

**THE STATUS OF CHILD ABUSE AND NEGLECT POLICY AND CHILD
PROTECTION PRACTICE IN SOUTH AFRICA**
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Introduction

The advent of democracy in South Africa in 1994 has resulted in numerous law and policy reform initiatives, especially in the field of child protection. The change of government and the inclusion of all communities and cultures in elections and government resulted in the flagging of the needs of vast numbers of children, who up until the present African National Congress took power, were marginalised to the point of near invisibility.

However the pressure to move towards a democratic system of government that was inclusive of every citizen in South Africa was not without cost. The new government had to face vast areas of deep poverty, further exacerbated by international apartheid linked economic sanctions, national debt, and labour unrest. Furthermore the majority of South Africa's youth grew up in communities in which family and community life was disrupted by pass laws, which separated parents from children as mobility was restricted (a mother or father who found work in the city would be unlikely to be able to move with the family) and political violence. Post apartheid these disruption have contributed to high crime levels involving both economic crimes as well as crimes against the person.

Furthermore the HIV/AIDS pandemic which mushroomed in the post-apartheid era has further compromised community and family life and particularly impacted on the lives and well being of children. Within this context, research has shown that children are particularly vulnerable to victimisation with regard to every type of crime. (www.cpcj.org.za) including all forms of abuse and neglect. With 16% of South Africa's population infected with HIV/AIDS and the slow roll out of ARV's, levels of orphanhood are high¹

Law and Policy Reform:

1. **International Conventions and Protocols:** With the change in government, South Africa signed and ratified numerous Conventions and Protocols during the decade after the change of government. These included (among others)
 - the Convention on the Rights of the Child
 - the African Charter on the Rights and Welfare of the Child.

Having signed these Conventions Government then embarked on a process of domestic law reform in order to bring domestic legislation in line with these international commitments, as well as to try and ensure an equal dispensation to all the country's children. However reporting on implementation progress to the committees that monitor compliance with these conventions has been somewhat slow;

¹ At present it is estimated that over 1 000 000 children have lost both parents to the pandemic and a further 2 000 000 children have lost one parent – Barberton and others: The Costing of the Children's Bill, 2006.

South Africa has never submitted a report to the African Committee on the Rights of the Child and is several years behind in its reporting to the UN Committee on the Rights of the Child.

2. **The National Constitution:** The Constitution of South Africa is regarded as one of the most progressive in the world and has in it a specific clause protecting the rights of children. This clause was inserted as a result of active lobbying on the part of the Child Rights NGO's inclusive of SASPCAN (ISPCAN's national partner in SA) and Childline SA.²
3. **The White Paper on Welfare** was developed as the guiding policy for all welfare provisions in South Africa and highlighted in particular the status of children and the need to adopt a preventive and developmental approach to the well-being of children.
4. **The Children's Act:** This legislation deals with giving effect to the rights of children as well as to addressing provision for the basic developmental and protection needs of children. The Act, passed in two sections, has a strong focus on the protection and development of the family as first line of protection and development of children. This law is at present only partially in force, as regulations have to be finalised. Although drafted the regulations still have to go through both a parliamentary and public comment process and it is envisaged that the legislation will only fully implemented in October 2008.

The legislation was costed before it was passed by Parliament. The costing process revealed several concerning issues relating to children:

- the **impact of the HIV/AIDS pandemic** on children is vast – both in terms of numbers of orphans and infected children as well as exacerbated by the already existing challenges that children face in South Africa. These include high levels

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Section 28 of the Bill of Human Rights

- This clause acknowledges the most basic rights of children in South Africa and states that every child has the right –
- to a name and a nationality from birth;
- to family care or parental care, or to appropriate alternative care when removed from the family environment;
- to basic nutrition, shelter, basic health care services and social services;
- to be protected from maltreatment, neglect, abuse or degradation;
- to be protected from exploitative labour practices;
- not to be required or permitted to perform work or provide services that – i. are inappropriate for a person of that child's age; or ii. Place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- not to be detained except as a measure of last resort, in which case,the child may be detained only for the shortest and appropriate period of time
- not to be used directly in armed conflict, and to be protected in times of armed conflict.

of poverty, high levels of growth stunting due to malnutrition, high levels of violent crime, especially sexual crime perpetrated against children and poor levels of existing service delivery.

- The lack of qualified personnel to implement the Children's Act, particularly in the Social Services Professions. The shortage of social workers and health professionals in South Africa has been intensified by emigration and the active recruitment of professional staff from South Africa by countries such as the United Kingdom.

The legislation is not without considerable controversy. Provisions that give early teenage children access to health care, contraception and HIV/AIDS testing without parental consent, the proscription of performing certain potentially harmful cultural practices on young children have been broadly and hotly debated and are strongly contested by some groups and individuals throughout the country.

5. **The Criminal Law (Sexual Offences and Related Matters) Amendment Act** was passed in 2007. The Act codifies criminal sexual acts against children and has strong provisions against child prostitution. However the protections for the child witness as s/he progresses through the Criminal Justice System are weak and many role players believe that the procedural provisions for the management of Sexual Offences do little to contribute to the safety and protection of the child witness.

Both the Children's Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act contain provisions for registers of offenders who commit offences against children. These registers are confidential and aimed at preventing the employment of those who have committed offences against children to work with children in any capacity – either as a paid or volunteer worker. The issue of dual (and almost identical) registers developed and administered by different state departments has caused concern and a lobby is developing in South Africa to ensure synthesis of the registers in order to avoid the wastage of scarce resources.

