabilities by State Parties.²⁴ Using the term 'special protection' implies that in the protection and assistance provided to internally displaced persons, State Parties must protect and assist internally displaced children with disabilities in a manner that recognises, respects and provides for the child's disability and special needs.²⁵ In other words, special care and measures must be implemented for internally displaced children with disabilities, over and above the general measures taken to protect and assist internally displaced persons and children. The Guiding Principles on Internal Displacement recognise that all internally displaced persons and children have the right to an adequate standard of living and that the state must provide, at a minimum, food, water, sanitation, clothing, shelter, education, and health services.²⁶ The Kampala Convention also requires State Parties to assess the needs and vulnerabilities of internally displaced persons.²⁷ Moreover, when children are internally displaced, this provision requires a child-based assessment standard to be implemented.²⁸ Children's rights should shape this child-based assessment standard and have its foundation in dignity, non-discrimination, the child's best interests and participation.

The Kampala Convention and the Guiding Principles on Internal Displacements would be useful tools for the protection of internally displaced children with disabilities; however, because South Africa has not signed and ratified the Kampala Convention and its accompanying Guiding Principles on Internal Displacement, the State is not bound by the provisions related to internally displaced children with disabilities. In a country such as South Africa, plagued by internal displacement for many years, this is unfortunate and a missed opportunity to protect its people. The State must have ratified the Kampala Convention to be held accountable for its response to the internal displacement caused by the KZN floods in terms of this Convention. Instead, it can only be held accountable against the provisions of other international human rights treaties to which the State is bound. Therefore, this article will rely on the provisions of the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD) and the African Charter on the Rights and Welfare of the Child (The African Children's Charter) to benchmark standards for the protection of the

24 See Kampala Convention, art 9(2)(c).

25 See Guiding Principles on Internal Displacement, principle 4(2).

26 See Guiding Principles on Internal Displacement, principle 18.

27 See Kampala Convention, art 5(5).

28 Adeola & Mezmur (n 7) 125.

standard of living of internally displaced children with disabilities as a result of the KZN floods.

3.2 The international and regional legal framework

The CRC takes a strong stance against the discrimination of children based on disability when State Parties implement their responsibilities in terms of the CRC and actively obligates State Parties to take all appropriate measures to ensure that children are protected from discrimination.²⁹ In doing so, the CRC references children with disabilities in article 23, the leading article for implementing the CRC for children with disabilities.³⁰ Article 23 highlights that children with disabilities should enjoy a full and decent life, ensuring dignity and full participation in society.³¹ Furthermore, the CRC emphasises that children with disabilities have the right to special care and that State Parties are obligated to provide support to children with disabilities and their families appropriate to their needs and circumstances.³² In addition, the CRC obligates State Parties to ensure that all children, including those with disabilities, have access to education, health services, and recreational activities.³³ In Article 27, the CRC provides for the right to an adequate standard of living, survival and development of all children that follow the child's physical, mental, and social development and requires State Parties to take proper measures to protect this right.³⁴ While the term 'adequate' is not defined and is open to interpretation when read with article 22 of the CRC, it should be taken to mean, at the very least, that State Parties provide for the child's basic needs.³⁵ For internally displaced children with disabilities, this means the provision of shelter, healthcare services and education with the utmost dignity and in a way that caters to the child's special needs. Pertinent to this article, the CRC recognises that living conditions, including the conditions of the parents, family unit, community, and broader society, primarily influence the child's ability to develop.³⁶

29 Convention on the Rights of the Child, art 2.

30 CRC Committee, General comment 9 (n 11). See also EM Chilemba *The national implementation of international human rights law pertaining to children with disabilities in selected jurisdictions in Africa* LLD thesis, University of the Western Cape, 2014, 38.

31 CRC, art 23, para 1. See also General Comment 9, para 11 which states that State Parties must ensure the inclusion of children with disabilities in society.

32 CRC, art 23, para 2.

33 CRC, art 23, para 3. See also General Comments 9, para 12. See also G Quinn & T Degener 'A survey of international, comparative and regional disability law reform' (2002) 120 *Disability Rights Law and Policy: International and National Perspectives* 120.

34 CRC, art 28.

35 M Candappa 'The right to education and an adequate standard of living: Refugee children in the UK' (2000) 8 *International Journal of Children's Rights* 261 at 263.

36 P Hashima & S Limber 'An adequate standard of living necessary for children's cognitive (mental) development' in A Andrews & N Kaufman (eds) *Implementing the UN Convention on the Rights of the Child: A standard of living adequate for development* (1999) 69-86.

The CRPD is a significant milestone in the international realisation of the rights of persons with disabilities. Similarly to the CRC, albeit more general to persons with disabilities and not specifically for children with disabilities, the CRPD also makes provision for the non-discrimination of persons, and therefore children, based on their disability,³⁷ and the right to life, survival and development which places an obligation on State Parties to take all necessary steps to protect the right to life of all persons with disabilities, including children with disabilities.³⁸ Specific protection of children with disabilities to ensure the enjoyment of their rights on an equal basis as other children are also provided in the CRPD.³⁹ Unlike the CRC, the CRPD provides humanitarian emergencies and obligates State Parties to take all necessary measures to protect persons with disabilities.⁴⁰

Likewise, the African Children's Charter also provides for the non-discrimination of children in the enjoyment of their rights⁴¹ and grants special protection to ensure the dignity, self-reliance, and participation in society of children with disabilities.⁴² One of the cardinal principles of the African Children's Charter is equality and non-discrimination, particularly related to children with disabilities.⁴³ The wording used in the African Children's Charter is more robust than those used in the CRC and CRPD in that the African Children's Charter provides for State Parties to ensure the survival and protection of children, including those with disabilities, to the maximum extent possible.⁴⁴ The African Children's Charter makes specific provisions for children with disabilities and obligates State Parties to ensure the child's dignity.⁴⁵ In addition, unlike the CRC, the African Children's Charter expressly provides for internally displaced children in article 23(4). This is significant for this article in that other international and domestic laws do not reference internally displaced persons in their provisions for refugees, and therefore, in terms of the African Children's Charter, internally displaced children receive the same protection as refugee children.⁴⁶ This protects internally displaced children with disabilities in that State Parties must take appropriate measures to ensure the protection and enjoyment of the rights contained in the African Children's Charter for internally displaced children.⁴⁷

