

CHAPTER 9

PREVENTION AND EARLY INTERVENTION SERVICES FOR CHILDREN AND THEIR FAMILIES

9.1 Introduction

In 1996, the Inter-ministerial Committee on Young People at Risk (hereafter, IMC) proposed a four-tier system for the transformation of the child and youth care system in South Africa. It was suggested that the first two levels of the new system must be prevention of harm to children and early intervention where harm occurs. Prevention and early intervention as the first two components in the four-tier system were officially put forward in the IMC's practice guide entitled **Minimum Standards: South African Child and Youth Care System**¹ and again in the financing policy document of the Department of Social Development entitled **Financing Policy: Developmental Social Welfare Services**.²

Prevention is very broadly defined in the **Financing Policy** document as 'any strategies and programmes which strengthen and build the capacity and self-reliance of families, children, youth, women and older persons'.³ Early intervention services are defined in the document as services that: 'target children, youth, families, women, older persons and communities identified (through a developmental risk assessment) as being vulnerable or at risk and ensure, through strengths-based developmental and therapeutic programmes, that they do not have to experience statutory intervention of any kind'.⁴ The **White Paper for Social Welfare**⁵ also states that programmes for families and children should be based on the principle that interventions should concentrate first on 'prevention, by enhancing family functioning, then on protection, and lastly on the provision of statutory services'.

As can be seen from the quotations in the previous paragraphs, prevention and early intervention services have been recognised as vitally important components in any future strategy on behalf of

1 May 1998.

2 March 1999.

3 **Financing Policy: Developmental Social Welfare Services**, March 1999 at p.10.

4 Ibid at p.11.

5 February 1997, par. 44(g).

children in South Africa. The attempts made by the IMC and the Department of Social Development to define these services indicate a need for specificity which, if it can be sufficiently achieved, will help with the framing of legally-enforceable rights for children who need prevention and early intervention services. The question which arises is whether it is possible to support such children by drafting laws which facilitate or even mandate the provision of prevention and early intervention services.

Prevention activities generally occur at three levels: primary, secondary and tertiary. Primary prevention involves approaches and activities which provide education and resources to enable and strengthen families to function optimally, and which protect against some of the major stress factors which generate abuse. Primary prevention activities are directed at the general population with the goal of stopping the occurrence of maltreatment and abuse before they start. Secondary prevention or early intervention activities focus efforts and resources on families where there are children known to be at greater risk of maltreatment, in order to prevent the development of full-scale or ongoing abuse.

Early intervention services have the following primary goals:

- To prevent the removal of children from their families.
- To prevent the recurrence of problems and reduce the negative consequences of risk factors.
- To divert children away from either the child and youth care system or the criminal justice system.

In this regard it might be worth recalling that the Commission did recommend⁶ the inclusion of a general principle in the new children's statute which states that primary prevention and early intervention services should seek to:

- enable and strengthen families to function optimally;

6 See 5.2 above.

- prevent the removal of children from their families;
- prevent the recurrence of problems and reduce the negative consequences of risk factors; and
- divert children away from either the child and youth care or the criminal justice system.

In the **National Strategy on Child Abuse and Neglect**, it is pointed out that there is at present no clear strategy for the prevention of child abuse and neglect, and no planning process which systematically links preventative approaches with provision for intervention.⁷ The Strategy recognises that resources must be allocated in such a way as to assure an appropriate balance between preventive-developmental services on the one hand, and investigation and treatment on the other. The Strategy says:⁸

Formal child protection services must whenever possible be delivered within the context of broader strategies to assist communities to holistically address their fundamental needs, of which protection is one. It is apparent that the risk of abuse is greatly increased in situations where e.g. there are no proper child care facilities and children are roaming unattended while their parents work. Problems with homelessness, overcrowding and inadequate policing appear to be contributory factors in many cases. ... It is necessary to systematically attend to those factors which impede the ability of parents, families and communities to act protectively towards children. Essential services and basic support systems must be in place in every community in order for intervention strategies to operate effectively. Preschool educare provision, whether formal or informal, centre- or home-based, is a crucial form of preventative and promotion provision, as also is after-school care provision. Concerted attention must also be paid to related social problems which play a role in generating child abuse and neglect, such as teenage pregnancy, alcoholism and drug dependency.

The Strategy says in addition preventive education for adults and children must be built into the overall approach. Such education should take into account the cross-cultural issues which are involved in the South African context, and the effectiveness of current preventive education programmes, many of which are first-world orientated, should be researched with this in mind.

7 Paragraph 3.1 of the National Strategy on Child Abuse and Neglect.

8 Ibid.

9.2 Existing legal position in South Africa

Primary and secondary prevention do not feature prominently in the Child Care Act, 1983. The emphasis in this Act is on tertiary prevention which involves dealing with abuse once it has occurred in order to prevent its continuation.

Prevention and early intervention services are referred to in regulation 2(4)(b) of the Child Care Act, 1983. In giving guidance to the social worker as to how his or her section 14(2) report to the children's court should be compiled, the regulation provides that the report must include a summary of prevention and early intervention services rendered in respect of the child and his or her parents and a brief background of previous statutory interventions in respect of the child, where applicable. Neither prevention nor early intervention services are defined, and it must be considered whether it is necessary to include such definitions in the new children's statute. There is also no guidance in the existing Child Care Act, 1983, or the Regulations, as to who is legally obliged to provide such prevention and early intervention services, when such services should be supplied and what form they should take. Without specificity in regard to all of these aspects, it will not be possible to provide effectively for such services.

Social workers report that they are undertaking a substantial amount of informal or 'non-statutory' work. The term indicates that work of this kind, which includes preventative services designed to make resort to care (and court) proceedings unnecessary, must inevitably take second place to duties associated with the children's court (the statutory work). **The Commission believes that the new children's statute should indicate that preventative work should be given high priority, and that it should not be undertaken only when other duties permit.** Although the Commission takes comfort in the shift in service delivery to prevention services as set out in the **White Paper for Social Welfare** and the **Financing Policy**, it must be clear that such a shift would require major resource allocations, especially in the short and medium term.

