Investing in Children

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NATIONAL COUNCIL OF PROVINCES

CHILD RIGHTS SEMINAR REPORT 2012
ACRONYMS AND ABBREVIATIONS

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<td>ARV</td>
<td>Antiretroviral</td>
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<td>CSG</td>
<td>Child Support Grant</td>
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<td>DSD</td>
<td>Department of Social Development</td>
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<td>ECD</td>
<td>Early Childhood Development</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>Member of the Provincial Legislature</td>
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<td>National Plan of Action for Children</td>
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<td>South African Integrated Nutrition Programme</td>
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Honourable Memela, Deputy Chairperson of the NCOP, joined children to hear their views prior to the NCOP Children’s Seminar.
On the 31st of May and 1st of June 2012, Members of Parliament and Provincial Legislatures converged on Parliament for a seminar on Child Rights organised by the National Council of Provinces (NCOP) in collaboration with the United Nations Children’s Fund (UNICEF). The theme of the Child Rights Seminar was “Investing in Children”. This was the first gathering of its kind organised by the NCOP, with representatives from all nine Provincial Legislatures. Academics and social activists presented delegates with information on a variety of issues affecting children. The commitment of the NCOP in dealing with issues affecting children was demonstrated in the speeches by the Chairperson and Deputy Chairperson’s of the NCOP, as well as deliberations and resolutions taken at the end of the seminar.

In 2012, the NCOP celebrates 15 years since its establishment as a House of Parliament in 1997. Under the leadership and stewardship of Honourable MJ Mahlangu and Honourable T Memela, it hosted a Child Rights Seminar on the 31st of May and 1st of June 2012 in Parliament. The hosting of the Child Rights Seminar was part of other activities planned for the NCOP’s 15 year celebrations. In celebrating the 15 years of existence, it partnered with UNICEF South Africa to ensure the successful presentation of the seminar. The seminar recognised, amongst others, the important role that Parliament plays in advocating for the rights of the children.

The seminar brought together delegates from Parliament, Provincial Legislatures, non-governmental organisations (NGOs), children, government officials and academics to debate and reflect on a variety of topics concerning children. It also provided Members of Parliament and Provincial Legislatures with information that will strengthen their work to promote, protect and fulfil the rights of children. Various speakers were invited to shed light on some of the issues affecting children.

The purpose of the seminar was to bring representatives from the legislative sector (Parliament and Provincial Legislatures) together to examine issues affecting South African children. The seminar was also designed to stimulate critical debates on child rights and other issues affecting children.
There is a plethora of evidence that support the long held belief that investing in children contributes to the future wellbeing, development and welfare of the country. It is therefore essential that the status of the implementation of child rights and the general wellbeing of children in the country be debated. Such debates will not only stimulate and enhance a deeper understanding of the critical issues, but will also assist in refocused thinking about how to address the social issues affecting children.

Children’s experiences of the implementation of their rights vary across the country and often differ between and within provinces. The Bill of Rights in the South African Constitution provides for children’s civil and political rights and freedoms as well as their social, economic and cultural rights, with a special provision contained in section 28 which provides children with additional rights to address their special needs and vulnerabilities.

Children’s own voices and inputs are important in order to understand their situation better and give effect to the realisation of their rights. Therefore, the seminar also gave a voice to many children of this country, advocated for their rights and thereby focused on the improvement of their quality of life.

Parliament in particular has a critical and constitutional role to play in ensuring investment in the rights of children. It can do so in a number of ways: by stimulating further debates and influencing policies and programmes aimed at enhancing the social conditions of all children; directly through the legislative process, the budget, oversight and representing the interest of children; and indirectly by increasing levels of awareness through facilitating debates in Parliamentary committees and the House. Thus, the seminar was directed at Members of Parliament (MPs) in both Houses of Parliament.

The NCOP, under the stewardship of Honourable MJ Mahlangu and Honourable TC Memela organised a Child Rights Seminar entitled “Investing in Children”. The seminar was conceptualised in order to inform and educate the MPs (mainly the NCOP and National Assembly (NA)) and Members of Provincial Legislatures about the situation and rights of children; and to stimulate debates and enable NCOP committees to act consciously on issues affecting South African children.

The overall objectives of this report are to:

- Report on the proceedings of the seminar
- Present key issues emanating from the seminar for future consideration by NCOP committees
- Enable the NCOP Presidium to determine ways to implement and monitor implementation of the resolutions of the seminar by NCOP committees.

In organising and hosting the seminar, Parliament collaborated with UNICEF which provided technical support towards the seminar; assisted with the process of ensuring that the voices of children are included and shared in the seminar; and assisted with the production of a resource book for MPs based on the presentations made by various invited speakers.
The aims of the seminar were to:

- Promote and protect the rights of the children
- Contribute towards the “creation of legacy” for the fourth Parliament.
- Specific objectives of the seminar were to:
  - Stimulate debates on issues pertaining to children by organising and presenting a seminar entitled “Investing in children”
  - Encourage and promote a holistic approach to legislation on diverse issues affecting children
  - Produce a publication entitled “Investing in Children: Some Critical Debates in South Africa”.
Structure of the seminar

The seminar was structured in such a way that it allowed the NCOP Presidium a leading role in determining the rationale for the seminar and outlining pertinent issues affecting children.

Giving children a voice was uppermost in the minds of the NCOP Presidium and organisers. Consequently, activities were organised to ensure that the voices of the children were heard.

First, they were engaged through workshops in all nine provinces. Children were required to give messages to MPs on issues affecting them. These were done through drawings, actual messages and a recording of the voice of a child who related a story of his/her hardship growing up in a poor family/home.

Second, children were invited to the seminar and assumed their slot in the first day. Three learners from local schools, including a school for children with physical disabilities, read messages based on the workshops they attended prior to the seminar.

The UNICEF Country Representative, Ms Aida Girma, reflected on the importance of Parliament in the realisation of children’s rights. Minister Lulu Xingwana, Minister of Women, Children and People with Disabilities, represented government’s Executive and delivered a keynote address spelling out achievements and challenges in fulfilling the constitutional mandate on the promotion, protection and fulfilment of the rights of children and highlighted programmes put in place in response to this constitutional obligation.

Speakers from the academic and non-governmental sectors, each with different interests in the field of children’s rights, delivered speeches according their expertise. Their messages outlined scientific research findings which reflected challenges and policy issues to consider in endeavours to protect and promote children’s rights.

The seminar concluded with the drawing up of resolutions that will guide future work in this arena of children’s rights protection and promotion. These resolutions are meant to guide the work of the NCOP and its committees, and their implementation will be monitored.

Three learners from local schools including a school for children with physical disabilities read messages, based on the workshops they attended prior to the seminar to the audience.
I am delighted to stand here this afternoon to welcome you to the Child Rights Seminar organised by the NCOP in partnership with UNICEF.

It is fitting that we hold this seminar during Child Protection Week, which is held under the theme “Working Together to Protect Children”. As former President Nelson Mandela said, “We owe our children, the most vulnerable citizens in our society, a life free of violence and fear”.

As we normally say, children must be seen and not hurt.

On behalf of the NCOP I would like to extend a warm welcome to all of you. We thank you for responding positively to our call to gather here over the two days to ponder the question: How best do we invest in our children?

I wish to welcome in particular the Minister for ensuring that she is with us during this occasion. We support you in the leading role you are playing, Minister, towards ensuring that our children enjoy their rights.

I wish to extend a similar word of welcome to Ms Girma, the head of UNICEF in South Africa, for the enduring partnership with Parliament. Without your support we would not have been able to cover much ground. Over the years UNICEF has assisted the process of capacity building and sharing of experiences in support of the work of parliamentarians.

Allow me to also welcome in particular our presenters from civil society and NGOs, as well as some of the people who spend most of their lives dealing with matters that affect our children. We are looking forward to hearing your insights.

We are happy to have among us children (abazukulwana) from schools and care centres around Cape Town. They represent many children we have interacted with in the province in the form of workshops, when we were preparing for this seminar. Today they have a particular mandate of conveying a message on behalf of children across South Africa. Provincial Legislatures held similar workshops where they educated children about Parliament, as well as asking them to put together messages which would be shared with delegates at this seminar.

We will follow up any issues they feel that we as public representatives should take up.

We convene at a very difficult time when, almost every day in the media, we read about the abuse of, and violence towards young children. A number of our children are brutally assaulted by their parents, relatives or people they have come to trust. Their self-worth is thus violated at early stages of development, leaving them severely traumatised.

When we read or hear about the news of child abuse, we are left wondering, and asking the question: What is wrong in our country?

However, in spite of the doom and gloom we are also happy to observe that a number of our children are growing up in a better South Africa. They are growing up in a society where they are not discriminated against on the basis of their background or on the basis of who they are. Where, to quote Rev. Martin Luther King Jnr, “they are judged by the content of their character”. Amidst the challenges, this is a positive story of our 18-year-old democracy. It is a story of hope.

Nonetheless, there is still a lot of work that needs to be done.

Among many things we can do, we need to bring back the notion that a child belongs to, and is a product of, a community. The notion of community is a uniquely African way of supporting families and raising children. Unfortunately, we seem to have abandoned it and as a result we are grappling to address the challenges that confront our children.
To assist us in finding better ways and means of investing in our children for the future of our country, we have identified certain themes to guide our engagements. For example, we will be talking about:

1. Children and maternal health
2. The role of the NGO sector and other partners
3. How to deal with children at risk
4. Children and the law
5. Child justice

These are merely topics to guide our discussions. Otherwise, we want an open sharing of experiences and insights to empower us to conduct oversight and to make the necessary interventions in the interest of the future of our country.

You are aware that the seminar is taking place at a time when Parliament is amending the Sexual Offences Act to address legal uncertainty occasioned by a high court judgement which rendered several sexual offences unpunishable due to lack of penalty clauses.

Clearly, we need collective wisdom to guide us in our efforts to guarantee our children, who are “the most vulnerable citizens in our society, a life free of violence and fear”.

It is thus important to use this seminar as a turning point towards harnessing our knowledge and skills in the interest of the common good.

2. Scene-setting message by the Chairperson of the NCOP, Honourable Mninwa Johannes Mahlangu

Earlier this year, at the strategic planning session organised by the NCOP, the representatives of national, provincial and organised local government supported the proposal to host the Child Rights Seminar as part of the programme to mark the 15 years of the existence of the NCOP. This was in recognition of the importance of children in our society and the need to invest in their wellbeing.

The proposal was in pursuance of one of the four goals outlined in the NCOP Strategic Framework Plan, at the beginning of the fourth Parliament in 2009, which is:

“To initiate and implement programmes aimed at assisting the vulnerable groups in society by ensuring that the NCOP plays its role towards building a Parliament that is responsive to the needs of the electorate.”

The above objective, which informed the development of the strategic plan document for the fourth Parliament, was our response to the need to build a caring society. Children are the most vulnerable in many societies. This is despite the fact that, in our case, the Constitution guarantees them the right to family care or parental care, or to appropriate alternative care when removed from the family environment.

It is our responsibility as parents, especially those of us who are also public representatives, to ensure that our children enjoy their rights in our democracy. Doing so is an important intervention towards creating a better future for our country.

It is a universally accepted principle that parents or legal guardians of a child, assisted by the state, have the responsibility to look after the welfare of the child.

Article 18 (1) of the Convention on the Rights of the Child provides as follows:

“States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians...
have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their concern.”

However, despite the existence of our national and international instruments to protect the rights of children, we still find our children being exposed to some of the worst social ills. The challenges that require our attention in this regard include:

1. Abuse of, and violence that is meted out to children
2. Poverty
3. Lack of access to early childhood development (it is a known fact that the early years are the most critical foundational years in the development of a human being)
4. Lack of proper recreational facilities (this forces children into experimenting with life-threatening substances such as drugs)
5. Parenting skills (raising children requires good parenting skills which are often lacking among the family or parents)
6. Influence of the changing environment and technology (to many children Tweeting has replaced normal conversation and parents need to be better equipped to raise children in the context of the fast-changing world of technology).

I trust that this seminar will reflect on these challenges, and more, as well as what we need to do, or are doing as a society to address them.

I must, however, point out that when we talk about the rights of the child, we should be clear that they do not limit the rights of parents. Parents are responsible for the upbringing and development of the child, and children are responsible for performing certain tasks in order to be able to realise a better future. The role of the state is to support the family by ensuring access to the necessary services.

Against this background, the purpose of this seminar is clearly:

- To provide an opportunity for key stakeholders in Parliament, Cabinet, Provincial Legislatures, organised local government and civil society to deliberate on what is required to better invest in the future of South Africa’s children
- To share information on the status of children, particularly those from impoverished communities
- To identify models of best practice in service delivery to children and in addressing their needs
- To identify the key obstacles/challenges in giving effect to children’s rights
- To identify priority areas of action.

Towards achieving this, we are happy that in the run-up to this seminar we had the opportunity to canvass the views of children. It is important for us as a House of Parliament to provide space for the voices of children to also be heard. I would like to thank the Provincial Legislatures for ensuring that the child participation programme succeeded, as well as UNICEF for technical support.