37 CRPD, art 5.

38 CRPD, art 10; See also Chilemba (n 30) 55.

39 CRPD, art 7.

40 CRPD, art 11.

41 African Charter, art 3.

42 African Charter, art 13.

43 D Olowu 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 127 at 129.

44 African Charter, art 5.

45 African Charter, art 13.

46 Adeole & Mezmur (n 7) 120.

47 African Charter, art 23.

Protecting the right to a standard of living for internally displaced children with disabilities is closely linked to the CRC, CRPD, and the African Children's Charter provisions. These international agreements emphasise the importance of safeguarding the child's dignity, ensuring non-discrimination based on disability, and taking special care that goes beyond what is provided to other internally displaced persons and children. This special care is essential to address the distinct needs of internally displaced children with disabilities, particularly concerning their shelter, healthcare services, and education. When a state becomes a party to an international convention, it agrees to comply with the rules and standards established in the treaty and to incorporate its provisions into its domestic laws and regulations, where necessary.⁴⁸ Accordingly, as a State Party to the CRC, CRPD and African Children's Charter, South Africa is bound by the abovementioned provisions. It must include them in the South African legal framework for protecting a living standard for displaced children with disabilities.⁴⁹

3.3 The South African legal framework

The South African Constitution (the Constitution) is one of the most profound and progressive in the world. It is founded on dignity and guarantees everyone, including children, the right to respect and protect their dignity.⁵⁰ This founding provision can no doubt be applied to internally displaced children with disabilities who must be treated with the utmost dignity during and after displacement. While children enjoy all the rights in the Constitution's Bill of Rights, children also receive special protection in section 28, which includes special rights specifically for children. For the purpose of this article, these special rights ensure the protection of the child's right to shelter, healthcare services and education, which are closely linked to the child's right to a standard of living.⁵¹ The Constitution also provides for instances where a state of emergency is declared. This applies to the KZN floods, as the flood threatened the nation's lives and was declared a state of emergency by the South African president. This was necessary, under the Constitution, to restore peace and order.⁵² For this article, it is essential to note that in instances of a state of

48 See OHCHR 'International human rights law' <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (accessed 30 July 2023).

49 South Africa ratified the CRC on 16 June 1995, the CRPD on 30 November 2007, and the African Children's Charter on 7 January 2000.

50 Constitution of the Republic of South Africa, 1996, secs 1 and 10; see also L Mathebe 'The Constitutional Court of South Africa: Thoughts on its 25-year-long legacy of judicial activism' (2021) 56 *Journal of Asian and African Studies* 18 at 21 <https://doi.org/10.1177/0021909620946848> (accessed 31 October 2022).

51 Constitution, sec 28(1)(c).

52 See sec 37 of the Constitution that provides: 'A state of emergency may be declared only in terms of an Act of Parliament, and only when – (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and (b) the declaration is necessary to restore peace and order.'

emergency, the Constitution prohibits any derogation regarding the right to dignity.⁵³

Consequently, one of the objectives of the Children's Act, which was assented to in 2006, is to give effect to and supplement the special rights for children in section 28 of the Constitution and the provisions of the CRC and African Charter.⁵⁴ The Children's Act contains express provisions for children with disabilities. It provides that in any matter concerning children with disabilities, consideration must be given to the special care required by the child, making it possible for the child to exercise their right to education with recognition of the unique needs of the child and providing the child with conditions that protect and ensure their dignity.⁵⁵ An emphasis on ensuring children's satisfaction is seen throughout the Children's Act and demonstrates the importance placed on dignity for children by the legislature.⁵⁶

In addition to the general protection of the rights of children with disabilities, the legal framework in South Africa also includes specific legislation that plays a crucial role in shaping disaster management and risk reduction, focusing on ensuring the well-being and rights of children with disabilities during times of crisis. The country's foundational disaster management legislation is the South African Disaster Management Act (DMA).⁵⁷ Its primary objective is to establish a comprehensive and integrated disaster management framework that guides the State in effectively responding to and mitigating the impact of disasters. While the DMA does not explicitly concentrate solely on children with disabilities, it does provide a more inclusive framework that considers the specific needs of vulnerable groups, including children with disabilities.

The DMA adopts an all-encompassing approach to disaster management, ensuring that the needs and rights of all individuals, regardless of age, gender, disability, or other characteristics, are considered. It mandates that disaster management plans and strategies should be inclusive, aiming to make the response and support mechanisms accessible and responsive to the unique challenges faced by vulnerable populations. While the DMA does not explicitly mention children with disabilities, it indirectly emphasises several critical aspects related to them.

Firstly, inclusive disaster preparedness is vital in minimising the impact of disasters. For children with disabilities, this involves ensuring that emergency shelters and relief services are adequately equipped to meet their specific needs. Secondly, the DMA underscores the importance of

53 Constitution, sec 37(5)(c) and Table of Non-Derogable Rights p 18.

54 Children's Act 38 of 2005, Preamble and sec 8(1).

55 Children's Act, sec 11(1)(a)-(c).

56 Children's Act see reference to dignity in sec 6(2)(b), 11(1)(c), 11(2)(b), and 11(c).

57 Disaster Management Act 57 of 2002.

protecting human rights during disasters, safeguarding the rights and dignity of children with disabilities and ensuring their continued access to essential services, healthcare, education, and social support. Thirdly, the DMA calls for coordinated efforts among government departments, municipalities, and stakeholders involved in disaster management. This coordination is especially crucial in effectively addressing the diverse needs of children with disabilities and ensuring that support services remain available during and after disasters. Lastly, the DMA acknowledges that inclusive disaster management necessitates the active involvement of affected communities in decision-making processes. For children with disabilities, this means consulting with their caregivers, support networks, and organisations representing their interests to understand their unique requirements and ensure their voices are considered during disaster planning.