9.3 Comparative review

The UK Children Act, 1989 imposes a general duty on every local authority to safeguard and promote the welfare of children within their area who are in need, and, so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and

level of services appropriate to those children's needs.⁹ In addition, local authorities in the United Kingdom must provide such day care for children in need within their area who are aged five or under and not yet attending school as is appropriate.¹⁰ Local authorities must also take reasonable steps to identify the extent to which there are children in need within their area; open and maintain a register of disabled children within their area; and assess the needs of such children in need.¹¹

Schedule 1, Part I of the UK Children Act, 1989 is illustrative of the manner in which positive duties can be imposed on local authorities to prevent child abuse and neglect. Some of the provisions of this Part read as follows:

Every local authority shall take reasonable steps, through the provision of services under Part III of this Act, to prevent children within their area suffering ill-treatment or neglect.¹²

Where (a) it appears to a local authority that a child who is living on particular premises is suffering, or is likely to suffer, ill treatment at the hands of another person who is living on those premises; and (b) that other person proposes to move from the premises, the authority may assist that other person to obtain alternative accommodation.¹³

Every local authority shall provide services designed (a) to minimise the effect on disabled

9 Section 17(1). For the purposes of this section a child is considered to be *in need* if the child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority for such child; the child's health or development is likely to be significantly impaired, or further impaired, without the provision of such services, or where the child is disabled. Section 17(10) of the UK Children Act, 1989.

10 Section 18(1).

11 Schedule 2, Part I of the Children Act, 1989.

12 Section 4(1) of Schedule 2, Part I.

13 Section 5(1) of Schedule 2, Part I.

children within their area of their disabilities; and (b) to give such children the opportunity to lead lives which are as normal as possible.¹⁴

Every local authority shall take reasonable steps designed (a) to reduce the need to bring proceedings for care or supervision orders with respect to children within their area; criminal proceedings against such children; any family or other proceedings with respect to such children which might lead them being placed in the authority's care; or proceedings under the inherent jurisdiction of the High Court with respect to children; (b) to encourage children within their area not to commit criminal offences; and (c) to avoid the need for children within their area to be placed in secure accommodation.¹⁵

14 Section 6 of Schedule 2, Part I.

15 Section 7 of Schedule 2, Part I.

As can be seen from this selection, local authorities in the United Kingdom are responsible for the provision of a myriad of prevention and early intervention services.¹⁶

Scottish law requires local authorities to operate a range of services geared towards reducing the risk of children coming into care. Section 22 of the Children (Scotland) Act of 1995 describes these services, in a general manner, as those necessary to 'safeguard and promote the welfare of children in their area who are in need'. These services must, where appropriate, 'promote the upbringing of such children by their families'. In providing such services, the local authority 'shall have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background'.

Section 23(3) the Children (Scotland) Act of 1995 requires a local authority to carry out an assessment of a disabled child who is within the authority's area if requested to do so by the child's parent or guardian. The purpose of the assessment is to ensure that the local authority provides appropriate services in accordance with the disabled child's special needs. An assessment may also be requested where it is not the child who is disabled but another member of the child's immediate family and this has an impact on the child. A definition of a disabled person is offered in section 23(2): 'a person is disabled if he is chronically sick or disabled or suffers from a mental disorder...'. Section 24 of the Scottish Act renders a local authority liable to carry out an assessment of a person who 'provides or intends to provide a substantial amount of care on a regular basis' for a disabled child. This assessment must be made if the carer requests it. The purpose of the assessment will be to ensure that appropriate care for the child is provided by the local authority in order to supplement whatever care the child is already receiving.

In the Ugandan Children Statute of 1996, section 11 requires every local government council from village to district level to 'safeguard and promote the welfare of children within its area'. This must be done by maintaining a register of children with disabilities in order to provide assistance,

¹⁶ See also the UK Children (Leaving Care) Bill, 2000, which provides inter alia for further duties of local authorities towards children, personal advisers and pathway plans, and advice and assistance for certain children and young persons.

providing help and accommodation to lost children, and finding missing parents. The Councils are also required to designate one of their members to be responsible for the welfare of children and this person is referred to as the 'Secretary for Children's Affairs'.

Namibia's draft Children's Act, 2001 also includes a provision on preventative assistance and services. Section 29 of this draft Act reads as follows:

(1) The Minister shall, out of moneys appropriated by Parliament for the provision of preventative assistance and services under this Act, provide such assistance and services to children and to their families and communities as he or she considers appropriate so as to

- (e) prevent the neglect, abuse or inadequate supervision of children or other failure to meet children's needs;
- (f) promote every child's well-being and the realisation of his or her full potential; and
- (g) actively involve and promote the full participation of families in identifying and resolving their own problems.

(2) The preventative assistance and services referred to in subsection (1) include, without being limited to, assistance with the basic necessities of life, including the empowerment of families to obtain such basic necessities.

(3) In the development and implementation of preventative assistance and services referred to in subsection (1) particular emphasis shall be placed on addressing the problems of families who are unable to provide proper care for their children because of lack of food, shelter, child care or other resources.

In terms of section 13(1) of the Children and Family Services Act, 1990, of Nova Scotia, Canada, where it appears to relevant Minister or agency that services¹⁷ are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with

17 Services to promote the integrity of the family include services provided for the following purposes: improving the family's financial position; improving the family's housing position; improving parenting skills; improving child care and child-rearing capabilities; improving home-making skills; counselling and assessment; drug or alcohol treatment and rehabilitation, child care; mediation of disputes; and self-help and empowerment of parents whose children have been, are or may be in need of protective services: section 13(2).

the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency involved must take 'reasonable measures to provide services to families and children that promote the integrity of the family'.

An interesting approach to prevention is found in Chapter VII of the new India Children's Code Bill, 2000. Although Chapter VII of the Bill is headed 'Provisions regarding health and nutrition', the bulk of the provisions clearly are preventative and early intervention measures. Section 51(1) of the Bill, for instance, places an obligation on the State Government to provide adequate health services and facilities to children, 'both before and after their birth and through the period of growth', to ensure their full physical, mental and social development. The section further provides that the scope of such services must be progressively increased so that within a targeted period all children in the country are provided with and enjoy optimum conditions in health care for their balanced growth. Section 51(2) of the Bill reads as follows:

For the purposes of increasing the rate of child survival in the country, especially the girl-child and increasing child health, special emphasis and importance shall be given in the following areas, namely: -

- (a) the prevention of child marriages;
- (b) the age of the mother in relation to child birth, the spacing of pregnancies, the services to be provided and care to be received during pregnancy and child birth;
- (c) care of the new born;
- (d) time-bound immunization programme and properly spaced scheme till the child attains five years of age;
- (e) adequate nutrition and health care;
- (f) safe water supply and basic sanitation.