Child participation is viewed as an ongoing process of children’s expression and active involvement in decision-making at different levels in matters that concern them. As Presiding Officers, we would like the delegates at this seminar to listen carefully to the views expressed by the children of our country.

We intend expanding this programme of child participation from next year in order to further reach out to communities that are worst affected through involving municipalities.

At the end of this seminar tomorrow, we must have a clear programme for taking up the issues that shall have been brought to us. The NCOP, and in particular the committees dealing with key child-related challenges, will need to devise a multi-sectoral approach to ensure that as public representatives and civil society we work together to promote the rights of children.

I would like to see, for instance, the Select Committee on Women, Children and People with Disabilities developing an oversight programme on specific interventions, working together with Select Committees for Social Services, Education and Recreation. They must link up with their counterparts in the National Assembly.

When dealing with important matters, such as the promotion of child rights and the protection of our children, it is important that both Houses of Parliament work together given their different areas of emphasis. Provincial Legislatures are critical in raising issues that impact on the realisation of these rights, while municipalities are central to the creation of a child-friendly environment.

Our collective interventions could serve as part of the legacy of the fourth Parliament in protecting and promoting the rights of children.

I have checked the statistics. About half of all children in South Africa live in three of the nine provinces: KwaZulu-Natal (23%), Eastern Cape (14%) and Limpopo (12%). These are the most rural provinces. This may guide the nature of our interventions, especially in view of the fact that generally our interventions in the NCOP are designed
to target the “back of the beyond”. A further 18% of children live in Gauteng and 10% in the Western Cape. In total, 77% of South Africa’s children are in five of the nine provinces.

The NCOP, Provincial Legislatures and South African Local Government Association (SALGA), have been conducting joint business review and strategic planning sessions since the beginning of this term of Parliament. This is important for purposes of co-ordinating our activities and for promoting adherence to the principles of co-operative government and good intergovernmental relations enshrined in our Constitution.

These annual review and strategic planning meetings will provide an important opportunity for feedback on how we are taking issues emanating from this seminar forward. So we already have an existing joint mechanism where committees can give feedback on their interventions, besides regular reporting to the House.

In this regard Members of the NCOP, Provincial Legislatures and representatives of SALGA need to ensure that when we reflect on our business as a matter of established practice, that we also reflect on the extent to which we are making South Africa a better place to live for our children.

Our children are the future. Investing in them is investing in our future. There is no self-respecting nation that will ignore a call to invest in children.

I am honoured to have been invited to deliver this keynote address at a seminar that focuses on a matter that is so close to our hearts. Investing in children is an investment in the future of our country.

Former President, Nelson Mandela said: “Our children are the rock on which our future will be built, our greatest asset as a nation. They will be the leaders of our country, the creators of our wealth, those who care for and protect our people.”

The Children’s Rights and Responsibility agenda is informed by this vision, as affirmed in our Constitution and by the international and regional treaties that we have signed namely, the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child.

Chairperson, distinguished guests, the timing of this seminar coincides with two auspicious activities dedicated to our children. The Child Protection Week (27 May to 3 June) as launched by the President in Galeshewe and International Children’s Day that takes place on the 1st of June (that is tomorrow).

This seminar, like all the activities South Africa has been engaged on since Sunday, marks a very crucial process. This is the time where the country escalates its effort toward protecting children. We all know that child protection is a ‘365 days activity’ and should be prioritised by parents, institutions, communities, children and government as the custodian of children’s rights.

The theme of this seminar is “investing in children”. Before I can even indulge on this theme, I need to remind all of us that we need to appreciate our children. Children are our precious gifts from God. We need to love them, nurture them and protect them against any form of harm.

Since Sunday several activities have been unfolding, spearheaded by various departments, civil society and business to create awareness around Child Protection week. Our society is concerned about the level of violence, abuse and neglect directed at children. Children are victims of sexual violence and killings and suffer all this at the hand of those who are supposed to protect them (their parents, teachers, caregivers etc.).
The recent spate of sexual violence against children, especially children with disabilities, is disturbing. Perpetrators of these violent activities target children with disabilities, taking advantage of their vulnerability. Where are those basic values of love, protection and care?

South Africa has a very good legislative framework. Section 28 of the Constitution articulates the rights of children. These rights include the right to be protected from maltreatment, neglect, abuse and degradation. It enshrines, among other things, children’s right to shelter, education, medical and health services, the right to food and a name. Children also enjoy other rights enjoyed by all others such as the right to dignity, freedom and security which include the right to be free of violence and the right to equality.

There is no doubt that the Constitution of South Africa elaborates and escalates the “best interest of the child.” Child participation is very fundamental to the South African constitution as children are required to participate in decisions that affect them. Children have a right to take part in public issues and to be heard on issues that affect their life. This right to participation is also enshrined in the international human rights treaties, such as the UNCRC. As children enjoy these constitutional rights, they need to understand that rights go with responsibilities. You cannot enjoy rights if you do not have a responsibility to protect the rights of others.

The Child Care Act and the Child Justice Act are all good pieces of legislation directed at protecting the rights of children. By protecting the rights of children, as a country we are already investing on our children. The government of South Africa has put together a number of key government programmes, listed below, to invest in the lives of children.

**Early Childhood Development (ECD) programme:**
Every child has the right to the best possible start in life. The first years of human development are very crucial to influence the future that is positive and successful. Research has indicated that the first 1,000 days of the child’s life have been identified as laying a foundation for successful development. Children who then attend ECD services and get enough stimulation during the first few years of life (0-4) turn to attain better academic scores later than the child who has not attended ECD services.

South Africa has achieved significantly as far as ECD services are concerned. The country has moved from 330,000 enrolments in 2003 to 707,000 in 2010 enrolment for grade R. Finding learner support and equipping teachers of grade R learners has improved greatly.

As a department, we continue to provide institutional support to the ECD sector in collaboration with the departments of Social Development, Basic Education and Health. We are also working with the Department of Basic Education on the advocacy campaign on access to inclusive quality education, retention and preventing children dropping out. We also advocate for strengthening the role of social workers in schools towards achieving quality education.

**Access to education for all:** Access to education for all children under the age of 16 years is a fundamental right and it is enshrined within section 28 of the Constitution. Although remarkable strides have been made in this regard, many children remain out of school due to lack of money, disability and other reasons beyond their control. Our access to education campaign addresses these fundamental constraints and ensures that all children attend school.

**Government attaches great value to education because we believe that with education the majority of society can be emancipated from poverty and unemployment.**
Children who live in families affected by unemployment and poverty are given an opportunity to access education in ‘no fee schools’. Eight million children from disadvantaged families attend schools and access education for free. If you take the child to school, you can already count on return on investment that such a child will be economically independent. If you fail to take a person to school, you will then have to maintain that person for the rest of his/her life.

In December 2011, we launched the Techno-girl project which seeks to change the face of the South African job market where there is lack of significant representation of women in the professional and scientific professions. The project encourages girl-children to pursue fields in Science, Maths, Engineering and Technology where women have historically been under-represented.

The department believes that promoting access to educational opportunities and skills development is key to addressing the socio-economic conditions of women in the long-term. By launching this critical project, we seek to expose girls, through job shadowing, to the world of work and to increase the knowledge of girls on the careers that they are exposed to.

We are confident that as a result of this intervention we will see a significant increase in the number of girl-children who enrol for Science, Maths, Engineering and Technology at tertiary institutions. We will certainly see an increasing number of girl-children participating in job shadowing programmes with private sector companies which will lead to a long-term improvement in the representation of women in the scientific professions.

**Nutrition:** Research and studies indicated that with good nutrition the country can save much on medical costs. Proper nutrition is key to facilitate good health and active and physically vibrant children. The government...
has initiated several initiatives from health institution, at identified schools as well as at various family settings (homes) to improve the nutrition status of families who are in distress.

Addressing nutritional needs during the first 1 000 days of a child’s life is imperative if we are to reap the benefits of good health and development. These 1 000 days include the 270 days of the woman’s pregnancy and the first two years of the infant’s life. Nutritional support programmes, in addition to antiretroviral (ARV) interventions, remain vital. This programme has contributed to the successful reduction of mother-to-child transmission of HIV by 50%.

In pursuit of child survival, we have signed a memorandum of understanding (MOU) with the Department of Health and will continue to support the interventions on maternal and child health care services.

Building and strengthening the family unit: It is evident that as a society we have lost our moral fibre. Our society has gone astray and the children are no longer safe in their homes and in their communities. In partnership with various departments there is a need to revive family units and to strengthen families. The Department of Social Development (DSD) has developed a family policy and we all need to work together to ensure that the family become the centre for inculcating social values to children.

If we promote the values of love, care, support and caring for each other, as well as sharing, then we can speak of the real social investment where we will in future have good citizens.

Child Support Grant (CSG): Research has found that adolescents in South Africa face a vast array of serious risks, the greatest of which involve transactional sexual relationships, where girls date older men in order to obtain cash, food, clothing, gifts and transport. This places them at the risk of dropping out of school, pregnancy and HIV and AIDS. Analysis of adolescent risky behaviours, as evidenced in the Impact Assessment of the Child Support Grant by (DSD, UNICEF and the South African Social Security Agency (SASSA)) indicated that the CSG has the potential of reducing six main risky behaviours - sexual activity, pregnancy, alcohol use, drug use, criminal activity and gang membership.

The results of this study confirm the positive developmental impact of the CSG in promoting nutritional, educational and health outcomes for millions of children in South Africa. Early receipt significantly strengthens a number of these important impacts, providing an investment in people that reduces poverty, promotes development outcomes and reduces vulnerability. The study also found that adolescents receiving the CSG are more likely to have positive educational outcomes, are less likely to resort to child labour, and are significantly less likely to engage in behaviours that put their health and wellbeing at serious risk.

These results convey several key messages for us:

- The CSG generates positive developmental impacts reducing vulnerability; and promotes long-term developmental changes, helping to break the intergenerational transmission of poverty.
- Early enrolment in the CSG programme substantially strengthens its impacts. Early receipt (from birth) of the CSG generates particularly powerful impacts that strengthen human capabilities and enable children to grow up with a lower risk of being trapped by poverty.
- Promoting continuous access to the CSG for eligible children during adolescence, as opposed to interruptions in the benefits, reinforces the positive impacts.
- Measures that promote early and continuous receipt of the CSG will more effectively protect children’s rights and contribute to human capital development, helping to lift children on development pathways out of poverty.

Sanitary dignity campaign: We will also intensify our sanitary dignity campaign in partnership with the Departments of Basic Education, Health, Correctional Services and Social Development to ensure that all indigent girls and women have access to sanitary towels to preserve their dignity.

School going children who cannot afford sanitary towels miss up to 50 days of school per year as they have to stay at home until the cycle is over. The provision of sanitary towels helps to promote access to education for school going age girls.

National Plan of Action for Children (NPAC): This year we will engage children, consult parents, communities and civil society on challenges, gaps and opportunities to scale up an integrated response to our commitments. As signatories to the UNCRC we are required to develop a National Plan of Action for children. In this regard, the draft NPAC is available for public consultations with national departments, provinces, municipalities and various sectors.

I look forward to your inputs as we seek to strengthen its content which will serve as a blueprint for the children’s agenda in our country.
I am pleased to join you as you deliberate on the progress made in the realisation of child rights in South Africa, and commemorate this year’s Child Protection Week.

South Africa ratified the UNCRC in 1995. The rights of children are entrenched in, and protected by, the Bill of Rights in the country’s Constitution.

Members of Parliament and the Provincial Legislatures can, and should be, among the foremost champions of children’s rights. You can legislate, oversee government programmes for children, and allocate financial resources. As leaders within your nations and communities, you can raise awareness of issues affecting children and advocate for change.

Significant advancement has been made towards the progressive realisation of child rights in the past 18 years. Close to 11 million children are receiving CSGs and there is now strong evidence that the programme is making a difference in the lives of children.

In addition, more than eight million children attend school without paying fees as part of the ‘no fee schools’ initiative and are reached with the school nutrition programme.

Similarly, access to early childhood development services has improved over the past decade, and enrolment in grade R increased from 15% in 1999 to 77% in 2010.

Significant strides have been made to reverse the spread of HIV and AIDS. A recent study shows that the national mother-to-child HIV transmission rate fell to 3.5% in 2010, indicating that the national programme on the prevention of mother-to-child transmission of HIV is working.

These are tangible examples that make a difference in the lives of millions of children and their families.

Yet, progress happens in the context of deep-seated inequities in child wellbeing due to a number of historical and socio-economic reasons. Millions of children still live in poverty and face many challenges.

This seminar hosted by the NCOP provides an opportunity to analyse in more depth the situation of children – beyond national averages. If we look at the situation of children and realisation of children’s rights through an equity lens, we can see that the situation of children differs significantly between provinces and within provinces.

The NCOP is ideally positioned to ensure that no child is left behind through its collaborative approach and mandate with Provincial Legislatures and SALGA.

