



Childline

SOUTH AFRICA

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SUBMISSION ON THE CHILDREN'S BILL - A NATIONAL POLICY FRAMEWORK

INTRODUCTION

The need for an integrated approach to the holistic management of children's issues, the promotion of the well being of children and the protection of children's rights has long been recognised both internationally and nationally. Many sectors are involved in ensuring that children's rights and well being are promoted and protected, and that these may be compromised by competing demands for resources, the sometimes differing perspectives of the different sectors as to what constitutes the "best interests of children", and a lack of understanding of the roles and contribution of sectors.

THE CHALLENGE

Some of the key issues and challenges relating to implementing the country's ratification of the United Nations Convention on the Rights of the Child, the African Charter on the Rights of Children and the clause relating to the rights of children in the Bill of Human Rights in the National Constitution centre around the lack of coordination of services – both preventive and protective – to children, as well as comprehensive and integrated budgeting for these services. Each sector tends to work in isolation from the other, leading to the duplication of some services and shortfalls in others. Individual sectors may also be reluctant to commit resources to activities that require inter-sectoral collaboration.

EXISTING INTER-SECTORAL STRUCTURE – THE NATIONAL PROGRAMME OF ACTION FOR CHILDREN STEERING COMMITTEE

Although the National Programme of Action Steering Committee exists in the Office on the Rights of the Child in the National Presidency and calls on government departments to "give priority to children in every decision about how to spend government funds"¹, this structure, through its own activities and the activities of

¹ Cassiem, S. and Streak, J., BUDGETTING FOR CHILD SOCIO-ECONOMIC RIGHTS, Idasa, Cape Town 2001, p 41.

provincial programmes of Action serves to facilitate communication and the sharing of information, embark on activities that promote advocacy, participation and mobilisation, assist with research, policy review, evaluation, data collection and monitoring.² It is clear that this structure has a data collection and monitoring function, and not a service delivery function. Thus the inter-sectoral coordination of and actual service delivery to children does not fall within the ambit of this structure.

MOTIVATION FOR A NATIONAL POLICY FRAMEWORK

The concept of inter-sectoral and inter-disciplinary protocols and frameworks that promote working together in order to provide holistic children's services has been developed in both national and international forums and literature.^{3 4} It is of note that a number of countries have developed inter-sectoral strategies and protocols designed to facilitate the effective implementation of legislation and policy relating to children, as well as legislation that supports such strategies and protocols.

The Proposed National Strategy on Child Abuse and Neglect developed through the participation of the National Committee on Child Abuse and Neglect noted that "Government Departments at all levels, in partnership with the broader public must plan inter-sectoral preventive strategies which are designed to strengthen family and community life and to promote homes, schools, neighbourhoods and communities which are safe for children and which promote their full and healthy development"⁵ However despite the recognised need for a National Strategy on Child Abuse and Neglect, this has not yet been finalised and subscribed to in South Africa, thus underlining the problems of commitment to inter-sectoral working together. It is therefore clear that, by giving the need for inter-departmental, inter-sectoral collaboration recognition in legislation through provision for a National Policy Framework, the concept of working together to protect the rights of children will have a greater chance of becoming a reality.

As a result of submissions, research and their analyses of the needs of the children of South Africa the Final Report of the S A Law Commission on the Children's Bill noted that "The Commission is convinced that prevention and early intervention strategies can only be delivered effectively as part of an integrated, inter-sectoral, inter-departmental framework."

THE SOUTH AFRICAN LAW REFORM COMMISSION PROPOSALS

The Law Commission's Draft of the Children's Bill therefore contains an entire chapter on the Inter-sectoral Implementation of the Legislation, providing for the following:

² Ibid, p 42.

³ Childen, Young Persons and their Families Service, BREAKING THE CYCLE: AN INTERAGENCY GUIDE TO CHILD ABUSE, New Zealand 1997.

⁴ Home Office, WORKING TOGETHER UNDER THE CHILDREN ACT 1989, United Kingdom 1989.

⁵ National Committee on Child Abuse and Neglect, PROPOSED NATIONAL STRATEGY ON CHILD ABUSE AND NEGLECT, Pretoria, Department of Welfare, 1996.

1. The implementation of the Act by Organs of state at national provincial and local government levels, subject to a National Policy Framework.
2. The Minister of Social Development must prepare a National Policy Framework to guide the implementation, enforcement and administration of the Act in order to secure the protection and well-being of children in South Africa.
3. The National Policy Framework and any amendments must be published in the Government Gazette.
4. The National Policy Framework to bring together all organs of state at all levels of government, all designated child protection organisations and all NGO's involved in implementing government or government-aided programmes and projects concerning children.

The draft provisions specified the content of the National Policy Framework, stating that the Policy must be coherent, provide for an integrated, co-ordinated and uniform approach by all structures, and be consistent with the provisions of the Children's Bill (Act).

The Core Components provided for included

- national objectives to secure the protection and well-being of all children,
- priorities and strategies to achieve these objectives,
- performance indicators to measure progress with the achievement of these objectives,
- a framework for co-operative governance on a cross-functional and multi-disciplinary basis,
- the allocation to different spheres of government and organs of state primary and supporting roles and responsibilities,
- the engagement of NGO's in the implementation, enforcement and administration of the act and in the development and implementation of programmes and projects giving effect to the act and
- measures to ensure adequate funds for securing the protection and well-being of all children.