Section 52 of the India Bill states that the State Government must formulate suitable schemes to provide sufficient care to women during pregnancies which may 'include early registration of pregnant women for anti-natal care, universal coverage, tetanus injection supplemented with iron and folic acid, timely identification and treatment of maternal complications, promotion of clean deliveries by trained personnel, which may include imparting of training to the local mid-wives or dais in modern methods of handling deliveries and recognising them as such, increasing the

institutional delivery rates, management of obstetric emergencies, birth spacing, timing and limitation, improvement of maternal care facilities, and media efforts to promote the awareness of safe motherhood in the community'. This provision is built on the recognition that maternal death affects the rate of child survival and is detrimental to the health and development of the child.

To address the particular problem of female feticide and infanticide,¹⁸ section 53 of the Bill provides that Government must take necessary steps to prevent pre-natal sex determinations. The section further provides that where abortion of a pregnancy occurs and the child is a female child, and it is proved that a pre-natal sex determination test was done, it shall be presumed, unless the contrary is proved, that the offence of feticide had been committed.¹⁹ Where the death of a female child occurs during the first year of age, and it is proved that proper care had not been given to that child, it shall be presumed, until the contrary is proved, that the offence of female infanticide had been committed.

From these examples it is clear that it is possible to legislate on prevention and early intervention for children. Indeed, the inclusion of such provisions seems to be the modern trend.

9.4 **Comments and submissions received**

In Issue Paper 13 the following question was asked: 'How can legislation enable the transition from remedial modes of intervention towards prevention?'²⁰ In responding to this question, the South African National Council for Child and Family Welfare stated that the key issue is how to provide sufficient human and other resources necessary for the provision of prevention services. The practical point was made that, if such resources were not allocated, there was the risk of producing idealistic legislation which cannot be implemented.

The Natal Society of Advocates did not feel that prevention services could be provided for in

18 See also Chapter III of the draft Bill for special provisions relating to the girl child.

19 Section 53(3).

20 Question 16.

legislation. The Johannesburg Institute of Social Services felt similarly that prevention services are a welfare policy and financing issue and therefore need to be addressed on that level. By contrast, the ATKV was strongly in favour of prevention legislation. The ATKV submitted that prevention legislation instead of legislation aimed at circumstances surrounding the removal of children from their environments is the ideal. Establishing such legislation, they contended, would be a long-term process because the economic development within the country and the circumstances of most children is not what they should be. Mr DS Rothman, a commissioner of child welfare in Durban, was in favour of giving more prominence to prevention services. In his response to Issue Paper 13, he submitted that this objective could be achieved by introducing a system whereby the role of prevention services by social workers receives priority. He added that the burden of finance should shift from the remedial to the preventative mode. He also remarked that it is the heavy caseloads of social workers that seem to limit the availability of prevention services at present.

Since there was support for legally-mandated prevention services expressed in some of the responses to Issue Paper 13, further inquiries were made. A research paper entitled 'Legislating for Child Protection' was presented at a focus group discussion in Pretoria on 29 April 1999 and subsequently circulated.²¹ Question 1(c) of this research paper asked: 'How do you believe an appropriate balance can be achieved in legislation between formal protective measures and supportive / preventive services?'

Ms S Leslie of the SA National Council for Child and Family Welfare pointed out that much of the abuse and neglect of children in South Africa is caused by the lack of personal, economic / material and psychological resources within the family system. In order to assist families that are dysfunctional, one has to render protective and preventive services. The State should invest more resources for preventive services. At the focus group discussion of 29 April 1999 participants supported a balance between preventive services and protective measures. A concern expressed at the focus group discussion was that resources would have to be allocated if there are to be effective prevention services in South Africa. At a consultative meeting held in Umtata on 27 May 1999, participants supported child abuse prevention services in the form of continuous educational

²¹ J Loffell and C R Matthias **Legislating for Child Protection** (S A Law Commission, 1999).

programmes. They favoured early intervention that would provide support through counselling.

In the **Legislating for Child Protection** research paper, question 9 read as follows: ‘Should a comprehensive children’s statute include mandatory or discretionary provision, or both, for primary and secondary prevention for child abuse?’ Ms Leslie of the SA National Council for Child and Family Welfare and the Umtata Child Abuse Resource Centre indicated that there is a definite need in a children’s statute to include both mandatory and discretionary provision for primary and secondary prevention of child abuse. Ms Leslie noted that there should be provision to ensure that the rights of children and their needs are met. Ms T Odayar, Ms D Ritter and the Grahamstown Child and Family Welfare Society were of the view that there should be financing of preventive and early intervention programmes by the State. Ms P Gerrand of the Johannesburg Child Welfare Society, reporting back at the 29 April 1999 focus group discussion highlighted a difference of opinion in her group. The group favoured a reference to prevention and early intervention services in new child care legislation. However, group members were divided on the question of implementation. Some members considered that there should always be a discretion whether or not to supply such services. Other members felt that grounds should be indicated for situations where it would be mandatory for the government to supply such services. The members who considered that prevention services should be discretionary felt that South Africa does not have the resources to make prevention mandatory on a national basis.

At the focus group discussion held on 29 April 1999, participants indicated the following forms of primary and secondary prevention which should be focussed on: establishment of safe houses, support programs for abused children and volunteer training programs;²² developmental programs operated by State Departments, NGO’s, CBO’s and support groups for young mothers as part of health care provision;²³ continuous preventive education programs and support/counselling in relation to child abuse and children who have been subjected to abuse;²⁴ and targeting of vulnerable

22 Ms T Odayar, Ms D Ritter, and the Grahamstown Child and Family Welfare Society.

23 The Umtata Child Abuse Resource Centre.

24 Umtata consultative meeting.

mothers and children in the hospital setting, both at the time of birth and subsequently, eg, through the appointment of hospital social workers;²⁵ and via parenting programs and support groups.²⁶

Ms Fran Cleaton-Jones cited research results indicating that most abusive parents are under 25 years of age, and that children of very young parents tend to be disadvantaged. She recommended school-based parenting education as being useful both in delaying the onset of parenting and of providing coping skills. The need for inclusion of parenting education in the school curriculum was also emphasized by Ms S Leslie, who also supported the employment of school social workers as a preventive measure.