UNICEF firmly believes that the participation of children is essential in the development of strategies to address the challenges that children face. It is commendable that children’s views and ideas are part of the NCOP Seminar on Children’s Rights, and that several consultations were held with children in the provinces and by the Deputy Chairperson of the NCOP, Honourable Memela, in the build-up to this seminar.

Children have the right, like all other members of public, to participate in the processes of Parliament and Provincial Legislatures.

Children’s participation:

- Improves Parliament’s representative function
- Improves legislative outcomes
- Offers an important long-term perspective
- Promotes civic engagement and civic education.

Similarly, children have the right to access to information and accessible information, on what is happening in Parliament.
UNICEF values its positive and constructive relationship with Parliament and will continue to provide support to accelerate the realisation of child rights. We believe that each MP and Member of Provincial Legislatures (MPLs) has the power and the voice to make a profound and lasting difference in the lives of the hundreds of thousands children who are part of his or her constituents.

I wish you a constructive and fruitful seminar that will bring us closer to realising the rights of all children.

UNICEF firmly believes that the participation of children is essential in the development of strategies to address the challenges that children face.
An integral part of the NCOP Child Rights Seminar was to ensure that the voices of children were brought into the seminar in the most appropriate and meaningful manner. This was done under the leadership of the Deputy Chairperson of the NCOP in collaboration with provincial legislatures and UNICEF.

The active involvement of children in the 2012 Child Rights Seminar confirmed the NCOP’s interest and commitment to hear children’s voices in Parliament. The child participation process rested on two pillars, namely to have consultations and inputs from children, while at the same time contributing to the civic education of the children involved. As far as the latter is concerned, children received information on how the NCOP, the Legislature and Parliament work; the importance of their participation; the Child Rights Seminar and what it means for them as children to give their input to it, amongst others.

The child participation process was based on a pre-designed guideline and orientation to the staff of the NCOP and the respective Provincial Legislatures to ensure that they were able to facilitate the participation of children based on agreed principles. The NCOP and Provincial Legislatures’ Public Participation sections ran similar workshops in the three weeks prior to the Child Rights Seminar and send the conclusions of these workshops to the NCOP for consolidation and sharing with the seminar participants. All the children were asked to respond to four basic questions during the consultations:

- What they think the situation of children in their provinces is.
- What the lives of children living in rural areas are like.
- The three most important child rights issue they would discuss in Parliament.
- Any messages that they have for Members of Parliament.

The NCOP invited children that participated in the Cape Town children’s workshop to attend the opening of the Child Rights Seminar and share short statements on their wishes and ideas during the opening. Where children had sensitive messages and were not able to share their stories on the public platform, these were pre-recorded and played during the opening the seminar. Learners from a local high school informed the delegates that most children come from underprivileged homes where there are no proper sanitation, water, food security and household amenities. They noted that it is the right of every child to live in a proper environment where children could realise their full potential. They further indicated that whilst education is an important instrument in everyone’s life, most children are not able to pursue education due to gangsterism, teenage pregnancy, drugs and substance abuse at schools. A child also gave account (via pre-recorded message) of traumatic experiences she and her friends had had that related to violence.

For the seminar a special booklet was published that contained the feedback from the children. This was shared with all MPs, MPLs and other participants at the start of the seminar. The purpose was to provide them with information from the children that can influence and support the discussions and debates during the seminar. The following section provides some inputs from the children that they wished to share with MPs and MPLs. The words are unedited.

**What are the lives of children in our province like? What are the good things the children experience? What are the bad things that we are worried about?**

![Image of children's feedback]

If we were members of Parliament, and we needed to discuss the RIGHTS OF CHILDREN, what would the three most important things that we would discuss be?
Children were asked to indicate some of the important things regarding the lives of children that they would like to be discussed by Parliament and/or the Provincial Legislatures, and these were their responses:

“...the right to stay in a warm house.”
“...the right to have parents.”
“...the right to have a name.”
“...the right not to be abused.”
“...the right to eat.”
“...give [children] a bicycle...who are walking long distances from their home to their school.”
“...take orphans to support them. To make them survive from diseases and some crime.”
“...make sure that all people are equal and treated equally. No one who is under others.”
“...transport for those who walk long distances at school, because always they come late at school.”
“...take care of those children have no parents. Some other child live lonely.”
“...make a law of not hurting other children and to take care of other children.”
“Children must not be asked to buy alcohol because it is under the law.”
“Children must not be treated like adults.”
“Children do not have water nearby.”
“Children must not be forced to do things that do by adults.”
“Children have a free education.”
“Children have social grants.”
“We [children] do not have enough food at schools.”
“We [children] need libraries.”
“Parliament must increase social grants.”
“We [children] need security to look after drug dealers.”

If we were members of PROVINCIAL LEGISLATURE, and we needed to discuss the RIGHTS OF CHILDREN, what would the three most important things that we would discuss be?
Children were also asked to write special messages to Parliament. The following are messages received from several different children.

Dear Members of Parliament

“I would like you to make sure the children have the right to say no when the boy or man want to rape him [her]. We have the right to say no when someone want to touch our body. We have the right to have a name. We have the right to have parent. We have the right to go to a doctor when we are sick. We have the right to care.”

“Firstly I would like to thank you for giving children of my school, including myself, this opportunity to learn and better our understanding of parliament. I would the knowledge into mind and better my future. I have really enjoyed the lesson and will remember it. I would also like to ask you to please take our thoughts into consideration because we really put our heart and soul into trying to raise awareness about our provinces challenges. Thanks so much for reading and enjoy the rest of your day.”

“This is a special message to you regarding children’s rights. I would just like to thank members of Parliament for the opportunity that they have given me and some of the learners of my school. I feel that many children’s rights are not being seen to, for example children living in the rural areas, which does not have stable homes or water and electricity that they need. They also have very bad schooling and would just like to ask the government, Premier or Parliament to help them. Thank you.”

“I just want to express my appreciation and concerns to you. I appreciate what you have done to improve the country so far, but my concern is our youth. Our youth doesn’t see education as a must anymore because they are influenced by so many other things such as gangsterism, drugs, etc. So I think that the youth should have more programmes to go to, so that they will not be involved with bad deeds.”

“All I want is a cleaner, better environment with any drug-lords or drug addicts and alcoholics who abuse their children. Where I live there are many people who wait on the corners to buy drugs, which also include tik, etc. When a police van comes around, the drug addicts help each other to get away by telling each other where the police is and when they are coming.”

“I’ve been living in a structure for a long time and have been waiting long for a house. School work I can’t do because of no electricity. We need more activities to keep us busy during the school holidays so that we as youth do not get involved in wrong things. More bursaries should be made available to everybody. Thanks for everything you have done already.”
“I as a child want you to improve our society and our education. Not only in my area, but mostly in the rural areas of our province and country.”

“Me as a learner would like to inform you that the children’s rights need to be clear to the children. Most children not even aware of their children’s rights. Therefore they should make the children aware of their rights by arranging meetings during school time where their rights are given to them.”

“As we all know that all children have rights. I just want to share my word by saying that all children should have shelter, education, security, etc. That is why it is important for finance also. Children should also have food constantly. I think there should be feeding schemes for children who does not get food. I also want to share my word by saying that I have experienced quite a lot today about the political. And also about the Parliament. And how to achieve what I want.”

“I would like to say thank you that I could be part of this workshop programme. It has been an honour to learn about the Provincial Legislature. I enjoyed it, and will always remember the message sent out to our young people: “Always Persevere”. I would like to be part of it again. Us as children need to be heard, things and problems at schools will be resolved if maybe we are allowed to speak up.”

“I would like our country to be a better living for children. Many children come from rural areas and therefore they don’t have important facilities, e.g. health care, etc. Children that living on the Cape Flats are exposed to gangsterism, alcohol and drug abuse. Most of them come from broken homes. I ask you if you could please make life better for this children for they have many dreams and hopes for their future, but they’re influenced by all the negative things happening in their neighbourhood. My experience today was overwhelming. I’ve learnt a lot...”

“We are happy to have our rights. They really helped us a lot. Today we will be doctors and social workers. We are the children of South Africa, we are the future of tomorrow. We will like the Parliament to give us grants, give foreigners houses, enough food at schools. Connect pipes of water in rural areas. We need sport grounds, add more electricity, organise school uniforms, build more jails for criminals, more schools at rural areas, give us more libraries, need more computers. Send people and help us how to read.”

“I would like to tell Members of the Provincial Legislature and the Parliament Members that the children’s rights are being abuse in many ways. They do not have the proper facilities to work in and they don’t have the proper housing to live in. I want to indicate to the members to make the lives of children a better place. And make or put a smile on each every child’s face...I experience a lot about the political things today. Things I didn’t know and I would like to say thank you for the opportunity.”
“I have a message for you. We want children to have protected school [with] fence. It had been damaged by people that we don’t know. We want you to help us – thing like camera and fence and other thing. Please help our school to be love school that children must go to.”

“I would like to thank you for giving me the opportunity to learn more about Parliament. What I would like to say about children’s rights are that there are still too many crimes being committed to children and then they are too afraid to tell anyone what happened to them. The children don’t know much about their rights and think that something bad will happen. There is nothing wrong with any of our rights but children need to know that it is okay for them to report a crime what happened to them. I would also like to say that this experience has helped me to go further with my dream. I would like to say thank you for spend this time with us.”

“My message is that every child should have the right to education, even if they cannot afford it. The reason why I say this is so that they can make their dream comes true. I think children should also have the right to a safe environment where they are not getting influenced to do the wrong things, and not being abused, physically or sexually. I think children’s rights should be respected.”

“My message to you is that every sexual offence to a child should be illegal. Also that corporal punishment at schools should be banned and even the children’s parents should not hit them. I also think that there should be no statute of limitations to any sexual acts.”

“I want to tell you about the children right. All children to have a home, not to be street children. And all children have a right nobody should touch her body and have a right to have school and teacher and have shelter and have parents.”

“I want you to be strong in this thing of Children Bill of right. Some of them they don’t know what are Bill of Right, but others know them, but they do not tell their parents.”

“I would like you to change the way young poor talented children are being treated, either to their race or religion. The people who are murdering and raping our youth of today should be put in prison and get their punishment. Allow the less fortunate children to have an education because they are the children with high goals in life, but they cannot achieve it because they do not have an education to achieve their goals. Children also need freedom to clean water and electricity.”

In these words we find the hopes and dreams of our children, but also their insights, wisdom and own analysis of the lives they live every day.

Through the involvement and participation of children in the seminar, the NCOP demonstrated its interest and commitment to actively and clearly hear the voices of children. Also, it signalled its commitment to investing into the wellbeing of the South African children through the work of Parliament and its committees.
This section contains summaries of the presentations by the different invited speakers. The full text of their inputs can be found in the Annex to this report.

1. Role of NGOs. Ms E Monakali, Ilitha Labantu

Ms Ella Monakali from Ilitha Labantu opened her speech with a quote by Ms Sarah Michaels:

“NGOs are one of the most visible sets of actors in the related fields of human development and human rights that can play a significant role in helping to achieve human security. NGOs are especially well suited to action for human security because of their size and reach, closeness to local populations, willingness to confront the status quo, and the ability to address translational threats through coalition-building.”

In view of this, Ms Monakali explained that Ilitha Labantu believes that some of the key obligations of NGOs are to improve the circumstances and prospects of people and to act on their concerns and issues that are detrimental to their wellbeing. The organisation therefore stresses the participation of and benefit for local citizens.

Ms Monakali expressed concern about the frequency of violence against women and children in communities and how there seems to be a correlation between this and the socio-economic circumstances of children and their families.

The importance of the cross-cutting nature of the UNCRC was highlighted, as well as that the rights of children are paramount when dealing with vulnerable children in South Africa, including children exposed to drug abuse, sexual abuse and other social ills.
Ms Monakali expressed concern at the impact that the 2008 financial crisis and economic recession has had on the sustainability and operations of the non-governmental sector. It posed serious challenges to the delivery of services to vulnerable and much needed beneficiaries, such as women and children.

Ms Monakali highlighted the interplay between traditions and perceptions of childhood in the country and how that impacts either negatively or positively on the realisation of children’s rights in the country. It was further emphasised that the homes where children live should be saved and cared for, but that sometimes the abuse of children happens in their own homes. However, many children find it difficult to speak out or report negative or abusive practices that happen at home, and in such cases many NGOs provide the necessary support and counselling services to child victims.

Ilitha Labantu uses workshops at schools, outreach programmes in communities and children’s rights awareness campaigns to make children aware of their rights and to help them to report cases of abuse. This is supported through the use of child sensitive material that enables them to make a connection with the children and make it easier for them to interpret what is going on in their lives.

The impact of social factors such as peer pressure, standard of living, circumstances, family values, responsibilities and self-awareness on children need to be considered, as well as the pressure that these factors bring to bear. A child’s ‘root of learning’ is at home, but once exposed to the rest of the world that child begins to develop an identity. This is an integral part of growing and an integral part of a child’s life.