In contrast, the National Disaster Management Framework (NDMF) of South Africa serves as a national guiding document for disaster management.⁵⁸ Still, it does not have specific provisions exclusively focused on children with disabilities. Instead, the NDMF outlines the principles, policies, strategies, and actions required to effectively prevent, prepare for, respond to, and recover from disasters and emergencies within the country. Similarly, the provincial disaster management plan⁵⁹ and NDMF, like the DMA, strongly emphasise an inclusive approach to disaster management, considering the needs of vulnerable populations, including children with disabilities. While the NDMF also does not explicitly mention children with disabilities, it recognises that certain groups may face unique challenges during disasters and advocates for a comprehensive and integrated disaster management approach that considers the diverse needs of all individuals, regardless of age, gender, disability, or other characteristics. Despite the absence of explicit mention, the NDMF promotes inclusive disaster management planning, targeted support for vulnerable groups, community involvement, and equitable access to disaster management resources and services.

The international human rights law and domestic provisions provide a standard of living for an internally displaced child with disabilities that requires respect for and protection of the child's dignity throughout the displacement period, namely, during and after displacement. It also requires the internally displaced child with disabilities to receive protection and assistance from the State, at a minimum, on an equal basis as other children, but more particularly to receive special care measures from the State. In the protection of a standard of living for internally displaced

58 Government of South Africa National Framework for Disaster Management (2005) available at <https://www.preventionweb.net/publication/south-africa-national-disaster-management-framework-2005> (accessed 4 March 2023).

59 Available at <https://www.kzndard.gov.za/images/Documents/ARDM/Sectoral%20Disaster%20Risk%20Management%20Plan.pdf> (accessed 30 July 2023).

children with disabilities, the special measures taken by the State must account for the special needs of the child and provide shelter, healthcare services and education to the child. However, a significant shortcoming in the legal frameworks related to internally displaced children with disabilities in South Africa is that South Africa has not ratified the Kampala Convention. While the international and domestic frameworks provide general protection of the child's rights during instances of disaster, internal displacement is a nuanced disaster that is on the rise in South Africa. The South African legal framework falls short because there is no specific protection for internally displaced children.

4 Benchmark standards for the protection of a standard of living for internally displaced children with disabilities

The evaluation of the State's response to protecting a standard of living for internally displaced children with disabilities in KZN draws on the obligations and responsibilities provided by the CRC, CRPD and African Charter. Despite not being bound by the Kampala Convention, these standards are aligned with the Kampala Convention and guiding principles on internal displacement.⁶⁰

Two primary standards have been benchmarked and will be used to evaluate the State's response to determine whether they have met their international obligations and adequately protected the right to a standard of living of internally displaced children with disabilities:

- (i) The dignity of internally displaced children with disabilities must be ensured during and after displacement; and
- (ii) Internally displaced children with disabilities must have access to education, health services and shelter that is appropriate to and meets the child's special needs during and after displacement.

5 The dignity and special measures of protection for internally displaced children with disabilities

There is no express definition or interpretation of the terms 'dignity' and 'special measures' in the CRC, CRPD or African Charter as these terms relate to children with disabilities. This article investigated the interpretation and meaning of these terms in these international conventions to adequately evaluate the State's response to internally displaced children with disabilities against the benchmark standards.

60 Kampala Convention, art 3(1)(c), art 7(5)(c), art 9(2)(a) and art 9(2)(c).

5.1 The dignity of internally displaced children with disabilities

For internally displaced children with disabilities, a connection between dignity and non-discrimination is crucial due to their vulnerable and marginalised circumstances. Internally displaced children with disabilities possess inherent dignity and worth. However, during displacement, they may face significant challenges to their dignity, such as a lack of access to their basic needs, inadequate living conditions, and limited opportunities for education and healthcare. Respecting their dignity means recognising their unique needs and experiences and providing appropriate support and care that upholds their self-respect and ensures their rights are protected during and after displacement.

Similarly, internally displaced children with disabilities are particularly vulnerable to discrimination due to their displaced status and disability. They may encounter barriers in accessing essential services, discrimination in shelter accommodations, and exclusion from educational opportunities and healthcare facilities. Non-discrimination ensures that these children are treated fairly and equally, regardless of their disability or displacement status. It calls for targeted measures and special care to address their needs and ensure they are not further marginalised or excluded from humanitarian assistance and services.

The connection between dignity and non-discrimination for internally displaced children with disabilities means that their rights, well-being, and dignity should be at the forefront of disaster response and management efforts. The State and relevant authorities should take proactive measures to identify and address the unique needs of these children, providing them with accessible and inclusive shelter, healthcare, and educational opportunities. By doing so, they uphold the dignity of internally displaced children with disabilities and work towards creating a more inclusive and caring environment that respects the rights of all internally displaced children, irrespective of their circumstances.

The Committee on the Rights of the Child (CRC Committee) expanded on the interpretation of dignity. It held that protecting and ensuring the dignity of children requires State Parties to identify individual children or groups of children that need special measures to realise their rights.⁶¹ For internally displaced children with disabilities, this would mean that the State must identify and recognise that children with disabilities require special protection measures during and after displacement over and above the measures put in place for other children.

61 UN Committee on the Rights of the Child (CRC), General Comment 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, UN Doc CRC/GC/2003/5 (2003) para 12.

In addition, applying children's rights on an equal basis does not require children to have access to or identically apply their rights or to be treated identically when enforcing their rights.⁶² Instead, the circumstances of individuals or groups of children will determine whether their rights are applied and implemented equally to other children. Therefore, the special measures of protection that should be afforded to internally displaced children with disabilities to ensure their dignity and non-discrimination do not discriminate against other children or result in an unequal application and enforcement of children's rights generally.