The National Coalition on Gay and Lesbian Equality (NCGLE) noted that the **White Paper on Social Welfare** had shown a fundamental shift from the traditional approach in South Africa of responding to the symptoms of child abuse, by highlighting the need for approaches which provide for financial support and programs which enable and promote development so as to ensure that people can sustain themselves through times of crisis and vulnerability. The NCGLE also highlighted the vulnerable position of gay and lesbian youth who, due to current myths and prejudices, were particularly liable to rejection, assault and violence, discrimination in the school environment, and homelessness and street life with all their associated dangers. The following priority areas for preventive strategies were identified:

- the training and education of people in positions of authority over children, including police officials within other child protection agencies and teachers;

25 Ms S Leslie, SA National Council for Child and Family Welfare.

26 Group 2 at the Workshop.

- ... programmes which foster a non-discriminatory environment in schools ... (to address discrimination, prejudice and harassment directed against any group of people);
- empowering lesbian and gay youth through the provision of support for programmes focussing on sexuality education ... and specialised physical and mental health information and counselling services.

The preponderance of responses received by the Commission was strongly in favour of greater attention being given to the provision of prevention and early intervention services. Many respondents felt that a legislative framework for such services would assist in the derivation of the necessary resources. Another argument advanced by respondents was that such a framework would also provide children who need such resources with rights that are genuine in that they can actually be enforced. In view of the weight of opinion as conveyed to the Commission in the responses received **it is recommended that provision should be made for prevention and early intervention services in a new children's statute.**

In its research paper entitled **Legislating for Child Protection**, the Commission posed the following questions:

Is present legal provision in South Africa for the involvement of local government in the prevention of abuse of children adequate? If not, what changes should be made?

Responses to these questions were provided at the focus group discussion on child protection held on 29 April 1999. Subsequently, additional responses were received by the Commission. In these responses there was considerable support for a much greater degree of local government involvement in the provision of services to children. For example, Ms Leslie of the SA National Council for Child and Family Welfare indicated in her response that she considered that current local government involvement in South Africa is generally inadequate. Ms Linda Vara of the South African National Council for Child and Family Welfare indicated that local government should be more involved and visible. Ms Tilly Odayar, Ms Dalene Ritter and the Grahamstown Child and

Family Welfare Society suggested that local government authorities should be required by law to allocate a substantial portion of their budget to prevention programs.²⁷ At the focus group discussion, many of the delegates felt that if local governments are to be given more authority, there needs to be better accountability from representatives of local government. Mr D van Heerden of the Department of Welfare of the Northern Cape Province felt that legislation should make specific provision for local government to take responsibility for creating a child-friendly environment, for example, recreational facilities, housing, water and sanitation.²⁸

Taken as a whole, the responses provided at the focus group discussion on 29 April 1999 and those subsequently received support the view that there should be provisions in the new children's statute to empower local authorities financially and to require them to take on a much greater role in the provision of prevention services, early intervention services and more generally the promotion of the welfare of children.

9.5 **Going beyond prevention: promotion of the well-being of children**

Although prevention services have not previously been legislated for in any detail in South Africa, the concept is relatively well understood within the welfare sector. **It is therefore recommended that the concept of prevention should be used in the new children's statute.** However, the term does have negative connotations. It has been argued by the New South Wales Child Protection

²⁷ SA Law Commission **Legislating for Child Protection** (unpublished collation of responses, Children's Code project, 1999) pp. 31-32. Some respondents recommended a minimum budget allocation of 9%.

²⁸ Id at p.3

Council that the term ‘prevention’:

reflects a negative, problem-focussed approach, where the objective is preventing a social ill rather than the promotion of positive, life-enhancing strategies, such as good interpersonal relationships, appropriate parenting and pro-child policies. Thus, any models framed around prevention rather than promotion may be considered to offer somewhat restrictive means to address social ills.²⁹

Tomison points out that the promotion focus incorporates the strengths-based approach which emphasises the strengths and capabilities of families rather than their weaknesses.³⁰

In a discussion of the UK 1989 Children Act, Hargreaves and Hadlow indicate that the term ‘prevention’ has been supplanted by a general duty upon local authorities in England to safeguard and promote the welfare of children.³¹ Whilst safeguarding of children remains a central tenet of the 1989 Act, promoting the welfare of children replaces the preventive theme of earlier English Acts. The term ‘prevention’ is, however, still mentioned in Schedule 2 (para. 4) of the 1989 Act. Hargreaves and Hadlow argue that ‘[t]he legislators clearly favoured the term “promote the welfare of” omitting the term “prevention” (except for a reference to it in Schedule 2) as this was seen to be an unnecessarily negative term’.³²

They further note that the terms ‘promote’ and ‘safeguard’ seem to be consistent with the concept of parental responsibility:

...parental responsibility fits well with the role of the social worker in “promoting” the welfare of children as this has the sense of initiating and furthering the progress of

²⁹ The New South Wales Child Protection Council as quoted by A M Tomison **Overcoming Structural Barriers to the Prevention of Child Abuse and Neglect- A Discussion Paper** (Australian Institute of Family Studies, undated) at p.11.

³⁰ Ibid, p. 62.

³¹ R G Hargreaves and J Hadlow ‘Preventive Intervention as a Working Concept in Child-Care Practice’ (1995) 25 **British Journal of Social Work**, pp. 349-365, at p. 349.

³² Ibid, p. 363.

something. To promote and / or support does not imply a taking over of responsibility. Therefore, if a social worker describes work as to promote and or/support the welfare of a child it does not have unhelpful connotations of parental shortcomings; it would also appear to facilitate working in partnership with parents... On the other hand, it could be argued that if a social worker describes his / her activity as 'preventive' there is a strong sense that the preventer is owning a considerable, if not total responsibility, for goal achievement, implicitly undermining the notion of parental responsibility.³³

Section 11(1)(a) of the Ugandan Children's Statute of 1996 also uses the terminology of safeguarding and promoting the welfare of children. Given the advantages and more positive connotations of the concept of promotion of welfare of children, it is recommended that such a duty be incorporated in the proposed new children's statute.