Ms Monakali highlighted the importance of schools in the education of children, as well as to promote gender equality and non-sexist behaviour through life skills education. This is very important in the development of children’s self-worth. Nevertheless, Ms Monakali also expressed concern that these aspects are not sufficiently addressed in our schools and that NGOs often take up these responsibilities in schools.

Ms Monakali stressed that the community plays a crucial role in a child’s development and that the notion of ubuntu and the traditional feeling bestowed onto all children that “your child is my child” are important in this respect. However, this is not always the case and many communities have failed to act as responsible members of society as can be seen in the manner in which children are brought up.

In order to address the plethora of challenges that face children in current times it is important that NGOs and government work together in partnership to create a better society for children.

*Ms Monakali made the following recommendations:*  
- Revitalise moral regeneration programmes where children are provided with positive role models and a sense of belonging  
- Children should be educated in schools about their rights as well as the policies that give effect to these rights  
- Policies and procedures should have as a primary aim the protection of children  
- Right violations of children should be documented  
- Data and information should be collected, based on indicators, on the realisation of children’s rights. This will assist with evidence-based policy development and strategic interventions, where needed.

2. Children living and working on the streets. Whose children are they? Towards an epistemological break of misguided conceptualisation. Prof. M Makofane, University of South Africa

Prof. Makofane started her presentation by indicating that societies are judged by the way they treat their children and that it is in this context that her paper will challenge the use of the concept “street children”. The paper is based on the findings of a qualitative research study.

The concept of “street children” is difficult to define, especially as there is no commonly agreed definition used by researchers and organisations working with children living and working on the streets (“street children”), and that this definition varies by geographical area.

It was indicated that the United Nations defines “street children” as “any boy or girl...for whom the streets (in the widest sense of the word: i.e., unoccupied dwellings, wasteland, etc...) more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults” and that the South African Children’s Act, No. 38 of 2005 states that a “street child” means a child who – “because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or because of inadequate care, begs or works on the streets but returns home at night”. The difference between these two definitions is that the South African government’s definition includes the factors that may compel children to leave their homes. The understanding of the term was
further elaborated on through an explanation of the term “children of the street” which refers to those who live on the streets without adult supervision while “children on the street” refers to those who beg and do menial work on the street and return home to contribute towards their families’ livelihood.

Prof. Makofane explained that some are reluctant to use the term “street children” as a result of its emotional overtones. In a diverse society such as South Africa, it is expected that people will attach different meanings to the term. Some may find it appropriate and acceptable, while others may find it inappropriate, offensive, derogatory, dehumanising, and perpetuating social exclusion and stigma towards children in adversity. This will result in a person ‘othering’ others instead of making them part of who they are.

According to Schimmel (2006:211) the term “street living children” is “unambiguous and self-explanatory and therefore appropriate to use to refer to children living in the street without parental care or supervision.”

On the other hand, Iqbal (2008:201) regards the definition by West as comprehensive: “street children” is “a shorthand for children who transit to the streets – children who work on the street, or children who live on the street, with a variety of occupations including, beggars, garbage pickers, shoeshine boys, flower sellers, sweet shop workers, commercial sex workers and petty criminals.” The challenge with this definition is that the majority of the ordinary people will not know that the label is shorthand for children living and/or working in the streets.

It was proposed that the term and concept of “street children” should be analysed and reviewed from an African perspective, as the African belief systems dictate that all children, regardless of their circumstances, should be embraced for the benefit of humanity and posterity. This is supported by the adage that “it takes a village to bring up a child”. This is linked to the concept of ubuntu that is deeply embedded in the diverse African cultures and which has become well known all over the world as typical of African, and specifically South African, culture. Thus, the use of the concept “street children” is a misnomer since it is in stark contrast with ubuntu, which refers to a sense of pride to be an African because ‘I am what I am because of who we all are’.

Prof. Makofane indicated that children living and working on the streets themselves questioned the use of this term. They indicate that they should be called children as they are children just like all other children, with the difference, as stated by a child, “that I do not have parents and my relatives are not prepared to take care of me and that is why I ended on the streets to fend for myself”.

Prof. Makofane made the following recommendations:

- Different countries and communities should learn from each other about how to address the issue.
- It is important that children living and/or working on the streets are not excluded socially as to ensure that workable, long-term, sustainable interventions can be developed and implemented for these children.
- It is important that within the South African context and cognizant of the meaning and spirit of the ubuntu, the concept of “street children” should be explored and redefined through academic and government collaboration; and with public participation.
- South Africans needs to re-enter the debate and assume the leading role in defining who we are and how we would like to define our children. Such a perspective will be of value in developing suitable intervention strategies for children in adversity.

3. Children and the law: What parliamentarians need to know about the prohibition of parental corporal punishment. Ms C Bower, Linali Consulting

Ms Bower explained that South Africa’s ratification of international treaties and conventions places obligations on our government to domesticate the rights addressed in these various international instruments, in other words, to entrench them in legislation. South Africa ratified the UNCRC and the African Charter on the Rights and Welfare of the Child. The UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child have pronounced corporal punishment a serious violation of children’s fundamental rights.

Section 28(1)(d) of the South African Constitution states that “every child has the right to be protected from maltreatment, neglect, abuse or degradation”. Furthermore, the Children’s Act, No. 38 of 2005 requires the development of “appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline” (section 144(1)(b)).

Ms Bower indicated that there are a number of myths about corporal punishment which facilitate continued approval of its use by parents. However, an examination of the facts shows that these are just myths and that the facts are rather different:
Myth 1: The Bible says we should beat our children. This is not true. There is in fact no mandate to beat children in the Bible. Within the entire Law (Torah), no such mandate can be found. Jesus himself was a teacher and expert in interpreting the Scripture. There is no recorded incident of Jesus himself using violence against anyone, and all recorded instances of interaction between Jesus and children were kind, gentle and respectful.

Myth 2: This is part of my culture. This is not true. The use of corporal punishment as a means of maintaining control was introduced into African societies by missionaries and colonialism. It was entrenched in South African law during the apartheid era, and was deliberately used to strengthen that system. In contrast, there is a Zulu saying that “you don’t build a family with a stick” and the concept of corporal punishment is incompatible with the concept of ubuntu.

Myth 3: Banning hitting children is an un-African idea. This is not true. Five African countries have now banned all forms of corporal punishment: Kenya, Tunisia, South Sudan, Togo and the Democratic Republic of the Congo. In addition, campaigns for prohibition are on-going in Tanzania, Angola and South Africa, among others. Child rights defenders across Africa have committed to a prohibition of all forms of corporal punishment of children and the promotion of positive parenting and support for parents.

Myth 4: It’s the only way to teach children to be well-behaved. This is not true. The research evidence is clear – we teach children many harmful lessons when we hit them.

Myth 5: In places where corporal punishment has been banned, children are completely out of control. This is not true. More than 30 countries have now banned corporal punishment in all spheres – they DO NOT include the UK or USA (both countries with high levels of youth violence), but countries like Sweden, the Netherlands, Brazil, Greece and Romania. Corporal punishment is linked to serious violence against and abuse of children, as well as to the current high levels of violence in our society. Prohibition of corporal punishment will begin to address this matter. Corporal punishment is ineffective for teaching self-discipline and sends children the wrong messages. While, in general, it is true that the family is not a sphere in which the government should intervene, it is also true that the government has a constitutional duty to intervene when citizens, irrespective of age, are being hurt.

The negative effects of corporal punishment include: decreased moral internalisation and self-discipline; increased childhood aggression, delinquency and anti-social behaviour; increased aggression, criminality and anti-social behaviour in adulthood; decreased quality of the relationship between a parent and a child; decreased child and adult mental health; increased risks of being the victim of abuse; increased risks of abusing one’s own child or spouse; and increased risk of broad and enduring negative developmental outcomes.

Research shows that stress caused by the pain and fear of spanking can negatively affect the development and function of a child’s brain. It is precisely during this period of great plasticity and vulnerability that many children are subjected to physical punishment. The effect can be a derailing of natural, healthy brain growth, resulting in lifelong and irreversible abnormalities.

When we hit our children we teach them that: it is right to impose your will on someone else; they have no say, rights or dignity; bigger and stronger persons are entitled to hurt those who are smaller and weaker; loving and hurting are somehow linked; and violence and hurting are acceptable ways to resolve differences. We actually tell our children that I am punishing you because I love you.

Ms Bower made the following recommendations:

**Law reform is required to ensure that children have equal protection under the law. Children should receive more protection from violence than adults, not less.**

- Government must provide for broad education and support for parents as a prevention measure as well as an early intervention measure, when parents are using corporal punishment. Where parents use corporal punishment, a response involving early intervention and diversion is more appropriate. Positive discipline is about: long-term solutions that develop a child’s own self-discipline; clear communication of expectations, rules and limits; the building of a mutually respectful relationship with the child; teaching children life-long skills; increasing children’s competence and confidence to handle challenging situations; and teaching courtesy, non-violence, empathy, self-respect, human rights and respect for others. South Africans should protect the rights of others more than their own. The prosecution of parents is rarely in the best interests of their children, and thus should only be instituted if it is in the child’s best interests.

- Positive discipline should not be about permissive parenting or letting children do whatever they want. It should not be about having no rules, limits or expectations. It should also not be about short-term reactions or alternative punishments to slapping and hitting, but showing a child the right direction and the good way of life.
The explicit prohibition of corporal punishment will make a significant contribution to entrenching our hard-won democracy, and ensuring that the next generation is able to make sensible decisions, resolve conflict without violence, and live as self-sustaining and contributing members of our society.

4. Child Justice in South Africa: Reaching new frontiers or facing systemic implementation hurdles? Mr L Wakefield, Community Law Centre, University of the Western Cape

Mr Wakefield indicated that on 19 November 2008, the South African Parliament took a bold step and enacted the Child Justice Act, No. 75 of 2008. This Act proposed a new justice system for children in conflict with the law. The Child Justice Act was signed into law by the president during 2009, with an implementation date set for 1 April 2010. The Act created some new provisions such as raising the minimum age of criminal capacity from seven to ten years; the diversion of children at various stages of the procedure; and the preliminary inquiry procedure, amongst others.

Criminal capacity can be defined as the mental ability to distinguish between right and wrong and to act in accordance with such appreciation. Prior to the implementation of the Child Justice Act, South Africa was one of the few countries with the lowest minimum age of criminal capacity in the world. South Africa then still applied the common law position which contained three presumptions in relation to criminal capacity (set the minimum age of criminal capacity at seven years. Section 7 of the Child Justice Act amends the common law position as far as the minimum age of criminal capacity is concerned. In terms of this section the minimum age of criminal capacity is set at 10 years, while the common law presumptions still apply to children between the ages of 10 – 14 years and children above the age of 14 years. Therefore, currently the Child Justice Act does not comply with the international obligations imposed upon South Africa in terms of the UNCRC. However, sections 96(4) and (5) allows for the review of the formulation of criminal capacity by Parliament within five years, which includes the minimum age of criminal capacity, based on the production of certain statistics to Parliament by the Department of Justice and Constitutional Development.

Mr Wakefield noted that the lack of services for children with conduct disorder has recently come under the spotlight in the case of Centre for Child Law v MEC. Health and Social Development, Gauteng. The Centre for Child Law identified two cases where children with conduct disorder were sent from pillar to post and ended up committing offences. They found that the current child and youth care centres designated in terms of section 191 of the Children’s Act do not cater for the needs of children with conduct disorder. With that, conduct disorder does not constitute a mental health disability or illness; therefore the institutions catered for in terms of the Mental Health Care Act also do not cater for the needs of children with conduct disorders. Currently, no secure care centre has the means to cater for the needs of these children. It appears that the two cases regarding children with conduct disorders mentioned in Centre for Child Law v MEC Health and Social Development, Gauteng are not isolated cases dealing with children with conduct disorder. More than 20 other cases of children with conduct disorder, in Gauteng alone, were reported to the Centre for Child Law subsequent to this case.

Diversion can take place at various levels within the child justice system. Diversion is defined in section 1 of the Child Justice Act as follows: "diversion means diversion of a matter involving a child away from the formal court procedures in a criminal matter by means of the procedures established..." in the Act. In their annual report after the first year of implementing the Child Justice Act, the Department of Justice and Constitutional Development found that there was a 24% decrease in cases being referred to diversion after the implementation of the Child Justice Act. In this report, they mentioned the following possible reasons for the decline: (a) The impact of the implementation of the Act from 1 April 2010 (with particular reference to the provisions that stipulate that children may only be arrested and charged as a measure of last resort); (b) The resulting decrease in the number of children arrested, thus reducing the number of potential diversions; (c) An analysis of the impact of the 2010 FIFA World Cup crime prevention measures during June 2010 indicated a decrease in crime, also amongst children; and (d) The seasonal effect and a cyclical decrease of crimes, arrests and diversions during the winter months. Due to the lack scientific research to support these reasons, the Parliamentary Portfolio Committees on Justice and Constitutional Development and Correctional Services, respectively, instructed the Department of Justice and Constitutional Development to conduct research to investigate the reasons for the decline in diversion referrals.