Discrimination against internally displaced children with disabilities undermines the child's dignity⁶³ and ability to benefit from the State's intervention during and after displacement. Furthermore, the CRC Committee has emphasised that discrimination against children with disabilities reduces their quality of life. Children with disabilities require additional and special measures to realise their rights.⁶⁴ This is especially applicable to internally displaced children with disabilities where their quality and standard of living and access to other rights such as shelter, healthcare and education will be directly impacted and adversely affected by discrimination during and after displacement. This is supported by the Children's Act, which domesticates the CRC and the African Children's Charter and expressly provides for respecting and protecting the inherent dignity of children, ensuring they are treated equitably and not unfairly discriminated against.⁶⁵

Moreover, the provision to ensure the child's best interests in all matters affecting the child provides that the child's well-being and dignity are considered by the role-players tasked with ensuring their right to a standard of living during and after displacement.⁶⁶ In addition, the Children's Act provides specific protection for children with disabilities and provides that children with disabilities must be given opportunities and conditions that promote their dignity and participation.⁶⁷ Overall, the South African Children's Act strives to protect and uphold the dignity of displaced children with disabilities by recognising their rights, specific needs, and vulnerabilities. It emphasises their well-being and inclusion in decision-making processes, ensuring they receive appropriate care, protection, and support during displacement.

62 As above.

63 CRC, General Comment 1: Article 29 (1), The aims of education, 17 April 2001, UN Doc CRC/GC/2001/1 (2001) para 10.

64 CRC, General Comment 7 (2005): Implementing Child Rights in Early Childhood, 20 September 2006, CRC/C/GC/7/Rev.1 (2006) paras 11 and 12.

65 Children's Act, sec 2(a)-(c).

66 Children's Act, sec 7.

67 Children's Act, sec 11.

5.2 The meaning of appropriate measures taken to meet the special needs of internally displaced children with disabilities

The African Charter, Kampala Convention and the Guiding Principles on Internal Displacement all refer to ‘appropriate measures’ or ‘special measures’. However, no further explanation or interpretation is provided regarding what this terminology means and requires of State Parties. Therefore, it is necessary to rely on other treaties where similar language is used to interpret its meaning and the obligation created by the term.

The International Covenant on Economic, Social and Cultural Rights uses similar terminology, which the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) said must be interpreted by its full and natural meaning.⁶⁸ The ordinary meaning of appropriate measures would be suitable measures or measures that consider and are ‘proper’ in the given circumstances.⁶⁹ Placing the ordinary sense of the terminology within the context of internally displaced children with disabilities, the obligation created by the provisions for special or appropriate measures can be interpreted to mean that State Parties must take all possible measures, considering the circumstances of internally displaced children with disabilities, to ensure that these children can enjoy their rights. This would require action by State Parties to ensure that internally displaced children with disabilities have access to shelter, healthcare and education during and after displacement that accommodates the special and unique needs of individual internally displaced children with disabilities over and above what is provided for non-disabled children. In a practical sense, this means, for example, that temporary shelters provided to internally displaced children in wheelchairs must be easily accessible to the child; healthcare services provided to internally displaced children with psychosocial disabilities must be the services of psychiatrists and psychologists; temporary schooling for internally displaced children with intellectual disabilities must be special schooling that caters for intellectual disabilities.

Moreover, the child’s right to life, survival and development is one of the guiding principles for interpreting the CRC and the African Children’s Charter. Thus, it must be included in interpreting the special measures State Parties require for displaced children with disabilities.⁷⁰ The CRC Committee has interpreted the child’s development as needing to be understood ‘in its broadest sense as a holistic concept embracing the child’s

68 CESCR, General Comment 3 on Article 2(1): The Nature of State Parties’ Obligations, 14 December 1990, UN Doc E/1991/23 (1990) para 4.

69 Adeole (n 7) 122.

70 M Nowak *A commentary on the United Nations Convention on the Rights of the Child, Article 6: The right to life, survival and development* (2005) 14.

physical, mental, spiritual moral and psychological development'.⁷¹ The child's right to life, survival, and development⁷² is closely intertwined with the special measures that State Parties should implement to provide for the special needs of displaced children with disabilities. This is due to the right to life and survival emphasising the obligation of States to protect children from any form of harm or danger. Displaced children with disabilities are often more vulnerable during crises and displacement, at higher risk of facing life-threatening situations.⁷³ States must implement special measures to ensure the safety and protection of these children, including access to safe shelter, nutrition, and medical care, thereby safeguarding their right to life and survival.

Furthermore, the right to life and development requires State Parties to ensure that all children, including displaced children with disabilities, access essential services necessary for their growth and well-being.⁷⁴ This includes access to specialised healthcare, education, and social services tailored to their unique needs. State Parties should provide these services during displacement to enable the development and potential of these children, fulfilling their right to survival and development. Moreover, the right to development includes the right to education. State Parties must provide inclusive and accessible education for displaced children with disabilities, ensuring they have equal opportunities for learning and development. Special measures are essential to address any barriers that may hinder their access to education during displacement, allowing them to reach their full potential.⁷⁵ In addition, displacement and disabilities can have adverse psychological effects on children. States should establish special measures to provide psychosocial support for displaced children with disabilities, helping them cope with trauma and stress during crises. This support is crucial for their overall well-being, survival, and development. The right to life, survival, and development also include the right of children to be heard and participate in decisions affecting them. States should involve displaced children with disabilities in decision-making processes concerning their care, support, and well-being. This participation empowers them, ensures their dignity, and facilitates measures catering to their needs. By upholding these rights and implementing specific measures, States can better address the unique

71 UN Committee on the Rights of the Child (CRC), General Comment 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, UN Doc CRC/GC/2003/5 (2003) paras 12 and 18.

72 CRC, art 6; See also African Children's Charter, art 5.

73 D Nguyen 'The development of four leading principles of the Convention on the Rights of the Child in Vietnam's juvenile justice' (2017) 4 *Bergen Journal of Criminal Law & Criminal Justice* 267 at 272.