It is recommended that a similar, balanced approach, using both the concept 'prevention' and 'promotion', be utilised in the new children's statute. For wording, the Commission supports the Namibian provision and accordingly recommends the inclusion of a preventive provision in the new children's statute. Our formulation reads as follows:

- (1) Out of monies appropriated by law for the provision of preventative assistance and services under this Act, the Minister shall provide such assistance and services to children and to their families and communities as he or she deems appropriate to-
 - (a) prevent the neglect, abuse or inadequate supervision of children or other failure to meet children's needs;
 - (b) promote every child's well-being and the realisation of his or her full potential; and
 - (c) actively involve and promote the full participation of families in identifying and resolving their own problems.

³³

ibid.

(2) The preventative assistance and services referred to in subsection (1) include, without being limited to, assistance with the basic necessities of life, including the empowerment of families to obtain such basic necessities.

(3) In the development and implementation of such preventative assistance and services, particular emphasis shall be placed on addressing the problems of families who are unable to provide proper care for their children because of lack of food, shelter, child care or other resources.

The Commission also recommends the inclusion of provisions along the lines of section 55 of the draft Indian Children's Code Bill 2000 on health, as preventative measures, in the new children's statute.³⁴ This is one area where the apparent overlap of women's rights issues and children's rights issues can benefit both categories.

9.6 **Promotion, Prevention and Early Intervention: An Inter-sectoral Responsibility**

The abuse, neglect and maltreatment of children is a complex phenomenon that reflects underlying problems in the family, community and society. In order to address these problems effectively and to promote the welfare of all children, it is necessary that an inter-sectoral approach be adopted. This entails that all government departments be mandated to promote the welfare of children and to provide prevention and early intervention services.

In this regard, the National Committee on Child Abuse and Neglect states 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

34 See 11.2.2 below.

and healthy development'.³⁵ The Committee further states that '[k]ey role players for this purpose include structures responsible for education (including preschool care) and primary health care; NGO's and community-based organisations, religious and cultural groupings and traditional authority structures; employers, and the media'.³⁶ The National Strategy on Child Abuse and Neglect provides for local government to play a central role in inter-sectoral planning for the development of neighbourhoods which are safe and healthy for children, and in the provision of accessible venues from which a range of supportive and preventive services can be delivered on an inter-sectoral, one-stop basis. It further states that categories of children who are particularly vulnerable to abuse and neglect, including disabled children, and adults and juveniles who are known or potential perpetrators, should be targeted for specifically designed preventive strategies.³⁷

To give effect to an inter-departmental, inter-sectoral approach in prevention and early intervention, the Commission recommends the inclusion of the following provisions in the new children's statute:

Integrated and sustainable prevention and early intervention strategies and programmes

35 National Committee on Child Abuse and Neglect **Proposed National Strategy on Child Abuse and Neglect** Pretoria: Department of Welfare, 1996.

36 Ibid.

37 Ibid.

- (1) The Minister, in consultation with Cabinet, shall develop integrated and sustainable -
 - (a) prevention strategies and programmes which strengthen and built the capacity and self-reliance of families and children in these families;
 - (b) early intervention strategies and programmes targeting children and families as being vulnerable or at risk.

- (2) The Minister, in consultation with the Minister of Finance, must seek to achieve the integrated, sustainable, and equitable social and economic development of the Republic as a whole by -
 - (a) ensuring integrated development planning for children and their families for the Republic as a whole;
 - (b) promoting infra-structural development and services for children and their families for the Republic as a whole;
 - (c) building the capacity of Government at all levels to perform its functions and exercise its powers where such capacity is lacking;
 - (d) promoting the equitable distribution of resources between all levels of Government to ensure appropriate levels of prevention and early intervention services.

- (3) Prevention and early intervention services must promote
 - (a) appropriate parenting skills and the formation of appropriate interpersonal relationships between parents, families and children;

- (b) the preservation of family structures; and
 - (c) the capabilities of families and parents to safeguard the wellbeing and the best interests of their children.
- (4) Prevention and early intervention services must actively involve and promote the full participation of families, parents and children in identifying and resolving their problems.

Prevention and early intervention services to be provided to children in need of care

- (1) When any social worker's report is prepared in order to assist a court in determining whether a child is in need of care as is provided for in section X,³⁸ such report shall contain a summary of any prevention and early intervention services provided in respect of such child, and siblings of the child, and in respect of the child's family.
- (2) A court may, prior to making any finding in terms of section Y³⁹ or prior to making any order in terms of section Z,⁴⁰ order that prevention or early intervention services be provided to the child and to his or her parents or family by the Department of Social Development or any other person or organisation with expertise in the rendering of prevention or early intervention services.⁴¹
- (3) The order referred to in subsection (2) may be made for a specified period, but not

38 Currently section 14(2) of the Child Care Act, 1983.

39 I.e. that a child is in need of care; currently section 14(4) of the Child Care Act, 1983.

40 Currently section 15 of the Child Care Act, 1983.

41 See further 23.10.3 below.

for a period exceeding 6 months from the date upon which the order was made.

- (4) Where a court makes an order referred to in subsection (2), the court shall postpone the matter for a period not exceeding 6 months to enable prevention and early intervention services to be provided, after which a report concerning the results of the prevention or early intervention services must be made available to the court by the Department or the person or organisation who rendered such services.
- (5) After consideration of the report referred to in subsection (4), the court may make any order in terms of sections Y and Z⁴² or may extend the date of postponement of the proceedings for a further period not exceeding 6 months.
- (6) At the expiry of the period referred to in subsection (4), a report concerning the results of the prevention and early intervention services must be made available to the court by the Department or the person or organisation who rendered such services, which report must be considered by the court.
- (7) After considering the report referred to in subsection (6), and after consideration of any other reports or evidence placed before the court, the court may make an order in terms of sections Y and Z, or the court may decline to make an order.

In respect of children in residential care, foster care and subsidised adoptions⁴³ it is recommended that:

- (a) the public school fees of children in such forms of substitute family care be covered by the Department of Education for the duration of the placement;
- (b) free basic health care be provided to such children by the Department of Health.