Mr Wakefield also indicated that it is envisaged within the Child Justice Act that the imprisonment of children should only be as a matter of last resort and for the shortest appropriate period of time. In relation to the detention of children awaiting trial in prison, section 26...
of the Child Justice Act stipulates that should a child be detained, the least restrictive option of detention should be considered. This read with the requirements to detain children in prison awaiting trial in section 30 of the Child Justice Act, promotes the constitutional and international law principles regarding the detention of children as a measure of last resort and for the shortest appropriate period of time. It is worth noting that since the implementation of the Child Justice Act, the number of children awaiting trial in prison and number of children sentenced to prison has decreased.

However, the conditions of prisons seem to paint a bleak picture for children currently detained or sentenced. In a recent situational analysis conducted on children in prison it was found that with the exception of three prisons (Pretoria Local, Escourt and King William’s Town), unsentenced children are not provided with education. The situation of children sentenced to prison is different, as the majority of the correctional centres do provide weekly or daily educational programmes for these children. This comparison illustrates that children in remand detention receive fewer services in prisons than children sentenced to prison.

Mr Wakefield made the following recommendations:

- That Parliament gives attention to the obligatory provision of education programmes to children, especially those who are unsentenced. In this respect the Portfolio Committee on Correctional Services need to hold the Department of Correctional Services to account to provide education to children within their centres (whether children are sentenced or unsentenced). Unsentenced children have not been convicted of committing any offence (as they have only been charged and are still either awaiting trial or are going through a trial process) and yet services available to them are inadequate, compared to children convicted and sentenced.

- That Parliament reviews the provisions of section 8 of the Child Justice Act for an amendment in relation to the age of criminal capacity in order to ensure that South Africa complies with substantive provisions in relation to its international obligations and standards, and that this can take place earlier than the proposed five years.

- Parliament should play a pivotal role in the oversight of the implementation of the Child Justice Act.

It is envisaged within the Child Justice Act that the imprisonment of children should only be as a matter of last resort and for the shortest appropriate period of time.
which can include oversight visits within various constituencies of parliamentarians to monitor the implementation of the Child Justice Act and it is at these visits where MPs can detect and prevent abuse and unconstitutional conduct. The Child Justice Act also contains provisions in relation to the oversight function of Parliament. Sections 96(c)(3)(a) and (b) stipulate that the Minister of Justice and Constitutional Development must, every year, submit reports to Parliament on the implementation of the Child Justice Act. Parliament would then have a chance to interrogate the report and fulfil its oversight function in this regard.

- Parliament should oversee and ensure that the country reports on the implementation of the UNCRC and the African Charter on the Rights and Welfare of the Children are submitted in time, are accurate and that it contains information in relation to South Africa’s progress and implementation of a child justice system.

- South Africa has ratified the UNCRC, the African Charter on the Rights and Welfare of the Children and signed up to other international processes, which require a level of reporting to ensure that the state complies with those documents in its implementation. In terms of Parliamentary processes, such reports would normally have to be drafted by the Executive and approved by the Legislature. Therefore Parliament has a pivotal role to play in ensuring that reports of this nature are accurate. It is needless to say that provisions in relation to child justice are also of relevance in this instance.

Mr Wakefield concluded by indicating that the child justice system in South Africa is reaching new frontiers, while at the same time facing systemic implementation hurdles. The implementation shortfalls mentioned in his article in relation to the provision of services for children with conduct disorders, diversion services and accreditation of diversion service providers and programmes, and the situation of children in prisons need to be urgently addressed. These are certainly not the only implementation problems experienced in the child justice system. Parliament does have the authority to ensure that the relevant departments live up to the obligations as codified in the Child Justice Act and that South Africa complies with its international obligations.

5. Children and maternal health. Prof Xikombiso Mbhenyane, University of Venda

Prof. Mbhenyane indicated that, like other developing countries, South Africa is in nutrition transition, which includes the coexistence of under- and over-nutrition, and has a malnutrition problem of public health significance. At the national level, stunting and being underweight remain the most common nutritional disorders affecting one out of five children and almost one out of ten children respectively.

Survival, growth and the development of children are crucial for sustainable socio-economic development. Children represent the future and ensuring their healthy growth and development ought to be a prime concern of all societies.

Malnutrition has serious long-term consequences for children and adversely influences their development as it weakens the immune system. Early under-nutrition and micro-nutrient deficiencies have been associated with impairment of intellectual performance, work capacity and overall health and nutritional status during adolescence and adulthood. Poverty and poor nutritional intake are significant causes of the high levels of poor infant and child physical growth and development.

Poor nutrition has been implicated in delayed cognitive development; long-term damaging effects on infant and child intellectual and psychological development; and severe infection. And because under-nutrition is a major contributor to the chances that an infant and child will succumb to a life threatening disease, it is estimated that poor nutrition accounts for about 70% of under-five mortality in the developing world.

South Africa’s infant and under-five mortality rates are high with very little difference between the 1990 to 2008 figures. Most of these deaths are caused by conditions that are either preventable or treatable such as AIDS, neonatal causes, pneumonia and diarrhoea.

Prof. Mbhenyane explained that a child’s nutritional future begins during pregnancy as maternal under-nutrition has lifelong consequences for children, including impaired prenatal growth, low birth weight and increased risk of developmental disabilities. The size of the baby at birth is a risk factor for stunting, wasting and underweight. The education level of women, who are the main caregivers of children, has an influence on the quality of care, because more educated women are more able to process information on nutrition, acquire skills and display positive caring behaviours, and this is reflected in the child’s nutritional status.

Prof. Mbhenyane emphasised the importance of exclusive breastfeeding and held that this practice should be supported by community-based organisations, community leaders and community workers. Exclusive breastfeeding is important for the first six months of life as it offers babies greater immunity from disease and protection from contaminated water used to mix formula.

The South African Integrated Nutrition Programme (SAINP) is implemented as an integral part of the primary
There are several interventions that were implemented under SAINP, such as the promotion, protection and support of breastfeeding; vitamin A supplementation for postpartum women and young children aged six to 59 months; mandatory fortification of maize meal, white bread and brown bread flour; community-based growth monitoring and promotion; integrated community development projects; and nutrition promotion, education and advocacy.

Prof. Mbhenyane made the following recommendations:

- That the Department of Health prioritise the strengthening of the primary health care system as the national health response, particularly expanding the number and scope of work of community health workers to include high impact but low cost child health and nutrition interventions.

- HIV testing should be routinely offered for sick children and the capacity of primary health care providers should be developed for the early HIV identification and timely referral and management of advanced HIV infection in children.

- That the Department of Health put a greater emphasis on improving the quality of care, particularly in maternity and neonatal care units. Integrated strategies are more effective and efficient when compared with fragmented approaches, because there is increased access to services and the same facilities are used to address the multiple causes of malnutrition simultaneously.

Prof. Mbhenyane held that if government can ensure that most rural people have access to resources such as land for food production, modern agricultural technologies and credit, household food security can be improved significantly, resulting in adequate dietary intake and better nutritional status of families. Greater efforts should be made to increase women’s access to productive resources which directly or indirectly affect food availability at the household level.

Ensuring the schooling of young girls and increasing young women’s functional literacy could be the most important means of improving women’s nutritional status in the long-term because of the associated effects on health and nutritional awareness, fertility and social development.

Children represent the future and ensuring their healthy growth and development ought to be a prime concern of all societies.
The section provides a synthesis of the discussions that took place during the plenary sessions on both days of the seminar. This summary highlights themes that emanated from the discussion, rather than providing a chronological or individual account.

The following emerged from the discussions and inputs during plenary sessions:

- The plenary noted the importance of education as a vehicle that can reduce or even eradicate inequality in our society. It was noted that inequality between South African children need to be addressed urgently.
- The plenary was concerned that children are victims of violence and abuse in their homes and communities, particularly where very young children and children with disabilities become victims of abuse. It was also noted that exposure to gangsterism and drug abuse in communities put children at risk. It was further noted by members of the plenary that children are often at risk when they have to walk long distances to school, especially in rural areas, where there is no scholar transport. It was noted that the Eastern Cape has developed an integrated strategy for child protection bringing together government and non-governmental actors to address the right of children to be protected. Members raised concerns about children who are used by adults to commit crimes.
- The seminar participants noted important progress in the realisation of child rights i.e. that currently close to 11 million children are receiving the CSG and that enrolment for grade R has increased from 15% in 1999 to 77% in 2010.
- It was noted that there is a need to support parents as well as those, like grandparents, who have reassumed the role of parents in recent years. There should be programmes that support parents and in particular young parents to help them to cope with the demands and responsibility of parenthood. It was indicated that parents should also be support through literacy programmes.
- The importance of access to early childhood development programmes were raised as an important element in the investment in the children of the country.
- It was noted with great concern that the South African Human Rights Commission (SAHRC) is receiving complaints of corporal punishment in schools and examples were cited on these, including a recent case where a child was blinded in one eye because of a splinter from the cane. The plenary noted with concern that some educators continue to use corporal punishment in schools despite the fact that it is unlawful and they are not changing their practices despite the fact various manuals and training courses were developed to assist them with a more constructive and positive approach to discipline in the classroom. It was highlighted that it is essential for teachers to make a paradigm shift in their practice and that they should be held accountable if they do not obey the law that prohibits the use of corporal punishment in schools. It was suggested that MPs and MPLs should intervene through oversight.
- The plenary noted that there is a need to change the general mindset of the country regarding corporal punishment at all levels and in all settings. It was proposed that there should be a particular focus on traditional leaders. It was also suggested that there needs to be a clear definition on corporal punishment.

Special attention needs to be given to children with disabilities in the realisation of their rights, including the provision of transport to schools.

- The plenary expressed concerns on the situation and plight of street children. It was also noted that many children are on the streets with their parents who also live on the street. These children most often do not have access to government’s social protection measures such as social grants and the methods employed to deal with these children are often not appropriate. It was noted with concern that there are often a class and racial dimension to street children, which result in different responses by authorities and service delivery agencies. It was further proposed that local municipalities should play a more prominent role in the prevention programmes and intervention programmes related to street children and that SALGA can assist with this. There was agreement that the focus should be on the development of children, especially in working with street children.
- It was proposed that all legislation aimed at protecting children’s rights need to be reviewed in order to determine whether they need strengthening, or not. It is important that the government delivers on its promises, particularly for children, and ensure that funds and resources are utilised appropriately. Members were concerned by a lack of social workers and associated staff for the implementation of key legislation passed by Parliament, such as the Child Justice Act and the Children’s Act.
- The plenary proposed that this Child Rights Seminar should be held annually and rotate between the provinces. It is important that MPs and MPLs are up to date with the realities of child rights in the country and profile it at this high level. It was noted that the enjoyment of rights was afforded to everyone in the country, including children, and these rights need to be vigorously protected.
The seminar agreed that the relevant committees of the NCOP under the leadership of the Select Committee on Women, Children and People with Disabilities need to develop an oversight programme to monitor the realisation of child rights in the country, as this will ensure the protection of child rights and investment in children.

It was also proposed that Parliamentary committees, both at national and provincial level, should undertake oversight visits, listen to children and communities, to ensure that the rights of children are protected and realised in all communities.
The Deputy Chairperson of the NCOP, Ms Memela, concluded the seminar indicating the way forward as follows:

- The development of a report that synthesises the views and recommendations expressed during the seminar.
- The development of an oversight programme on key interventions.
- Relevant committees working on the oversight programme (that is from a multi-sectoral perspective) should ensure regular reporting to the House on the issues emanating from this seminar.
- It is important that both Houses of Parliament work jointly as far as the consideration of issues affecting children is concerned.
- The NCOP will organise an institutional review session which will provide an opportunity for feedback on the work that would have been done in pursuance of the oversight programme that is informed by views and recommendations expressed during this seminar.
- It is necessary to find a strategy to report back to the children that conveyed their messages to seminar participants. They should be told what we have done and what has happened. The oversight programme is therefore important.
- The child participation programme should be deepened through involving municipalities, and there should be a similar platform next year to consider the inputs of children.
- Importantly, the child participation programme must be preceded by an education and awareness drive (children need to know about civic matters).
- The research and committee departments in Parliament need to develop a support programme for the work of the committees, and assist Members to follow up and prepare the necessary reports.
- As partners, seminar participants are welcome to check with Parliament from time to time about progress on these commitments.
Papers delivered during the NCOP Child Rights Seminar

This Annex contains the original papers of the Child Rights Seminar as prepared by the individual speakers. These papers contain the opinions and views of the individual speakers and do not represent the views, policies or position of the NCOP or UNICEF, nor should they be assumed to do so. The views expressed in the papers are solely the responsibility of the authors.
Children and the law: What parliamentarians need to know about the prohibition of parental corporal punishment

Presented by Ms Carol Bower, Child Rights Consultant.