The Development of the National Policy Framework was to be through a consultative process that included Cabinet Members whose departments are affected by the framework, organs of state in other spheres of government and public participation.

Public participation was provided for through the publication of the proposed framework in the government gazette and a summary of the proposed framework in the national media, inviting the public to present oral representations or objections to the Minister, who was required to give due consideration to all representations or objections presented across all sectors and role-players.

This provision thus provided the framework for the entire implementation of the Children's Bill.

Arguments relating to the inclusion of the National Policy Framework in the Children's Bill:

ARGUMENTS AGAINST	THE ARGUMENT FOR
<p>1. There is provision for inter-departmental working together in the Constitution (Chapter 3). To include a national policy framework in the Bill is therefore a duplication and redundant.</p>	<p>1.1. The Constitution establishes the broad principle of inter-sectoral cooperation but not the specifics. The Children's bill is so complex and comprehensive that a specific National Policy Framework is required.</p> <p>1.2. The Constitution does not include the NGO's that will facilitate and contribute to the implementation of the Act. A National Policy Framework thus has to be developed that is inclusive of the NGO sector and the arrangements around the purchase of services from this sector.</p> <p>1.3. Although this Chapter exists in the National Constitution, Practice indicates that inter-departmental cooperation in providing for children is not happening. It is clear that there is duplication of services across departments, gaps in services, and differences in practice and resourcing across the Provinces instead of having some basic national norms.</p>
<p>2. It will delay the implementation of the Bill as it will take too long and hold up the implementation of the Act generally.</p>	<p>2.1. In the Sexual Offences Bill the Minister of Justice is instructed to draft the NPF for Sexual Offences within a 6 month period. Can the Children's bill not set a time frame?</p> <p>2.2. The Children's Bill once passed into an act can be progressively implemented. The development of the NPF need not delay the implementation of other sections of the Act.</p>
<p>3. The NPF is unaffordable – the consultation process may be expensive</p>	<p>3.1. The NPF will in the long term save resources as services will be better coordinated and also contribute to the prevention of duplication of services – thus saving money.</p> <p>3.2. It could also facilitate improved management of donor funding and ensure that donor funding is directed to where it</p>

	<p>is most needed.</p> <p>3.3. It would facilitate a fairer distribution of purchase of services thus reducing the costly competition for funding that sometimes occurs in the private sector.</p>
<p>4. The Bill does, in some clauses, refer to national strategies and mechanisms in relation to specific provisions, for example early childhood development, section 92.</p>	<p>4.1 However these sections are linked to fragmented provisions in the bill. There is a need to develop a comprehensive national policy framework to avoid further fragmentation of services and provisions. Having a number of national policy frameworks relating to different sections of the Bill may contribute to further fragmentation and wasted resources, and further compromise holistic developmental services to children.</p>
	<p>5. The NPF would substantially contribute to a reduction in the secondary abuse and neglect of children as services would be well coordinated, role-players would understand and have an appreciation of each other's role, gaps in the services etc.</p>
	<p>7. A consultative process will facilitate more rapid implementation and ownership of the Children's Act.</p>

THE RECOMMENDATIONS OF THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

It is of note that the concluding observations of the United Nations Committee on the Rights of the Child noted that it was “also concerned about the lack of inter-ministerial coordination between those ministries responsible for the implementation of the Convention (on the Rights of the Child).....The Committee recommends that the State party strengthen its efforts to ensure greater coordination between those ministries and departments responsible for the implementation of the Convention.”⁶

The Committee also expressed its concern about the “insufficient efforts made to ensure the adequate distribution of resources allocated for children’s programmes and activities”. The Committee further “encourages” ...the prioritising of budgetary allocations and distributions to ensure implementation of the economic, social and cultural rights of children to the maximum extent of available resources..”⁷

⁶ UN Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child South Africa, Unedited version, 28th January 2000, pp 3,4.

⁷ Ibid, p4

It is clear that the National Policy Framework, as envisaged in the Law Reform Commission Draft of the Children's Bill, is an essential component of meeting the South Africa's obligation to fulfil its ratification of the Convention of the Rights of the Child.

THE REMOVAL OF THIS CHAPTER FROM THE CHILDREN'S BILL

Unfortunately the entire chapter on the National Policy Framework contained in the SA Law Reform Commission's Draft of the Children's Bill has been removed in its entirety in the subsequent drafts of the Bill.

It is difficult to understand the rationale behind the removal of this chapter from the Bill other than to hypothesise that implementing such a framework would require resources and would also require the planned allocation of resources for successful implementation.

This is seen as a retrogressive step that will impact negatively on the implementation of the Children's Bill once it has become law.

It also undermines the possible commitment of the allocation of funding across sectors to ensure that adequate service delivery to children is manageable. This is particularly important and concerning when seen in the light of other provisions retained in the Bill which make it clear that the private welfare sector will carry responsibility for large portions of service provision, for example in the area of child protection.

Removal of this chapter from the Bill is removing the heart and brain of the Children's Bill and will severely compromise its implementation, and ability to function as an enabling, protective and comprehensive statute for the children of South Africa.

URGENT REQUEST

Our urgent request is that this chapter be reinstated in the Children's Bill in its entirety.

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Johannesburg Child and Family Welfare Society.
RAPCAN
SASPCAN

Network Against Child Labour