42 Currently sections 14 and 15 of the Child Care Act, 1983.

43 See also Chapters 17, 18, and 19 below.

9.7 **The Role of Local Government**

9.7.1 **Introduction**

In some countries, as we have seen, it is specifically local government authorities which are responsible for providing certain important services for children. Often, these services include what have been described earlier in this Chapter as prevention services, early intervention services and promotion of the welfare of children. In these countries, unlike in South Africa, national legislation describes in some detail aspects of the child-services which local authorities are obliged or encouraged to provide. It is important to note that there is a distinction between legislation which compels local authorities to provide services and legislation which merely facilitates such services by encouraging local authorities to provide them. It is also important to note that in many countries local authorities are a vital component in the provision of services to children. It is intended, in this part of the Chapter, to recommend that in future local authorities need to play a much greater role in the provision of prevention services, early intervention services and promotion of the welfare of children in South Africa.

9.7.2 **The present legal framework concerning local authorities**

The Local Government Transition Act 209 of 1993, in Schedule 2A, includes the management of child care facilities as a function of local government. Neither ‘management’ in this context nor ‘child care facilities’ are defined in the Act. This failure to define is problematic. What ‘child care facilities’ are local authorities responsible for? How are local government authorities required to ‘manage’ these? Are local government authorities merely required to provide buildings ‘to house

the delivery of social services by others to children?',⁴⁴ Schedule 2A of the Local Government Transition Act raises many unanswered questions.

The next piece of legislation of relevance to the provision by local authority of services to children is the Development Facilitation Act (DFA) 67 of 1995. Under section 3 of that Act government authorities are required to make the best possible use of existing resources, including those relating to social facilities. Local authorities are expected to make effective use of land under their control and of water, health and education facilities. The wording of this Act makes it possible for local authorities to work creatively with regard to, inter alia, the social service needs of children. For example, service providers for children in need could be given financial grants and exempted from rates, electricity and water charges. Unfortunately, the DFA suffers from the same shortcoming as the Local Government Transition Act, namely, that it does not explain what facilities local authorities are required to provide for children.

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Johann Mettler and Tony Loubser **Local government and the provision of child care facilities**, research paper commissioned by the S A Law Commission, p. 5.

The next, and most important legislative development, was the promulgation of the Constitution Act 108 of 1996. The Constitution states that government in South Africa is constituted as national, provincial and local spheres of government. These three spheres are distinctive, interdependent and interrelated. Local government is a sphere of government in its own right, and is no longer a function of national or provincial government. It is an integral component of the democratic state.⁴⁵

All spheres of government are obliged to observe the principles of cooperative government put forward in the Constitution. Cooperative government assumes the integrity of each sphere of government. But it also recognises the complex nature of government in modern society. No country today can effectively meet its challenges unless the components of government function as a cohesive whole. This involves:

- Collectively harnessing all public resources behind common goals and within a framework of mutual support.
- Developing a cohesive, multi-sectoral perspective on the interests of the country as a whole, and respecting the discipline of national goals, policies and operating principles.
- Coordinating their activities to avoid wasteful competition and costly duplication
- Utilising human resources effectively.
- Settling disputes constructively without resorting to costly and time-consuming litigation.
- Rationally and clearly dividing between them the roles and responsibilities of government, so as to minimise confusion and maximise effectiveness.⁴⁶

45 **White Paper on Local Government**, 9 March 1998, section C, par. 1.1.

46 **White Paper on Local Government**, section C, par. 1.1.

Intergovernmental relations are the set of multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction within and between spheres of government. In South Africa a system of intergovernmental relations is emerging to give expression to the concept of cooperative government contained in the Constitution.⁴⁷

A system of intergovernmental relations has the following strategic purposes:

- To promote and facilitate cooperative decision-making.
- To coordinate and align priorities, budgets, policies and activities across interrelated functions and sectors.
- To ensure a smooth flow of information within government, and between government and communities, with a view to enhancing the implementation of policy and programmes.
- The prevention and resolution of conflicts and disputes.

To date, the development of a framework for intergovernmental relations has focused on the relationship between national and provincial government. The role of local government is being defined as it develops in practice over time. The establishment and recognition of organised local government structures is an important step in ensuring local government representation in intergovernmental processes and forums. In 1998 local government representatives nominated by the South African Local Government Association (Salga) took their place in the National Council of Provinces (NCOP). In the same spirit, there is also need to work towards ensuring that provincial local government associations are accommodated within the legislative processes of provincial governments.

Section 41(2) of the Constitution requires the development of an Act to establish or provide for structures and institutions to promote intergovernmental relations. The Department of Constitutional Development is currently drafting a discussion document to open debate on the question of intergovernmental relations, with a view to initiating discussions around the content of future

47 Ibid.

legislation. The roles and responsibilities of each sphere within a system of intergovernmental relations will become clearer as this process unfolds.

‘Child care facilities’ are expressly referred to as a ‘local government matter’ in Schedule 4, Part B, of the Constitution. These facilities are not defined. Municipalities, in turn, have in terms of section 83(1) of the Local Government: Municipal Structures Act 117 of 1998 the function and power to inter alia provide for and regulate ‘child care facilities’. It is important to note that a cross-reference in Part B to sections 155(6)(a) and (7) of the Constitution indicate that both provincial and national government authorities must monitor and support local government in its involvement with ‘child care facilities’. **It is recommended that national government perform its function as envisaged under section 155(7) of the Constitution by creating national legislation that will oblige local government authorities to provide prevention services, early intervention services and other services which promote the welfare of children.** In the recommendations set out below in this Chapter, specific tasks to be carried out by local government, either directly or by delegation, are indicated.

It is not merely Schedule 4, Part B of the Constitution which obliges local government in a way which is relevant to the provision of services for children. Section 152(1) of the Constitution provides as follows:

The objects of local government are –

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

The aspects of promotion of social development and a safe and healthy environment seem particularly relevant with regard to the role of local government in providing or overseeing prevention and early intervention services for children.

Section 153 of the Constitution provides that:

A municipality must

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.

The needs of vulnerable children for prevention and early intervention services surely fall under ‘the basic needs of the community’ as referred to in section 153(a) above. Provision of such services is surely also promotion of ‘the social...development of the community’ as required in section 153(a).

It may be concluded that the Constitution provides a solid legislative foundation for service provision on behalf of children by local authorities. All that remains is for specific duties to be listed in more detail in additional legislation.

As already mentioned, municipalities have in terms of section 83(1) of the Local Government: Municipal Structures Act 117 of 1998 the functions and powers assigned to them in terms of sections 156 and 229 of the Constitution. This includes the provision and regulation of child care facilities. It is worrisome, however, to note that in the enumeration of the functions and powers of **district** municipalities⁴⁸ in section 84(1) of the Local Government: Municipal Structures Act 117 of 1998, no specific mention is made of ‘child care facilities’. This means that there is no possibility, short of amending the Local Government Act, for municipalities at district level to share such resources.