74 D Hodgson 'The child's right to life, survival and development' (1994) 2 *The International Journal of Children's Rights* 369 at 385.

75 S Kamga 'COVID-19 and the violation of the right to basic education of learners with disabilities in South Africa: An examination of *Centre for Child Law v Minister of Basic Education*' (2021) 65 *Journal of African Law* 347.

needs of displaced children with disabilities, safeguarding their well-being and promoting their overall development and potential.

Likewise, the Children's Act contains significant provisions pertaining to special measures for meeting the specific needs of displaced children with disabilities. These provisions ensure that these children receive appropriate care, protection, and support, addressing their unique requirements and enhancing their overall well-being. One key aspect of the Children's Act in this regard is the application of the best interests of the child principle. This principle places the child's best interests as the primary consideration in all matters concerning them, including decisions about the care and support provided to displaced children with disabilities.⁷⁶ By prioritising their needs and circumstances, the Act ensures appropriate measures are taken to meet their special requirements. The Act also emphasises non-discrimination, prohibiting discrimination against children, including those with disabilities.⁷⁷ Displaced children with disabilities should not face discrimination or be denied access to services solely because of their disability status, which promotes equal treatment and protection for all children. Furthermore, the Children's Act recognises every child's right to access appropriate healthcare and social services.⁷⁸ This includes displaced children with disabilities, who may require specialised medical care, rehabilitation services, and other support tailored to address their specific needs effectively.

The Act also provides alternative care arrangements for children whose parents or family members cannot care for them. This provision encompasses displaced children with disabilities, who may require specialised care and support in alternative care settings to cater to their unique needs.⁷⁹ In addition, the Children's Act acknowledges the right of children to participate in matters that directly affect them.⁸⁰ In the context of displaced children with disabilities, this means allowing them to express their views and preferences regarding their care and support. The Act ensures that their voices are heard and considered by involving them in decision-making. By encompassing these provisions, the South African Children's Act strives to protect and enhance the well-being of displaced children with disabilities, emphasising their unique requirements in disaster and displacement.

76 Children's Act, sec 7.

77 Children's Act, sec 2.

78 Children's Act, sec 13.

79 Children's Act, sec 167.

80 Children's Act, sec 7.

6 Evaluating the State's response to internally displaced children with disabilities against the benchmark standards

In his speech on 18 April 2022, South Africa's president Cyril Ramaphosa declared a national state of disaster because of the KZN floods and emphasised that the primary responsibility of the national sphere of government was to coordinate and manage the response to the disaster in collaboration with the provincial and municipal spheres.⁸¹

With the help of the provincial and municipal governments, the national government planned to address the disaster in three phases. Phase One focused on immediate humanitarian relief to ensure that the basic needs of all displaced persons would be met; Phase Two focused on the rehabilitation of displaced persons by rehoming them and restoring the provision of services offered by the destroyed and damaged public infrastructure; Phase Three focused on the rebuilding of significant infrastructure and houses with a focus on implementing measures to protect residents from disasters of this nature in future.⁸²

6.1 Shelter

The immediate need of the displaced families and children affected by the floods was providing shelter. Initially, internally displaced persons were provided shelter in various community halls, receiving mattresses, food, and hygiene packs.⁸³ However, the State intended to build 4 396 temporary accommodation units by the end of April 2022.⁸⁴ Ninety-eight shelters accommodated 8 400 people; 1 700 were children under ten, and 217 were persons with disabilities.⁸⁵ Unfortunately, no further breakdown of how many persons with disabilities were children and no specific

81 SA Government (n 3).

82 Discussion of the three-phase plan during Ad Hoc Joint Committee on Flood Disaster Relief and Recovery meeting with the Department of Planning, Monitoring and Evaluation (DPME), the Department of Cooperative Governance and Traditional Affairs (CoGTA), the National Disaster Management Centre (NDMC) and the KwaZulu-Natal (KZN) CoGTA held on 23 May 2022; meeting video and audio available at <https://www.youtube.com/watch?v=0dSw-ZoMry8> (accessed 30 July 2023).

83 'KZN flood victims to get temporary accommodation by weekend' *SA Government News Agency* 25 April 2022 <https://www.sanews.gov.za/south-africa/kzn-flood-victims-get-temporary-accommodation-weekend> (accessed 1 November 2022).

84 B Macupe 'Temporary homes to be built by end of the week for flood victims – Sihle Zikalala' *City Press* 24 April 2022 <https://www.news24.com/citypress/news/temporary-homes-to-be-built-by-end-of-the-week-for-flood-victims-sihle-zikalala-20220424> (accessed 1 November 2022).

85 Social Cluster Media Briefing Statement Outlining the Government's Response to the Disaster Emanating from the Floods in KwaZulu-Natal by the Department of Health (2022) <https://www.health.gov.za/wp-content/uploads/2022/04/CLUSTER-MEDIA-BRIEFING-STATEMENT-FOR-28-APRIL-2022..pdf> (accessed 1 November 2022).

number of children between the ages of ten and 18 was provided. However, even after the first temporary accommodation units were allocated, thousands of internally displaced persons remained in the community hall shelters.⁸⁶ By September 2022, one such hall still accommodated more than 100 internally displaced persons, including children who had been there since April 2022.⁸⁷ By September, there was less coordination of humanitarian relief, and very little food was given to those in shelters. Internally displaced persons complained to the media about sharing the space and bathroom facilities with hundreds of others, their children being exposed to alcohol abuse, arguments, and altercations between people with no privacy for their families. Parents complained that their children were exposed to inappropriate sexual behaviour, the conditions in the community halls had become unhygienic with minimal cleaning, and it had been extremely cold during the winter months.⁸⁸

The State responded to these complaints and expressed dismay at the inappropriate behaviour of some persons living in the community halls but confirmed that food was still being provided to shelters by the Department of Social Development. However, the Department knew that many people were taking more meals than allocated to them, leaving nothing left for others. The Department of Human Settlements confirmed they were working tirelessly sourcing temporary and permanent accommodation and soon relocating more internally displaced persons. The Department confirmed this and committed to moving all internally displaced persons out of shelters and into accommodation units by December 2022. In addition, the State confirmed that social workers were still providing social services to those in shelters.