1. Introduction

The Working Group on Positive Discipline (WGPD) is a network of South African organisations working in various ways to prevent and address child abuse and neglect, and ensure the protection of the rights of children. It has a particular emphasis on the promotion of positive parenting and non-violent discipline, and is committed to the abolition of corporal and all other forms of humiliating punishment of children.

The WGPD was formed in early 2006, but began its life as a sub-group within the much larger civil society grouping, the Children’s Bill Working Group (CBWG). The CBWG, a network of networks representing over 100 organisations, was established early in 2003, after the release by the South African Law Reform Commission (SALRC) of the Draft Children’s Bill and the Discussion Document on the Bill.

The WGPD established itself as separate group after the passage of the Children’s Amendment Act at the end of 2007, in order to continue to advocate for and strongly support the promotion of positive and non-violent parenting and the prohibition of parental corporal punishment in South Africa.

1.1 Key messages of the WGPD

The WGPD holds that:

- Law reform is required to ensure that children have equal protection under the law. Children should receive more protection from violence than adults, not less.
- Government must provide for broad education and support for parents as a prevention measure as well as an early intervention measure when parents are using corporal punishment.
- The prosecution of parents is rarely in the best interests of their children, and thus should only be instituted if it is in the child’s best interests. Where parents use corporal punishment, a response involving early intervention and diversion is more appropriate.
- Corporal punishment is linked with serious violence against and abuse of children and with the current high levels of violence in our society. Prohibition will begin to address this.
- Corporal punishment is ineffective for teaching self-discipline and sends children the wrong messages – such as that it is acceptable to use violence against a friend if the friend does something you don’t like.
- While in general it is true that the family is not a sphere in which government should intervene, it is also true that government has a duty (and is constitutionally bound) to intervene when citizens, irrespective of age, are being hurt. This applies also, for example, to the Domestic Violence Act.

2. Our international obligations

South Africa’s ratification of international treaties and conventions places obligations on our government to domesticate the rights addressed in these various international instruments – i.e. to entrench them in legislation.

2.1 UN Convention on the Rights of the Child (UNCRC)

South Africa ratified the UN Convention on the Rights of the Child in 1996.

Article 19 states:

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”
Subsequently, the UN Committee on the Rights of the Child (the Committee) has pronounced on corporal punishment as a serious violation of children’s basic human rights, in General Comment 8.

2.2 African Charter on the Rights and Welfare of the Child (the Charter)

South Africa ratified the Charter in 2000.

The Charter contains, in Article 16, obligations which are substantially the same as those imposed by the UNCRC. Further, the Charter contains a clause in the Preamble which defers to the UNCRC in any instance where the UNCRC affords greater protection than the Charter. Thus, General Comment 8 issued by the UNCRC is pertinent also to the African Charter.

Also, the 12th Session of the African Committee of Experts, held from 3-5 November 2008 in Addis Ababa, Ethiopia discussed the issue extensively.

3. Our own statutory obligations

While South Africa is bound by its ratification of international treaties to develop legislation which prohibits corporal punishment, it is equally bound by its own Constitution. Section 28(1)[d] of the South African Constitution states that:

*Every child has the right to be protected from maltreatment, neglect, abuse or degradation*

This is strengthened by section 144(1)[b-d] of the Children’s Act as Amended (Number 38 of 2005, which states that:

*Prevention and early intervention programmes must focus on—*

- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline;
- (c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;
- (d) promoting appropriate interpersonal relationships within the family

Unfortunately, these provisions (while laudable and necessary) do not go far enough to ensure that children are protected from parental corporal punishment.

4. The myths about corporal punishment

There are a number of myths about corporal punishment which facilitate continued approval of its use by parents. However, an examination of the facts shows that these are just myths and that the facts are rather different.

4.1 The Bible says we should beat our children

While it is true that certain parts of the Bible contain references to physically punishing children (especially in the Book of Proverbs), Christians interpret these passages in different ways. Those who rely on ancient texts to justify corporal punishment should remember that, in the original Hebrew, there are three different words that are translated in English as “rod”, and the one used most often in the verses from Proverbs is the word “shebet”. The shebet was the walking staff held by the head of a family, the king’s sceptre, on the crook with which shepherds guided and rescued sheep. This use of “shebet” can also be seen in Psalms, where the “rod” is identified as something that “comforts me”.

Similarly, when it is claimed that the Bible states that parents should hit their children, this is in part a mistranslation of the word “correction”. The word used in the original Hebrew is “muwcar” which means “reasoning together” - and has nothing to do with physically striking children.
The phrase “spare the rod and spoil the child” is erroneously attributed to the Bible. The statement was first made in a poem written in 1664.\(^1\)

There is in fact no mandate to beat children in the Bible. Within the entire Law (Torah), no such mandate can be found. Jesus himself was a teacher and expert in interpreting the Scripture. There is no recorded incident of Jesus himself using violence against anyone, and all recorded instances of interaction between Jesus and children were kind, gentle and respectful.

4.2 This part of my culture

In the past, slave owners said that they had the right to beat their slaves; the police and courts said it was their right to beat prisoners; and husbands have said they have the right to beat their wives. The fact that parents say it is their right to beat their children must be challenged. It is of great concern that children, who are physically and emotionally the most vulnerable members of society are last in line to have this fundamental human right protected.

The use of corporal punishment as a means of maintaining control was introduced into African societies by missionaries and colonialism. It was entrenched in South African law during the apartheid era, and was deliberately used to strengthen that system. In contrast, there is a Zulu saying that “you don’t build a family with a stick” and the concept is incompatible with the concept of ubuntu.

4.3 Banning hitting children is an un-African idea

Five African countries have now banned all forms of corporal punishment: Kenya, Tunisia, South Sudan, Togo and the Democratic Republic of the Congo. In addition, campaigns for prohibition are on-going in Tanzania, Angola and South Africa, among others. Child rights defenders across Africa have committed to a prohibition of all forms of corporal punishment of children and the promotion of positive parenting and support for parents.

4.4 It’s the only way to teach children to be well-behaved

Children learn the wrong things when we hit them. They learn that people who are bigger and stronger can hurt those who are smaller and weaker, and that the way to sort out problems and differences is to hit the person you disagree with. They learn to avoid “getting caught” doing the wrong thing when the person doing the hitting can see them or find out about it – they do not learn not to do the wrong thing in the first place. Instead of being a deterrent, corporal punishment provides a bad example for children.

The research evidence is clear – we teach children many harmful lessons when we hit them. Research findings include:

- On average, the behaviour of children who are spanked by their parents gets worse over time.
- Decreased moral internalisation and self-discipline.
- Increased childhood aggression, delinquency and anti-social behaviour.
- Increased aggression, criminality and anti-social behaviour in adulthood.
- Decreased quality of relationship between parent and child.
- Decreased child and adult mental health.
- Increased risk of being the victim of abuse.
- Increased risk of abusing one’s own child or spouse.

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\(^1\) Rossi
In general, corporal punishment was found to be associated with only one desirable behaviour – immediate compliance.

A very recent study, published in February 2012, also reviewed research over the last 20 years into the corporal punishment of children. It showed clearly that physical punishment increases the risk of broad and enduring negative developmental outcomes; that no study found that physical punishment enhances developmental health; that most child physical abuse occurs in the context of punishment; and that a professional consensus is emerging that parents should be supported in learning non-violent, effective approaches to discipline.

4.5 In places where corporal punishment has been banned, children are completely out of control

More than 30 countries have now banned corporal punishment in all spheres – they DO NOT include the UK or USA (both countries with high levels of youth violence), but countries like Sweden, the Netherlands, Brazil, Greece and Romania.

5. The dangers of corporal punishment

The negative effects of corporal punishment are well-documented. They include:

- Decreased moral internalisation and self-discipline.
- Increased childhood aggression, delinquency and anti-social behaviour.
- Increased aggression, criminality and anti-social behaviour in adulthood.
- Decreased quality of relationship between parent and child.
- Decreased child and adult mental health.
- Increased risk of being the victim of abuse.
- Increased risk of abusing one’s own child or spouse.
- Decreased IQ.
- Increased risk of broad and enduring negative developmental outcomes.

Stresses caused by pain and fear of spanking can negatively affect the development and function of a child’s brain. It is precisely during this period of great plasticity and vulnerability that many children are subjected to physical punishment. The effect can be a derailing of natural, healthy brain growth, resulting in life-long and irreversible abnormalities.

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2 Gershoff
3 Children who are spanked have lower IQs, new research finds – available at http://www.physorg.com/news173077612.html
4 Durrant and Ensom
5 Teicher
6. The links between corporal punishment and violence in society

South Africa is an extraordinarily violent society with among the highest levels of interpersonal, family and community violence in the world (including rape, child rape, intimate femicide, domestic violence and family murders).\textsuperscript{6}

Unfortunately, when we hit children we DO teach them a lesson – but perhaps it’s one we should rather not be teaching. What do we teach our children when we hit them?

- That it is OK to impose your will on someone else
- That they have no say or rights or dignity
- That bigger, stronger people are entitled to hurt those who are smaller and weaker
- That loving and hurting are somehow linked
- That violence and hurting are acceptable ways to resolve differences

Are these not some of the very things that are wrong in our country?

7. The ineffectiveness of corporal punishment

Research has shown:\textsuperscript{7}

- Corporal punishment has ONLY ONE desirable outcome – immediate compliance
- On average, the behaviour of children who are spanked gets worse

Given its relative ineffectiveness and potential for harm, it surely makes sense that if there are more effective alternatives for raising self-disciplined adults who can make sensible decisions and take responsibility for their own lives, then they should be actively explored.

Corporal punishment and discipline are different things – one involves punishment and discouragement, the other involves teaching and encouraging children. Other non-damaging ways of disciplining children are possible.

8. The alternatives to corporal punishment

Positive discipline is based on children’s rights to healthy development, protection from violence and participation in their own learning. It is non-violent and respectful of the child as a learner. It is an approach that helps children succeed, gives them information, and supports their growth.\textsuperscript{8}

Positive discipline is about:

- Long-term solutions that develop a child’s own self-discipline;
- Clear communication of expectations, rules and limits;
- Building a mutually respectful relationship with the child;
- Teaching children life-long skills;
- Increasing children’s competence and confidence to handle challenging situations; and
- Teaching courtesy, non-violence, empathy, self-respect, human rights and respect for others.

\textsuperscript{6} Bower
\textsuperscript{7} Gershoff
\textsuperscript{8} Durrant
Positive discipline is NOT:

- Permissive parenting;
- Letting children do whatever they want;
- Having no rules, limits or expectations; and
- About short-term reactions or alternative punishments to slapping and hitting.

9. Conclusion

It is clear that the continued absence of legislation prohibiting parental corporal punishment violates South Africa’s international obligation and constitutional commitments; it allows a practice which is damaging, dangerous and ultimately ineffective to continue; and it makes a significant contribution to our already high levels of violence in the home, in communities and in our society.

The explicit prohibition of corporal punishment will make a significant contribution to entrenching our hard-won democracy, and ensuring that the next generation is able to make sensible decisions, resolve conflict without violence, and live as self-sustaining and contributing members of our society.

Bibliography


Child justice in South Africa: Reaching new frontiers or facing systemic implementation hurdles?

Lorenzo Wakefield*, Community Law Centre, University of the Western Cape

1. Introduction

On 19 November 2008, the South African Parliament took a bold step and enacted the Child Justice Act 75 of 2008.2 This Act proposed a new justice system for children in conflict with the law. The Child Justice Act was signed into law by the president during 2009, with an implementation date set for 1 April 2010. This Act has been hailed by many as a step in the right direction when realising children's rights to a criminal procedure that enforces their best interest within the justice system.3

The purpose of this paper is to investigate the implementation of the Act and where necessary, the international legal obligations, based on the following areas:

- Criminal capacity;
- Children with conduct disorders;
- Diversion and diversion accreditation; and
- Children in prison.

Once the areas above have been discussed, I will investigate the role that Parliament plays in ensuring the full realisation of the rights of children in the child justice system.

2. Overview of the Child Justice Act

As mentioned above the Child Justice Act came into operation on 1 April 2010, with a launch at the Walter Sisulu Child and Youth Care Centre in Soweto. It is noteworthy to briefly discuss the history, together with an overview of the scope that is covered by the Act.

The Child Justice Act can be described as the brainchild of the late Minister of Justice, Advocate Dullah Omar. Upon his appointment as Minister of Justice in President Nelson Mandela’s cabinet, he appointed a project committee within the then South African Law Commission4 to investigate the rights of children who come into conflict with the law. The SALRC published various issue and discussion papers, while in 2000 it completed its investigation with a report and a draft Child Justice Bill. This Bill was handed to the Department of Justice for adoption and introduction into Parliament.

