

## Children's rights to social services

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Section 28 of the South African Constitution entitles children to basic socio-economic rights, including the right to social services. However, this right has to date not been defined by Parliament or the courts, and it is therefore not clear what social services the State must provide to children.

Social services are the responsibility of the Department of Social Development. The right to social services is linked to the right to be protected against abuse and neglect and to the right to grow up in a family or in a family-like environment. As social services have not been defined yet, international law and Constitutional Court jurisprudence on other socio-economic rights must be applied to clarify the meaning of the right to social services.

It is very important to define this right to enable the department to allocate appropriate funds for the delivery of services. The Children's Bill, currently before Parliament, is meant to provide a legislative framework for the delivery of social services. Therefore, a clear definition of such services is needed to check that the Bill fulfils the government's constitutional and international law obligations.

Social services are interventions delivered as part of the social welfare system of a country. There are different types of welfare systems and the type of services made available to citizens is dependant on the type of welfare system that the country has adopted.

During apartheid, South Africa followed a residual approach to social welfare. This means that the involvement of the State in the well-being of citizens was very limited and families and communities were supposed to look after themselves. At the same time, apartheid policies such as the migrant labour system, influx control policies and the relocation of around two million people to the homelands caused massive disruptions in family and community life. The capacity of families and communities to absorb social shocks such as poverty, ill-health or unemployment was therefore extremely limited.

Given this history, a post-apartheid right to social services must speak to these injustices. The welfare system of the democratic South Africa should be 'developmental' because this model is aimed at addressing issues of poverty and marginalisation.

International law stipulates four 'layers' of social services. As a functioning family is best placed to protect children and other vulnerable members against abuse and neglect, developmental social services are in the first place all about protecting the family. There are also other services that directly prevent abuse and neglect. These services are classified as 'preventative services'. Services that protect children from abuse and neglect, such as those provided by social workers and the courts, make up the layer of 'protective services'. Should prevention or protection fail, services must provide for the rehabilitation of the child. These services make up the 'curative layer' of services. The last layer of services is 'special services' aimed at children with special needs.

The Children's Bill provides for some of the 'layers' of social services demanded by international law. However, it does not define the right to social services or the rights of vulnerable children. The Bill furthermore does not adequately define the State's obligations: In many instances it leaves it up to the discretion of the national or provincial ministers as to whether or not provide and fund a particular service. The Bill also lacks a co-ordination structure to ensure that all the different role players do their jobs. Finally, the Bill does not provide for affordable remedies because important court interventions are placed with the High Court, which many people cannot afford.

There is no denying that the Children's Bill is providing the country with a great opportunity to realise children's rights. However, if these shortcomings are not addressed, the resulting law will not be effective in realising children's right to social services.

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The Children's Institute, University of Cape Town, aims to contribute to policies, laws and interventions, that promote equality and realise the rights and improve the conditions of all children in South Africa, through research, advocacy, education and technical support.