9.7.3 **Examples of local government initiatives in South Africa in respect of prevention and early intervention services**

⁴⁸ A ‘district municipality’ is defined in section 1 of the Act as a municipality that has municipal and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality.

There have been instances where the perceived urgency of local needs has encouraged or obliged local authorities to plan for or provide social services from which children have benefited. Three examples of such initiatives are referred to below.

- **The 1997 Cape Metropolitan Areas Local Government Policy on Street People**⁴⁹

On 30 April 1997 the Cape Metropolitan Council decided to commit local government resources for the purpose of rehabilitating ‘street people’ with a view to enable their integration into society. Resources have been channelled to NGO’s to permit them to improve and expand the services to street people in the Cape Metropolitan area. In addition, as part of the new policy, it was proposed that each municipal local authority must conduct an investigation in order to identify the needs of street people in its particular area. A second purpose of the investigation was to discover what steps local government could take in order to support service providers in the Cape Metropolitan area.⁵⁰

- **The Gauteng Welfare Relations Act 17 of 1998**

The main object of the Gauteng Welfare Relations Act is the delegation of certain welfare functions to officials in local government. It is stated in section 2 of the Act that decentralisation is necessary in order to provide ‘quality welfare services’. It is also stated that local government needs to participate in the delivery of welfare services and its capacity must therefore be enhanced.⁵¹ The mechanism by which these objects are to be achieved is indicated in section 3. Section 3 empowers the Member of the Executive Council who, at Provincial level, is responsible for welfare and population development. This member may ‘by notice in the Provincial Gazette, delegate any power, function or duty conferred ... by the Social Assistance Act 59 of 1992, except the power to

⁴⁹ The words ‘street people’ are used by the drafters of the Cape Metropolitan Areas policy on street people to include street children: **Street people: Mission statement and recommendations for local authorities in the Cape Metropolitan Area** as cited by Mettler and Loubser **Local government and the provision of child care facilities**, pp. 23-24.

⁵⁰ For further information in regard to this initiative see Mettler and Loubser **Local government and the provision of child care facilities**, pp. 23-25.

⁵¹ Section 2.

make regulations, to officials in the service of local government in the Province'.⁵² In terms of the Act, financial provision for the delegated functions is made by the Provincial Executive Council.

- **Kwa-Zulu Natal**

The North/South Central Health Department in Durban has produced a discussion document on the role of local government in early childhood development (ECD). The document emphasizes the need for local government to ensure to children affordable access to basic infrastructure and services, as well as the establishment of support mechanisms to enable children living in poverty to have access to these services. The document recommends that the services to be provided must be made accessible to children affected by poverty. Amongst the recommendations made in the discussion document are: the imposition of a minimum permissible share of the municipal budget for child development purposes; and the establishment of an inter-sectoral co-ordinating body to plan and monitor child programmes, and the development of a strategic plan.⁵³

9.7.4 Evaluation and recommendation

It might be argued that local authorities should not be directed by national legislation which sets down a single plan to which all local authorities would have to conform. It might be considered that flexibility is required so that local authorities may respond differently to the differing needs of children within their geographical areas. In the 1998 **White Paper on Local Government**, mention was made of the ‘central responsibility of municipalities to work together with local communities to find sustainable ways to meet their needs and improve the quality of their lives’.⁵⁴ A stated objective of the White Paper was to create a framework within which municipalities could develop their own strategies for meeting local needs and promoting the social and economic development of their inhabitants.⁵⁵ However, because of the extreme vulnerability of children who require prevention and early intervention services, this is one area in which at least basic minimum national

⁵³ Mettler and Loubser **Local government and the provision of child care facilities**, p. 30.

⁵⁴ March 1998, p. 17.

⁵⁵ **White Paper on Local Government**, p. 19.

standards must be set.

As the three different examples in 9.7.3 above show, local government authorities in South Africa encounter situations where they, as a matter of urgency, need to provide social services. Services to children in need are an especially important category of social services. With reference specifically to prevention and early intervention services, these, by their very nature, must be quickly administered. There would therefore seem to be good reason for obliging and empowering local authorities to deliver prevention and early intervention services.

In general, the Commission recommends that the new children's statute should empower local authorities to provide certain specified prevention services, early intervention services and programmes to promote the welfare of children.

More specifically, and in addition to the powers and functions a municipality has in terms of sections 156 and 229 of the Constitution and sections 83 and 84 of the Local Government: Municipal Structures Act 117 of 1998, each local authority⁵⁶ should be obliged, in terms of the new children's statute, to:

- (a) safeguard and promote the welfare of children within its area;**
- (b) ensure integrated development planning in respect of child care facilities within its area;**
- (c) keep a register of the total number of children and record their ages, in its area of jurisdiction. The purpose of the register will be to assist in rational and appropriate budget allocations to and by the local authority. It will also be used in planning services for children in the area by government;**
- (d) undertake a needs analysis of children in order to determine the existing needs of children in the area of jurisdiction. Each local government should appoint a task team to determine what it needs to do in respect of the children in its area and to budget for**

56 Whether at municipal or district level.

such services. The analysis must be conducted at least once every three years. A format for the needs analysis should be included in the regulations to the new children's statute.

- (e) keep records in the register of the number of lost or abandoned children, children living on the street, and disabled children within its area of jurisdiction and give assistance to them in order to enable them to grow up with dignity among other children and to develop their potential and self-reliance.⁵⁷ These children within the area of its jurisdiction are the special responsibility of the local authority. The local authority must see that such children have access to basic nutrition, shelter, basic health care services and social services. The latter must include, where appropriate, family tracing and family reunification services for the children;
- (f) maintain a database of all available child care facilities in their area of jurisdiction;
- (g) provide and maintain sufficient and appropriate recreational facilities for the children in its area of jurisdiction;
- (h) ensure the environmental safety of the children in its area of jurisdiction;⁵⁸
- (i) conduct inspections of child care facilities to ensure maintenance of standards. This must occur in terms of a single, national standard set in the regulations of the new children's statute;
- (j) provide for home visiting services to all new-born babies.