The Department of Justice introduced the Child Justice Bill into Parliament during 2002, at which stage deliberations began. Deliberations ceased during 2004 and during 2008 the Child Justice Bill was reintroduced in Parliament for

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1 *LL.B, LL.M (UWC), Researcher: Children’s Rights Project, Community Law Centre, University of the Western Cape. The author would like to acknowledge the European Union and the Open Society Foundation of South Africa for its financial contribution towards the drafting of this paper. The views in this paper are those of the author and do not represent the official views of the European Union or the Open Society Foundation of South Africa.
2 Hereinafter referred to as “The Child Justice Act”.
4 The South African Law Commission subsequently changed their name to the “South African Law Reform Commission”. I will use the abbreviation SALRC hereafter when referring to the South African Law Reform Commission.
The child justice procedure envisaged in the Child Justice Act can be explained as follows:\(^5\)

As one can view from this diagram, children below the age of 10 years do not have any criminal capacity. Diversion can also happen at various stages of the child justice procedure. This procedure also allows for a preliminary inquiry to take place to decide on whether to divert a child away from the court procedure or not; or whether a child might be in need of care and protection; or if the matter should be referred to the child justice court for trial. Thus the new

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\(^5\) This diagram was first used by: J Gallinetti *Getting to know the Child Justice Act* (2009) 65.
provisions created in the Child Justice Act are: raising the minimum age of criminal capacity from 7 to 10 years;\(^6\) the diversion of children at various stages of the procedure;\(^7\) and the preliminary inquiry procedure.\(^8\)

### 3. Legal obligations and implementation

I will now consider the four topics mentioned in the introduction, which will be under investigation in this paper. These are criminal capacity; children with conduct disorders; diversion and diversion accreditation; and children in prison.

#### 3.1 Criminal capacity

Criminal capacity can be defined as the mental ability to distinguish between right and wrong and to act in accordance with such appreciation.\(^9\)

Prior to the implementation of the Child Justice Act, South Africa was one of the few countries with the lowest minimum age of criminal capacity in the world. South Africa then still applied the common law position which contained three presumptions in relation to criminal capacity and set the minimum age of criminal capacity at 7 years old.

This rule worked as follows: children below the age of 7 years old were irrebuttably presumed not to possess criminal capacity. Therefore children below the age of 7 years old could not be charged with committing offences. Children between the age of 7 and 14 years old were rebuttably presumed not have criminal capacity. This meant that the onus of proof was left upon the prosecution to show that a child between these ages had the ability to distinguish between right and wrong and knew the consequences of such distinction. Children above the age of 14 years old were rebuttably presumed to possess criminal capacity. Therefore if they did not possess such capacity (due to a mental disability for example), then it was left up to the defence to produce evidence to prove this.

Neither the United Nations Convention on the Rights of the Child (hereinafter the UNCRC), nor the African Charter on the Rights and Welfare of the Child (hereinafter the ACRWC)\(^10\) stipulate a minimum age of criminal capacity for children who commit offences. Article 40(3)(a) of the UNCRC does stipulate that “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law” must be establish. In a previous article I argued that this should be read with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice\(^11\) which, in Rule 4.1 states that the minimum age below which children will not have criminal responsibility


\(^7\) Before the implementation of the Child Justice Act, diversion was regulated by policy. Therefore the practice is not entirely new. The Child Justice Act now regulates the practice in terms of legislation.

\(^8\) Sections 43(1) and (2) of the Child Justice Act stipulates that the preliminary inquiry is an informal pre-trial procedure which is inquisitorial in nature, the objectives of which are the following: “(a) to consider the assessment report of the probation officer...; (b) establish whether the matter can be diverted before plea; (c) identify a suitable diversion option, where applicable; (d) establish whether the matter should be referred... to a children’s court...; (e) ensure that all available information relevant to the child, his or her circumstances and the offence are considered in order to make a decision on diversion and placement of the child; (f) ensure that the views of all persons present are considered before a decision is taken; (g) encourage the participation of a child and his or her parent, an appropriate adult or guardian in decisions concerning the child; and (h) determine the release and placement of a child...”


\(^10\) South Africa ratified both these treaties in 1996 and 2000 respectively.

\(^11\) Hereinafter referred to as the “Beijing Rules” after the city where these rules were adopted.
should not be “fixed at too low an age level bearing in mind the facts of emotional, mental and intellectual maturity”.12
In order to guide States Parties to the UNCRC in the interpretation of its articles in relation to child justice, the United Nations Committee on the Rights of the Child13 published General Comment Number 10 entitled “Children’s Rights in Juvenile Justice” during 2007. After weighing up all the options and considering all the submissions made to the UNCRC on criminal capacity, it found that the minimum age of criminal capacity should be set at 12 years and States Parties to the UNCRC should be encouraged to never lower the minimum age of criminal capacity.14 The UNCRC decided on this age, because of the strong submissions made by experts in the field of children’s cognitive and conative abilities that 12 years could be considered an age where children can truly tell the difference between what is right and wrong and act in accordance with such distinction.15

Section 7 of the Child Justice Act amends the common law position as far as the minimum age of criminal capacity is concerned. In terms of this section the minimum age of criminal capacity is set at 10 years old, while the common law presumptions still apply to children between the ages of 10 – 14 years and children above the age of 14 years. Therefore currently the Child Justice Act does not comply with the international obligations imposed upon South Africa in terms of the UNCRC.

All is not lost though. Section 8 of the Child Justice Act stipulates the following:

In order to determine whether or not the minimum age of criminal capacity as set out in section 7(1) should be raised, the Cabinet member responsible for the administration of justice must, not later than five years after the commencement of this section, submit a report to Parliament, as provided for in section 96(4) and (5).

Sections 96(4) and (5) allows for the review of the formulation of criminal capacity, which includes the minimum age of criminal capacity, based on the production of certain statistics to Parliament by the Department of Justice and Constitutional Development.

In a recent study conducted by the Child Justice Alliance on criminal capacity, Skelton and Badenhorst argued that not only did General Comment No. 10 place an obligation on South Africa to increase the minimum age of criminal capacity to 12 years old, but also in the concluding observations for South Africa on its 1st initial country report to the UNCRC, did it recommend that the then Child Justice Bill include a minimum age of 12 years.16 In addition to this, Skelton and Badenhorst recommended that South Africa abolish the common law presumptions in relation to criminal capacity and stipulate a minimum age of 12 years old, whereupon children below the age of 12 years will not possess criminal capacity, while children above the age of 12 years will possess criminal capacity (provided that they do not have some mental disability that would influence their ability to distinguish between right and wrong and act in accordance with such distinction). This, they argue, would also be in line with international obligations placed upon South Africa.17

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3.2 Children with conduct disorder

The lack of services for children with conduct disorder has recently come under the spotlight in the case of Centre for Child Law v MEC Health and Social Development, Gauteng.18

The American Academy of Child and Adolescent Psychiatry defines conduct disorder as follows: “conduct disorder refers to a group of behavioral and emotional problems in youngsters.”19 They go further to explain that normally children with conduct disorder would do the following: aggression to people and animals; destruction of property; deceitfulness, lying or stealing; and serious violations of rules.20 They also stated that the “treatment of children with conduct disorder can be complex and challenging”.21 However, a South African expert found that “in the context of consistent nurturing and holding environments, re-education processes can be affected and competencies can be built in children with such and other diagnosis that can ameliorate their symptoms or result in more socially productive behaviour patterns being developed.”22

The Centre for Child Law identified two cases where children with conduct disorder were sent from pillar to post and ended up committing offences.23 They found that the current child and youth care centres designated in terms of section 191 of the Children’s Act24 do not cater for the needs of children with conduct disorder. With that, conduct disorder does not constitute a mental health disability or illness; therefore the institutions catered for in terms of the Mental Health Care Act also do not cater for the needs of children with conduct disorders.

Within the child justice system, the situation is the same. Currently no secure care centre has the means to cater for the needs of children with conduct disorder. As mentioned by the expert in the case of Centre for Child Law v MEC Health and Social Development, Gauteng “consistent nurturing and holding environments and re-education processes” can assist with the treatment of children with conduct disorder. The current centres identified in the child justice system do not currently have the capacity to treat children with conduct disorder, taking into consideration the amount of other children that they have to care for with various other needs. Therefore placing children with conduct disorder into these centres might not be in their best interest to assist them with the treatment needed for children with conduct disorder. Boezaart and Skelton correctly argues that section 191(2)(i) of the Children’s Act provides for child and youth care centres for “the reception, development and secure care of children with behavioural, psychological and emotional difficulties”.26 Therefore an obligation is placed upon the Department of Social Development (and the provincial departments of social services) to produce such centres in terms of the Children’s Act.

18 Case No. 37850/2010.
20 Ibid.
23 For information about this, please read: N Breen “Between the cracks: How the State fails to provide for and protect children with a debilitating form of conduct disorder” Article 40 Vol.13, No.1 (May 2011) 5 at 8.
25 These are child and youth care centres that specialises in programmes for children that might have committed offences. These were previously referred to as secure care centres and reform schools.
It appears that the two cases regarding children with conduct disorders mentioned within Centre for Child Law v MEC Health and Social Development, Gauteng are not the only isolated cases dealing with children with conduct disorder. More than 20 other cases of children with conduct disorder, in Gauteng alone, were reported to the Centre for Child Law subsequent to this case.

3.3 Diversion and diversion accreditation

As one can view from the diagram above diversion can take place at various levels within the child justice system. This speaks to the importance of diversion within the child justice system. In a study conducted by the Child Justice Alliance prior to the implementation of the Child Justice Act, it was found that there existed no uniform practice of when to divert children, even though in practice diversion did take place. This meant that a legislative framework providing such unity of practice was needed.

Diversion is defined in section 1 of the Child Justice Act as follows: “diversion means diversion of a matter involving a child away from the formal court procedures in a criminal matter by means of the procedures established by Chapter 6 and Chapter 8.”

Chapter 6 of the Child Justice Act allows for a prosecutor to divert a matter away from the court-based justice system in extremely minor cases committed by a child, while chapter 8 allows for the diversion of cases away from the court-based justice system in more serious cases.

In the first year annual report on the implementation of the Child Justice Act, the Department of Justice and Constitutional Development found that there was a 24% decrease in cases being referred to diversion after the implementation of the Child Justice Act. In this report, they mentioned the following possible reasons for the decline:

- The impact of the implementation of the Act from 1 April 2010 (with particular reference to the provisions that stipulate that children may only be arrested and charged as a measure of last resort);
- The resulting decrease in the number of children arrested, thus reducing the number of potential diversions;
- An analysis of the impact of the 2010 FIFA World Cup crime prevention measures during June 2010 indicated a decrease in crime, also amongst children; and
- The seasonal effect and a cyclical decrease of crimes, arrests and diversions during the winter months.

Granted that reasons 1 and 2 may show plausible causes as to why there is a decrease in the number of children being diverted, this has not been scientifically proven in research. For this reason, the Parliamentary Portfolio Committees on

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28 See diagram displayed at “Overview of the Child Justice Act” above.


32 Ibid.
Justice and Constitutional Development and Correctional Services, respectively, instructed the Department of Justice and Constitutional Development to conduct research to investigate the reasons for the decline in diversion referrals.33

The Child Justice Act also stipulates that all diversion services providers and programmes have to be accredited. In this regard section 56(1) stipulates that:

Subject to section 98(2), a prosecutor, an inquiry magistrate or a child justice court may only refer a matter for diversion to a diversion programme and diversion service provider that has been accredited in terms of this section and has a valid certificate of accreditation, referred to in subsection (2)(e).

Upon communication with various diversion service providers, it has come to light that not all of them are accredited, more than 2 years into the implementation of the Child Justice Act and yet they are still providing the important service of diversion provision. They have stipulated that they have submitted an application for accreditation and are still awaiting a response from the various provincial departments of social development. They have also said that there seems to be no unified criteria for the accreditation of their programmes, as in some districts their programmes are accredited, while in other districts the same programmes are not accredited. This seem to portray an inconsistency in practice, which with the codification of diversion services into legislation was meant to be avoided, as a unified practice was intended.

3.4 Children in prison

It is envisaged within the Child Justice Act that the imprisonment of children should only be as a matter of last resort and for the shortest appropriate period of time. One can view this from the formulation of the provisions relating to the remanding of children in prison awaiting trial and the sentencing of children to prison.

In relation to the detention of children awaiting trial in prison, section 26 of the Child Justice Act stipulates that should a child be detained, the least restrictive option of detention should be considered. This read with the requirements to detain children in prison awaiting trial in section 30 of the Child Justice Act,34 promotes the constitutional35 and international law36 principles regarding the detention of children as a measure of last resort and for the shortest appropriate period of time.

It is worth noting that since the implementation of the Child Justice Act, the number of children awaiting trial in prison and number of children sentenced to prison has decreased.37 Therefore the Child Justice Act reached one of its purposes to ensure that the constitutional principles pertaining to detention of children as a last resort or for the shortest appropriate period of time has been achieved.

33 For the minutes of this meeting please see: http://www.pmg.org.za/report/20110622-joint-meeting-implementation-child-justice-act (accessed on 29 May 2012). As at the time of writing, this research has not been published by the Department of Justice and Constitutional Development.