6. **The Child Justice Bill** is presently being debated in Parliament. This legislation seeks to provide care, rehabilitation and protection for children who are in conflict with the law. The Bill is regarded as progressive and has a strong restorative justice focus, in that it will divert many children who acknowledge criminal behaviour away from the Criminal Justice System into rehabilitation and restorative justice programmes. The Bill also proposes the raising of the age of irrefutable criminal incapacity to 10 years. However many child rights lobbyists are strongly recommending that this be increased to 12 years.

Delays in finalising this legislation have created great frustration among those who work with children. Work on law reform in child justice began in 1996.

South Africa has high levels of crime committed by children, particularly sexual crimes, and high levels of abuse of children in prison and secure care facilities for children.

7. **The National Strategy for Child Protection:** This policy document has also gone through a lengthy process of development with work beginning in 1996. The strategy has gone through numerous re-drafts, and delays have been influenced by political factors, as well as a lack of capacity in the responsible government department. However the policy, which provides for child protection principles, protocols and systems, is presently being costed both at national and provincial government level.
8. **Grants and feeding programmes:** South Africa has, through its social security legislation, established a social security system for children who live in poverty. The amount is very small and certainly does not cover the needs of children, however it does contribute to food security for the poorest of the poor children. The grant does not extend throughout the entire childhood of the child and once a child reaches the age of 14 years (to be increased in 2009 to 15 years) the child support grant falls away. An active lobby exists in the country to persuade government to extend the grant through childhood to age 18 years. Enormous concern has been expressed by the National Minister of Education and others about the school drop out rate at age 14/15 years, high levels of teenage pregnancy and the involvement, particularly of girl children, in transactional sex in order to survive.

School feeding programmes have also been instituted in schools in areas characterised by poverty. However once again the school feeding programmes are being implemented at primary school level, which excludes older children, and concerns have been expressed about the high levels of corruption that characterise these schemes.

9. Other legislation that contributes to the care and protection of children include (inter alia)
 - legislation that deals with the creation, use of children for and the distribution of child pornography and the exposure of children to all forms of pornography. These crimes are presently heavily penalised in South Africa but few convictions and successful investigations occur.
 - Labour legislation that protects children from exploitation via all forms of labour up until the age of 15 years and all forms of potential harmful and dangerous labour between the ages of 15 and 18 years.
 - Legislation that deals with the school environment, corporal punishment in school, the exclusion of children from school on the basis of poverty related issues, etc.
 - Family law that protects children in situations of divorce, separation, and in access and custody disputes.
 - Legislation that deal with family violence.

- Legislation that deals with the maintenance of children and the functioning of the maintenance system.

Implementation challenges and issues

1. **Political will** is problematic – although there is much “speak” about the rights of children and legislation is fairly progressive, little attention is paid to implementation of child protection legislation, and social services to children and families remain under-funded and undervalued.
2. **Resources** – the drain of human resources in the health and social service professions has already been mentioned and will severely compromise the implementation of the recently passed Children’s Act and its Amendment. To deal with this the government has developed a staff retention strategy that at present applies to staff in state employment but has not been extended to staff in the private/civil Society sector. Added to this is the lack of expertise in many parts of the state service; the fact that employees offering social services are in scarce supply and are often poorly mentored and monitored, and frequently promoted to higher level positions without sufficient experience and training for such positions. Service delivery by the state is thus often assessed as inadequate and poor and sometimes clients will refuse referral to state services.
3. Funding remains an ongoing challenge – not only because of a lack of resources in the National Treasury but also because within government departments that provide social services there is a lack of expertise and experience in the costing of services, the development of budgets and appropriate spending of such budgets. Contracting out – even state obligated services – to Non-government Organisations is only partial and “subsidies” and “financial awards” by the state often divert civil society time away from service provision to time consuming fundraising in order to make up the serious shortfalls in income. As NGO’s are unable to match the salaries offered to government social service professionals, there is a constant movement of trained staff from NGO’s to government employ, thus necessitating constant baseline training in child protection and diverting service delivery budgets into extensive and continuous training and staff support.
4. Corruption remains problematic, particularly in the social security system. South Africa’s National Minister of Social Development made a statement in 2007 to the effect that if everyone in the social security sector who had been involved in grant corruption was fired, the system would collapse. Apart from this, money “legitimately” spent by government is often wasted on high cost meetings at high cost venues. A recent meeting (March 2008) of the Office on the Rights of the Child in the National Presidency was held at the most expensive Casino venue in the country.
5. **Tensions between the NGO sector and government** are variable. Government has begun to accept that the delivery of child protection services necessitates

partnerships with NGO's. However the system of partial funding, salary discrepancies and other issues cause deep tensions and civil society organisations' role as the monitor of how government is doing is rejected. Feedback that is not positive is sometimes perceived and received as a rejection of the new democratic dispensation and transformation in the country. Despite this, NGO's have been a powerful force in shaping the new legislation for the protection and care of children.

6. **International funding** has tailed off or comes with complex strings attached. Many international donors channel their donations through government believing that this funding will be distributed to those providing services in child protection. A further challenge has been the diversion of funding relating to children into HIV/AIDS related issues to the exclusion of child protection, without recognition of the links between child protection and the pandemic.

It is of note that the UN Convention on Rights of the Child and the African Charter on the Rights of the Child have been used as guiding international policies for the development and transformation of law and policy relating to children in South Africa. Our commitment to these international treaties has been used as a compelling force to analysis the development process and the content of the law against these documents.

The World Health Organisation Guidelines on Child Maltreatment have not been extensively used in the development of law and policy, probably because the law and policy reform processes in South Africa began before the finalisation of these guidelines. The South African Society for the Prevention of Child Abuse and Neglect, the National Partner of ISPCAN, has been a strong participant in the development of these provisions, especially in the National Strategy for Child Protection.

However the greatest challenge lies ahead. Good law and policy is only as effective as its implementation. Planning for implementation and improved partnerships between the NGO and Government Sectors has been initiated.

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