All of the above may be provided directly by employees of the local authority and/or delegated to non-employees or non-governmental organisations. Registered non-profit organisations⁵⁹ providing services to children and families must be exempted from payment of property rates. In addition, local authorities should consider entertaining applications for full or partial exemptions from payment of electricity and water tariffs by non-profit organisations providing social services for

⁵⁷ Taken from section 11(5) of the Uganda Children Statute 6 of 1996.

⁵⁸ Points (f) and (g) are in line with the international concept of 'child-friendly cities': see generally Wandile Zwane 'Child-Friendly Cities? Planning for a Young Urban World' (2001) 5 **Children First: A Journal on Issues Affecting Children and Their Carers** 3. However, points (f) and (g) are recommended for rural as well as urban areas.

⁵⁹ As is provided for in the Nonprofit Organisations Act 71 of 1997.

children. Obviously the local government's financial viability is a legitimate factor which can be taken into account in considering such applications. The discretion in regard to exemption from electricity or water tariffs should be used by each local authority as an aspect of its duty to 'safeguard and promote the welfare of children within its area' as indicated under item (a) in the above list of recommendations.

It is recommended that local governments must be enabled to develop 'one-stop centres' for child and family services in their areas of jurisdiction. It is in this context that the omission of any reference to 'child care facilities' in section 84 of the Local Government: Municipal Structures Act 117 of 1998 is regretted as the omission prevents the sharing amongst municipalities of child care facilities at district level. The concept of a one-stop service is a feature of the 1997 White Paper for Social Welfare. The Greater Johannesburg Welfare, Social Service and Development Forum (GJWF) also refer to a one-stop service for children and their families. The implication of this type of service is that residents in a particular neighbourhood should be able to access a range of services housed in one building, for example, a clinic, a recreational centre, an ECD centre, an NGO office, etc. The combination of services will differ in different areas. These centres may be set up in consultation with other role players. In relation to provision of services at the one-stop centre, the local authority might take responsibility for the direct delivery of selected social services, or might allow NGOs, CBOs and / or provincial government structures to deliver services from those premises.

9.8 The Role of Traditional Leaders in the Delivery of Prevention and Early Intervention Services and in Safeguarding and Promoting the Welfare of Children

The Constitution recognises the institution, status and role of traditional leadership, according to customary law, subject to the Constitution.⁶⁰ The Constitution further provides that a traditional authority that observes a system of customary law may function subject to any applicable legislation

60 Section 211(1) of the Constitution, 1996.

and customs.⁶¹ Section 81 of the Local Government: Municipal Structures Act 117 of 1998 gives traditional authorities, through their leaders, direct access to decision-making at local government levels and ensures their participation in local government affairs. Section 81(1) reads as follows:

Traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, . . . in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.

Section 18(1)(f) of the KwaZulu Amakhosi and Iziphakanyiswa Act 9 of 1990 clearly defines as one of the powers of the *amakhosi* or *iziphakanyiswa* to ‘... ensure the protection of life, person and property and the safety of bona fide travellers within his area ...’. Traditional authorities and their leaders can and should therefore play an important role in any preventive and early intervention strategy for children.

The Commission has noted that the White Paper process on Traditional Affairs is underway. In that process the following issues, among others, will be dealt with:

- The structure and role of traditional leadership and institutions.
- Principles relating to remuneration.
- A national audit of traditional leaders.
- The role of women.
- The role of traditional leaders in politics.
- The future role of the Houses and Council of Traditional Leaders.
- The rationalisation of current legislation dealing with traditional leadership and institutions.

⁶¹ Section 211(2) of the Constitution, 1996. See also the KwaZulu Amakhosi and Iziphakanyiswa Act 9 of 1990 which provides for the establishment of tribal, community and regional authorities.

The Department of Justice has indicated its intention to establish community law courts.⁶² These courts will take cognisance of the advantages of customary law courts such as the fact that they are cheap, speedy, informal, conciliatory and accessible. Traditional leadership will enjoy special recognition in the new community law courts which will operate in rural areas.

The Department of Land Affairs is looking at various options of land tenure.

Some of the functions currently exercised by traditional authorities do not overlap with the constitutional functions of local government. Local government does not, for example, lend itself to judicial functions, nor can it speak on traditional affairs or act as the custodian of customs and culture. In some respects, however, the current responsibilities of traditional authorities and municipalities do overlap. This has been a source of tension and has hampered development in certain rural areas.

⁶² See also South African Law Commission **Discussion Paper 82: Traditional Courts and Judicial Functions of Traditional Leaders** (Project 90: Customary Law, May 1999); Wilfried Schärf and Daniel Nina (eds) **The Other Law - Non-state ordering in South Africa** Cape Town: Juta 2001, chapter 3.

The Commission is of the opinion that traditional authorities, through their leaders, have a very important role to play in protecting and promoting the welfare of children living within its jurisdiction. **The Commission believes traditional authorities can best fulfil their role in this regard by participating at the government levels provided for by the Constitution and the Local Government: Municipal Structures Act 117 of 1998.** As far as local government level is concerned, traditional authorities will obviously exert their influence through the local government structures and the recommendations regarding local government made above will therefore also apply to traditional authorities where applicable. This is in line with the challenge identified by the **White Paper on Local Government** to ensure that, in practice, tribal leadership plays a supportive role to municipalities so as to enhance rural governance, development and nation building.⁶³

9.9 Court-Instigated Services

The children's court needs to be part of a coherent strategy for delivering prevention and early intervention services for children. By virtue of its specialization, the court will be an appropriate forum for identifying cases where intensive services are required. It is therefore recommended that where the court decides on a balance of probability that such services provide a reasonable likelihood of avoiding the need to remove a child from his or her current caregiver, it may:⁶⁴

1. Order an emergency, short-term, state-funded financial grant to be paid to the child or her primary caregiver either in a lump sum or in monthly payments over a maximum of four months (the maximum rate of payment will be set in the regulations); and / or
2. Refer the child and / or named family members to an approved family preservation programme. Each provincial government authority must maintain a list of approved family preservation programmes for court-referral purposes. Provincial government may either set up such programmes or outsource them to other appropriate service providers.

63 Section D, par 4.3 of the White Paper on Local Government.

64 For additional court orders, see 23.10.3 below.

9.10 **Conclusion**

It should be evident that it is indeed possible and, in the Commission's opinion appropriate, to legislate on prevention and early intervention services for children and their families.