In August 2022, the State's Ad Hoc Joint Committee on Flood Disaster Relief and Recovery completed a visit to some shelters in KZN where they found overcrowding and the conditions in the shelters were found to be unacceptable and inhumane.⁸⁹ In September 2022, the spokesperson for the Department of Human Settlements and Public Works confirmed that since April, there had been a reduction of 38 per cent of persons in shelters, and 980 families were occupying temporary accommodation units.⁹⁰

86 *SA Government News Agency* (n 83)

87 C Mazibuko 'Life in a community hall is hard for victims of April floods' *Sunday Tribune* 55 September 2022 <https://www.iol.co.za/sunday-tribune/news/life-in-a-community-hall-is-hard-for-victims-of-april-floods-5eed4b00-15fe-465c-9397-0f30edf039e9> (accessed 1 November 2022).

88 As above.

89 'Committee concludes oversight visit to KZN' *SA Government News Agency* 25 August 2022 <https://www.sanews.gov.za/south-africa/committee-concludes-oversight-visit-kzn> (accessed 1 November 2022).

90 Mazibuko (n 87).

6.2 Healthcare services

Shortly after the KZN floods occurred, the South African Minister of Health identified vulnerable groups who would be most affected by the floods. The groups identified were children and persons with disabilities.⁹¹ Therefore, children with disabilities are doubly vulnerable due to their minority and special needs. In response, the Department of Women, Youth and Persons with Disabilities facilitated the Women's Economic Assembly rollout to develop a programme of action to assist these vulnerable groups of persons affected by the floods.⁹²

Social services were prioritised to assist internally displaced persons with psychosocial healthcare. In doing so, comprehensive assessments of households and individuals were conducted, and services were made available based on the needs established by the assessment.

6.3 Education

While schooling continued in the unaffected areas of KZN, more than 630 schools were destroyed or damaged by the KZN floods and attendance in school by internally displaced children after the floods remained problematic. This was prioritised by the State, which acknowledged in April 2022 that they would monitor the schooling of internally displaced children with disabilities and how the KZN floods had affected their education.⁹³

In a media briefing, the State confirmed that it was specifically focused on children, generally, who had been displaced from schools.⁹⁴ However, in September 2022, hundreds of children in shelters were still not attending school when UNICEF South Africa provided relief through recreational toys and learning materials to these children.⁹⁵ Unfortunately, there is no information about how many internally displaced children, who are still unable to access education, are children with disabilities.

91 K Ledwaba 'Government prioritises women and persons with disabilities affected by the KZN floods' *City Press* 28 April 2022 <https://www.news24.com/citypress/news/government-prioritises-women-and-persons-with-disabilities-affected-by-the-kzn-floods-20220428> (accessed 1 November 2022).

92 Social Cluster Media Briefing Statement (n 85) 6.

93 Ledwaba (n 90).

94 Social Cluster Media Briefing Statement (n 85) 2.

95 L Matangira 'Over 1 000 children affected by April floods receive play and learning materials' UNICEF 26 September 2022 <https://www.unicef.org/southafrica/stories/over-1000-children-affected-april-floods-receive-play-and-learning-materials> (accessed 1 November 2022).

6.4 Benchmark standard one: Ensuring the dignity of internally displaced children with disabilities

For the State to meet benchmark standard one, for the right to a standard of living for internally displaced children with disabilities, it must be established that the dignity of children with disabilities was ensured during and after displacement. For dignity to be ensured, the State must have identified groups of persons that require special measures to ensure the realisation of their rights. The State's response to the recent flooding in KZN and the subsequent internal displacement of children with disabilities has positive and concerning aspects when evaluated against the benchmark standard one.

In the aftermath of the KZN floods, the State's response to the displacement of children with disabilities revealed both positive and concerning aspects. These aspects shed light on the extent to which the dignity and well-being of these vulnerable children were respected and protected during the crisis.

In terms of positive aspects, the State swiftly recognised the immediate need for shelter for families, including those with children having disabilities. Community halls were made available quickly and equipped with essential items such as mattresses, food, and hygiene packs. This initiative aimed to provide a temporary but comfortable solution to meet the displaced children's basic needs. Furthermore, the State demonstrated its commitment to addressing the unique challenges faced by children with disabilities. It identified vulnerable groups, including these children, and prioritised social services and psychosocial healthcare to cater to their specific needs. The comprehensive assessments conducted to tailor services based on individual needs showcased a genuine acknowledgement of the distinctive difficulties children with disabilities might encounter.

However, several concerning aspects emerged from the State's response. Despite their initial efforts, some community hall shelters quickly became overcrowded and unhygienic, undermining the dignity and well-being of internally displaced children by exposing them to inappropriate behaviour and substandard living conditions. A significant concern was the prolonged stay of internally displaced persons, including children, in community hall shelters for months after the floods. This delay in relocation may have further compromised their dignity and well-being, as these shelters were not designed for long-term habitation. Adding to the challenges was the lack of specific data regarding the number of internally displaced children with disabilities, making it difficult to fully comprehend the scope of this vulnerable group's needs and experiences. Moreover, education access remained a challenge for many displaced children, including those with disabilities, due to the destruction of schools. Although the State acknowledged the importance of monitoring

schooling, it did not provide sufficient data on how many of these children faced barriers to education and were being left behind.

While the State's response has shown some positive efforts in addressing the immediate needs of displaced children with disabilities, there were concerning aspects, particularly regarding overcrowded and unhygienic shelters, delays in relocation, and lack of specific data on children with disabilities. These aspects raise concerns about adequately protecting their dignity and well-being during the displacement. To align with the benchmark standard of ensuring the dignity of displaced children with disabilities, the State should focus on improving the living conditions in shelters, expediting relocation to appropriate accommodation, collecting disaggregated data on children with disabilities, and ensuring their access to education and psychosocial support. The State must maintain a child-centred approach, prioritising these vulnerable children's rights and dignity during all disaster response and recovery phases. The effect of the KZN flood and the displacement of children with disabilities is ongoing. The author, therefore, hopes for additional reports and reflections to be available for future research.

6.5 Benchmark Standard Two: Special measures taken to ensure access to appropriate shelter, health care services and education

For the State to meet benchmark standard two, for the right to a standard of living of internally displaced children with disabilities, it must be established that special measures were taken to ensure access to rights that are closely related to a standard of living for children with disabilities, namely, the rights to shelter, healthcare and education. For special measures to be taken, it must be shown that the State has taken all possible measures, considering the circumstances of children with disabilities, to ensure that they have access to shelter, healthcare and education that accommodates their special needs.

6.5.1 Shelter

The State swiftly acknowledged the pressing need for shelter and promptly established community halls as temporary accommodations for those displaced, including children with disabilities. This initiative included the provision of mattresses, food, and hygiene packs, catering to the immediate needs of the affected population. Adding to these efforts, the State embarked on an ambitious plan to erect 4 396 temporary accommodation units, which is evidence of the State's dedication to ameliorating the shelter conditions of those uprooted by the floods.

However, despite the initial resolve, several community hall shelters eventually became breeding grounds for overcrowding and unhygienic conditions. As mentioned under benchmark standard one, the dignity and well-being of displaced children with disabilities were compromised, as they were subjected to inadequate privacy and exposed to unsuitable and inappropriate behaviour, undermining the sanctity of their living conditions. Adding to these concerns, many internally displaced persons, including children, remained in community hall shelters for prolonged periods with no alternative long-term accommodation. Furthermore, the State's response appeared to lack the foresight to ensure that community hall shelters were equipped to accommodate children with disabilities. This oversight was particularly evident in the absence of specialised measures, such as facilities tailored to the needs of children with physical disabilities reliant on assistive devices for mobility. Alarming, no systematic assessment was conducted to ascertain the specific shelter requirements of internally displaced children, highlighting a critical gap in ensuring their well-being.

While strides were made in providing temporary shelter solutions and plans for future accommodations, the issues of overcrowding, unhygienic conditions, and the lack of tailored provisions for children with disabilities marred the otherwise praiseworthy efforts. The prolonged stays in community hall shelters and the dearth of assessments only further underscored the pressing need for more comprehensive and inclusive strategies.

6.5.2 Healthcare services

The State demonstrated an understanding of the vulnerability of children with disabilities affected by the floods. This recognition translated into prioritising social services and psychosocial healthcare to cater to the unique needs of this group. A noteworthy stride was the execution of comprehensive assessments targeting households and individuals, resulting in services that were tailored to their distinct requirements. This proactive approach signified the State's acknowledgement of the specific challenges that children with disabilities face during such situations.

However, certain concerning aspects also surfaced. Notably, there is a lack of explicit information detailing the extent to which healthcare services were specifically tailored to cater to the needs of children with disabilities. This raises questions about the effectiveness and inclusivity of the provided medical care for this vulnerable group. Furthermore, a notable gap emerged in the absence of recent updates regarding the Women's Economic Assembly's initiative. This initiative, set in motion by the Department of Women, Youth and Persons with Disabilities, aimed to establish a programme ensuring the health rights of vulnerable groups, including children with disabilities. Although the Women's Economic

Assembly conducted its annual conference in October 2022, it refrained from furnishing any reports concerning the progress and outcome of its mandate.

The evaluation of the State's healthcare response to internally displaced children with disabilities unveils a mixed landscape. While commendable efforts were evident in recognising vulnerabilities and tailoring services, gaps remain in the form of a lack of specific details on healthcare customisation and the status of initiatives like the Women's Economic Assembly. This nuanced assessment underscores the need for sustained attention to ensure a comprehensive and targeted approach to healthcare for these vulnerable children.

6.5.3 Education

The State displayed an awareness of the significance of monitoring the educational situation of internally displaced children, encompassing those with disabilities. It acknowledged the inherent challenges displaced children with disabilities encountered in maintaining their schooling due to the floods' destruction of educational institutions. Additionally, an encouraging development was the intervention of UNICEF South Africa, which extended relief in the form of recreational toys and learning materials to internally displaced children. This initiative underscored a concerted effort to provide educational support to these children amidst their displacement.

However, the State did not furnish specific data regarding the precise number of internally displaced children with disabilities who faced hindrances in accessing education. This information gap needs to be revised to ensure an accurate assessment of the magnitude of the issue. Furthermore, the lack of details pertaining to targeted measures designed to ensure inclusive and specialised education for children with disabilities during displacement raises concerns about the comprehensiveness of educational provisions for this vulnerable group. Moreover, no data was available to shed light on the persisting lack of educational access for internally displaced children with disabilities due to the lingering impacts of the KZN floods.

While the State's response demonstrated some positive efforts to address the rights to shelter, healthcare, and education for displaced children with disabilities, there are concerning aspects that require improvement. The overcrowded and unhygienic conditions in some community hall shelters, delays in relocation, lack of specific data on children with disabilities, and limited information on targeted measures for inclusive education raise concerns about the adequate fulfilment of these rights during displacement. To meet benchmark standard two, the State should take more targeted and systematic measures to ensure that the

rights to shelter, healthcare, and education are fully and inclusively addressed for children with disabilities during and after displacement. The State should ensure that special measures are implemented to meet the specific needs of children with disabilities and promote their overall standard of living during and after disasters and displacement.

7 Conclusion and recommendations

Internal displacement occurs when persons are involuntarily forced to flee from their homes or places of habitual residence but stay within their State's borders to avoid the destructive and harmful effects of natural disasters. This is a recurring human rights issue in South Africa, with internal displacements occurring frequently in various parts of South Africa. However, this article focused on the severe floods that occurred in KZN in April and May 2022, resulting in 40 000 persons becoming internally displaced and requiring urgent intervention and humanitarian support from the State.

This article aimed to evaluate the State's protection of the right to a standard of living for internally displaced children with disabilities in KZN in response to the effect of the recent floods. This was done by developing benchmark standards based on the international obligations for the protection of a standard of living for displaced children with disabilities and then assessing the State's response to the effect of the internal displacement caused by the KZN floods against the benchmark standards to determine if the State's response adequately protects the right to a standard of living of these children.

To develop benchmark standards, the article relied on international and domestic laws related to children with disabilities to determine the obligations created for states by law. In doing so, it was found that a common thread through the international treaties and domestic laws for a standard of living for internally displaced children with disabilities was the protection of the dignity of children and the provision of special measures to meet the need for shelter, healthcare and education of internally displaced children with disabilities during and after displacement.

To meet benchmark standard one, it must be established that the dignity of children with disabilities was ensured during and after displacement. For dignity to be ensured, the State must have identified groups of persons that require special measures to ensure the realisation of their rights. The article found that the South African State recognised children with disabilities as a vulnerable group requiring special measures and close monitoring during and after displacement to ensure that they have access to their rights. To meet benchmark two, it must be established that the State has taken all possible measures, considering the circumstances of children with disabilities, to ensure they have access to

shelter, healthcare and education that accommodates their special needs. There was some acknowledgement of the special healthcare needs of children with disabilities, but this was not done in providing shelter or education to accommodate the special needs of internally displaced children with disabilities.

Without formal reports by the relevant State Departments, it is difficult to establish precisely what was provided to internally displaced children with disabilities and to confirm whether that adequately protects the standard of living of internally displaced children with disabilities. However, the current data indicates that many internally displaced children with disabilities still live in community hall shelters and do not attend a school where they can be stimulated seven months after the KZN floods. It can be inferred that this indicates that despite recognition and respect of the dignity of internally displaced children with disabilities and their need for special measures, the State's response to the effect of the KZN floods does not adequately provide for shelter, health care and education of these children; and therefore, does not sufficiently protect the standard of living of internally displaced children with disabilities.

Based on the assessment of the State's response to the displacement of children with disabilities in KZN, the following recommendations are suggested to improve the protection and implementation of the right to a standard of living of displaced children with disabilities:

- (i) Ratification of the Kampala Convention: The State should ratify and domesticate the Kampala Convention. While internally displaced persons, including children with and without disabilities, are entitled to general protective measures in terms of the international and national legal frameworks in South Africa, there are no specific protective measures and legislation for internal displacement. This is a significant shortcoming in the legal frameworks governing the State as internal displacement is not new to South Africa and continues to occur more frequently, often leaving thousands of already vulnerable citizens even more vulnerable and at risk of human rights violations. Moreover, the ratification and domestication of the Kampala Convention will likely address the other recommendations mentioned below.
- (ii) Targeted Measures for Shelter Accommodation: The State should prioritise identifying and immediately relocating children with disabilities to suitable shelter accommodations that cater to their specific needs. Community hall shelters should have facilities to accommodate children with physical disabilities who require assistive devices. Conducting thorough assessments to determine the shelter needs of internally displaced children, including those with disabilities, is crucial.
- (iii) Urgent Specialised Healthcare Services: The State should ensure the Women's Economic Assembly's mandate to establish a programme for the right to health of vulnerable groups, including children with disabilities, is promptly implemented. Specialised healthcare services that cater to the unique needs of internally displaced children with disabilities

should be provided, and in doing so, the State should collaborate with relevant health authorities and organisations to ensure comprehensive medical and psychosocial support for this vulnerable group.

- (iv) **Inclusive Education Access:** The educational needs of internally displaced children with disabilities should be identified and assessed to provide tailored educational services to these children. Targeted measures to ensure access to inclusive and specialised education for displaced children with disabilities should be urgently developed and implemented. In the interim, the schooling of displaced children with disabilities must be monitored closely, and proactive steps must be taken to ensure the attendance and participation of displaced children with disabilities in educational activities.
- (v) **Coordination and Monitoring:** Coordination among government departments, municipalities, and relevant stakeholders involved in disaster response and management should be improved. Moreover, a comprehensive monitoring system to track the well-being and living conditions of internally displaced children with disabilities, ensuring they receive necessary support during and after displacement, should be developed.
- (vi) **Child Participation and Safeguarding:** Children with disabilities should be involved in decision-making processes that affect their lives, ensuring their voices are heard in disaster planning and response efforts. Targeted measures to protect displaced children, especially those with disabilities, from exploitation and abuse in shelters or temporary accommodation units should be implemented.
- (vii) **Capacity Building and Training:** Training to government officials, social workers, and service providers on disability-inclusive disaster management and response should be provided. This will enhance these role players' understanding of the specific needs of children with disabilities and their ability to provide appropriate support and services during and after displacement.
- (viii) **Data Collection and Reporting:** Accurate and up-to-date data collection on internally displaced children with disabilities, including their numbers, living conditions, and access to services, should be ensured. Regular reports by the role players involved on the progress of interventions and outcomes should be encouraged to promote transparency and accountability in disaster response efforts.
- (ix) **Long-Term Support:** Plans should be implemented to support and rehabilitate internally displaced children with disabilities beyond the immediate crisis. Sustainable solutions for the ongoing well-being and social integration of displaced children with disabilities, considering their specific needs, should be implemented.
- (x) **Strengthen Collaboration with Civil Society:** The State should partner with civil society organisations that specialise in disability rights and inclusive disaster management. Their expertise can enhance the State's efforts to protect and implement the rights of internally displaced children with disabilities.

By implementing these recommendations, the State can significantly improve its protection and implementation of the right to a standard of living for internally displaced children with disabilities in KZN and other regions in South Africa that experience internal displacement. These measures will ensure and promote this vulnerable group's unique needs, dignity and well-being during and after internal displacement.