34 Section 30(1) of the Child Justice Act stipulates that: “A presiding officer may only order the detention of a child in a specified prison, if— (a) an application for bail has been postponed or refused or bail has been granted but one or more conditions have not been complied with; (b) the child is 14 years or older; (c) the child is accused of having committed an offence referred to in Schedule 3; (d) the detention is necessary in the interests of the administration of justice or the safety or protection of the public or the child or another child in detention; and (e) there is a likelihood that the child, if convicted, could be sentenced to imprisonment.”

35 See section 28(1)(g) of the Constitution of South Africa, Act 108 of 1996.

36 See article 37(b) of the UNCRC.

However, the conditions of prisons seem to paint a bleak picture for children currently detained or sentenced to it.

The formulation of the right to basic education in the Constitution seems to place an immediate obligation on the State for its provision of basic education. This read with section 3(1) of the South African Schools Act means that schooling must be provided to children up to grade 9 or when they turn 15 years of age, whichever comes first. In relation to education within correctional centres, section 19(1)(a) of the Correctional Services Act lays down the requirement of education for children of school-going age.

In a recent situational analysis conducted on children in prison, Muntingh and Ballard found that except for in three prisons (these being Pretoria Local, Escourt and King William’s Town), unsentenced children are not provided with education. The situation of children sentenced to prison is different, as the majority of the correctional centres do provide weekly or daily educational programmes for these children. However, the study found that at some centres there are also deviations. This constitutes a violation of the right to basic education as formulated in both the Correctional Services Act and the Constitution.

In relation to other services available for unsentenced children, the situational analysis found that:

- There is little consistency in practice across the correctional centres in relation to access to social workers and psychological services.
- The only outdoor recreational activities they can partake in are in prison courtyards, this despite the fact that 59% of the prisons reported that they do have sports fields.
- At 7 correctional centres the cells for unsentenced children had been occupied over capacity for 30 days at a time.
- In relation to other services available for sentenced children, the situational analysis found the opposite:
  - All the prisons reported that social workers were provided to children and 81% reported that psychological services were available.
  - The survey found that in general sports fields are available to children for sports and other recreational activities.
  - At 5 correctional centres the cells for sentenced children had been occupied over capacity for 30 days at a time.

References:
38 See L Wakefield & NL Murungi “Domesticating international standards of education for children with intellectual disabilities: a case study of Kenya and South Africa” in Grobbelaar-du Plessis & T van Reenen (eds) Aspects of disability law in Africa (2011) 133, at 144 and 145. Section 29(1)(a) says that “everyone has a right to basic education, including adult basic education.”
39 Act 85 of 1996.
40 Act 111 of 1998.
43 Ibid. It was found that at some centres unsentenced children has access to social workers working for the Department of Correctional Services, while at others they do not.
47 Ibid.
Based on this comparison one can see that children in remand detention receive much less services in prisons than children sentenced to prison.

In relation to recommendations for Parliament, I would argue that the provision of education programmes to children, especially those unsentenced, need to be given urgent attention. The Portfolio Committee on Correctional Services need to hold the Department of Correctional Services to account to provide education to children within their centres (whether children are sentenced or unsentenced). With that, the inequality of services granted to children in remand detention, compared to those sentenced also need to be given serious attention. Unsentenced children have not been convicted of committing any offence (as they have only been charged and are still either awaiting trial or are going through a trial process) and yet services available to them are inadequate, compared to children convicted and sentenced.

4. The role of Parliament

The establishment and mandate of the Parliament of South Africa can be found within chapter 4 of the Constitution. Parliament considers its role within the following 5 functions:

Function 1: passing legislation;

Function 2: overseeing the executive branch of government;

Function 3: facilitating public participation in legislative and other processes;

Function 4: participate in, promote and oversee co-operative government; and

Function 5: engage and participate in international processes.

In the context of this paper, 3 important functions in relation to child justice in South Africa should be emphasised. These are passing legislation, overseeing the executive branch of government and engagement in international processes.

4.1 Passing legislation

Parliament passed the then Child Justice Bill into law during 2008. This was the first step in ensuring that South Africa has a dedicated child justice system in place. It is not envisaged that the Child Justice Act should be amended soon. However, in terms of section 8 of the Child Justice Act, an amendment in relation to criminal capacity is necessary. Parliament has the ability to rectify the current non-compliance with international law immediately. If one reads section 8 of the Child Justice Act, it stipulates that within 5 years of the implementation of the Act, can section 7 (the section that deals with criminal capacity) be amended. The Act came into operation on 1 April 2010; therefore 1 April 2015 would be the deadline for Parliament to amend section 7. This would mean that a further 3 years (from the time of writing this paper) would pass before section 7 will be amended. This essentially mean that a further 3 years would pass within which children who do not possess cognitive and/or conative abilities could still be prosecuted for offences that they did not know they might have committed.


50 Act 108 of 1996.

In order to ensure that South Africa complies with substantive provisions in relation to its international obligations, Parliament should also strongly consider amending the common law presumptions in relation to criminal capacity to reflect that children below the age of 12 years do not have criminal capacity and those above the age of 12 years do possess criminal capacity.

Therefore I recommend that in order to ensure that South Africa complies with its international obligations and that children who might not have the ability to distinguish between right and wrong and act in accordance with such distinction are protected, Parliament should consider the review sooner, rather than later.

4.2 Overseeing the Executive branch of Government

Oversight of the Executive and other organs of State (such as the institutions created for under Chapter 9 of the Constitution) is one of the core functions of Parliament. Parliament describes the functions of oversight to be:

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.
- To hold the government to account in respect of how taxpayers’ money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations.
- To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievements of goals set by the legislation and the government’s own programmes.
- To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.52

These are all noteworthy functions of oversight and certainly the role that Parliament plays in its oversight based on the Child Justice Act falls within all of these functions. Oversight visits within various constituencies of parliamentarians can be utilised to monitor the implementation of the Child Justice Act and it is at these visits where Members of Parliament can detect and prevent abuse and unconstitutional conduct. In relation to reporting to Parliament by the Executive arm of government can the efficiency and effectiveness of government operations regarding the child justice system be improved and goals set by legislation and programmes can be measured.

More importantly, the Child Justice Act also contains provisions in relation to the oversight function of Parliament. Sections 96(3)(a) and (b) stipulate that the Minister of Justice and Constitutional Development must, every year, submit reports to Parliament on the implementation of the Child Justice Act. Parliament would then have a chance to interrogate the report and fulfil its oversight function in this regard.

At the time of writing this article, only one such report has been submitted to Parliament. This report was submitted based on the 1st year of implementation of the Child Justice Act. The second report in this regard is still outstanding, even though the Child Justice Act has been in implementation for over 2 years now.

Apart from the annual report presentations on the implementation of the Child Justice Act, Parliament should adopt a more proactive role in its oversight function on the implementation of the Child Justice Act. This include oversight visits and reporting on the implementation of the Child Justice Act at such visits. Parliament should also adopt the quarterly reporting based on the implementation of the Child Justice Act more vigorously. During the first year of implementation of the Child Justice Act, the Department of Justice and Constitutional Development has submitted quarterly reports on the implementation of the Child Justice Act. This has however not happened during the second year of implementation of the Child Justice Act.

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In relation to the treatment of children with conduct disorder in the child justice system, the oversight of not just the implementation of the Child Justice Act is necessary, but also the Children’s Act. In this regard the oversight role played by provincial legislatures is vitally important in the establishment of facilities to cater for the needs of children with conduct disorder. Provincial legislatures should scrutinise the various provincial departments of social development/services’ strategic plans and budgets to ensure that allocation is made for child and youth care centres in terms of section 191(2)(i) of the Children’s Act.

The role played by Parliament regarding diversion services is also one of oversight. Diversion services and the accreditation thereof have been passed in legislation. In order to achieve Parliament’s fourth function of oversight,53 I would argue that it is vital to ensure that the Department of Social Development adopt a unified approach in relation to the accreditation of diversion services. The current subjective practice in relation to the accreditation of diversion programmes will not benefit the impact of diversion services on children.

4.3 Engagement in international processes

South Africa has ratified the CRC, the ACRWC and signed up to other international processes,54 which require a level of reporting to ensure that the State complies with those documents in its implementation. In terms of Parliamentary processes, such reports would normally have to be drafted by the Executive and approved by the Legislature. Therefore Parliament has a pivotal role to play in ensuring that reports of this nature are accurate. Needless to say that provisions in relation to child justice are also of relevance in this instance.

South Africa only submitted an initial report to the UN Committee on the Rights of the Child. The State failed in submitting the 2nd and 3rd periodic report this Committee as well. With that, the State also failed in submitting its initial report to the African Committee of Experts on the Rights and Welfare of the Child.55

As mentioned in this paper, South Africa has made many positive inroads in the child justice system. This is a consequence of the enactment and the implementation of the Child Justice Act and the establishment of two one-stop child justice centres in Mangaung and Port Elizabeth, respectively. Two years after the implementation of the Child Justice Act, certain challenges still remain.56

However, as a country, South Africa has much more to report on to the UN Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child to give a reflection on the developments in relation to child justice issues. Parliament has the authority to place pressure on the Executive to ensure that the State reports to the various treaty bodies in this regard are completed as a matter of urgency. These reports would give us an accurate reflection on the State of the justice system for children and various other child rights issues in the country.

5. Conclusion

In the title to this paper, I asked the question whether the Child Justice Act is reaching new frontiers or facing systemic hurdles. The answer to this question is a yes to both. The child justice system in South Africa is reaching new frontiers, while at the same time facing systematic implementation hurdles.

53 This function is explained above as: “To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery”.

54 Other processes include the Universal Periodic Review and African Peer Review Mechanism for example.


Academic authors have correctly argued that the new Child Justice Act, to a large extent, complies with South Africa’s international and constitutional obligations and once carefully considered is “respectful of the interest of society and the rule of law”. Therefore one can certainly argue that it reaches new frontiers in realising children’s rights in the justice system.

However, as explained in the four areas above, there are instances where the Child Justice Act does not comply with international obligations (i.e. the minimum age of criminal capacity). The implementation shortfalls mentioned in this article in relation to the provision of services for children with conduct disorders, diversion services and accreditation of diversion service providers and programmes and the situation of children in prisons need to be urgently addressed. These are certainly not the only implementation problems experienced in the child justice system.

In this regard, Parliament does have the authority to ensure that the concerned departments live up to the obligations as codified in the Child Justice Act and that South Africa complies with its international obligations in terms of criminal capacity. It can do this by exercising proactive oversight over the relevant departments and amending the provisions in relation to criminal capacity as a matter of urgency.

List of resources

Books


Chapters in Books


**Journal Articles**


N Breen “Between the cracks: How the State fails to provide for and protect children with a debilitating form of conduct disorder” Article 40 Vol.13, No.1 (May 2011).


**Research Reports**


**Other sources**

Street children: Whose children are they? Towards an epistemological break of misguided conceptualisation

Prof. MDM Makofane, University of South Africa

1. Introduction

Societies are judged by the way they treat their children. It is in this context that the paper challenges the use of the concept ‘street children’. The argument is premised on the power of the spoken word. When one of the participants was asked how he would like to be addressed by the public, he said “call me by my name”.

A wake up call is also encapsulated in a statement made by Dr B.S. Ngubane, the then Minister of Arts, Culture, Science and Technology, in his opening address at a workshop entitled “The Feasibility of Technical Language Development in the African Languages” (in Pretoria on 8 March 1996), indicating the need for language development and the role it may play in the process of empowerment. He said:

The vision we have for our country and the strategies to arrive at our goals depend on many factors, one of them being appropriate knowledge. Knowledge is power. Knowledge transfer can only take place if a person understands the concepts being conveyed to him or her and the context in which it takes place. Keeping in mind that people are a nation’s greatest asset, development can only be fostered if people are developed. In this whole process, language plays the most important role (Ngubane 1997:7).

The analysis of the above quotation by Carstens (1998:4) is that “if a person does not have full command of the language in which a concept is conveyed to him or her, conceptualisation will not be (fully) realized.”

The aim of this qualitative study is to challenge and offer a critique on the use of the concept ‘street children’ in the South African context. Even though the term has been adopted for conformity with the United Nations, its continued use erodes the fundamental values of ubuntu1, an African life-view that most South Africans subscribe. This paper therefore challenges the designation ‘street children’ highlighting research findings that significantly dispute such a label in a refreshing light.

2. Methodology

Qualitative data were collected through a variety of sources such as the research reports of social work students, interviews with social workers and focus groups with the affected children to highlight their views on the utilization of the term ‘street children’. By nature qualitative research method recognizes multiple realities (Streubert, Speziale & Carpenter, 2007) which strengthen trustworthiness of the findings (Cuba cited by Krefting, 1991).

The presentation is a culmination of several activities undertaken to gain insight into the use of the label ‘street children’ in South Africa, namely:

- An extensive literature review;
- A review of thirty seven research reports of fourth year social work students at the University of South Africa (Unisa), who conducted research on: The coping resources of street children in 2011. Semi-structured interviews were used to gather qualitative data from the participants. The findings provided a broad spectrum of results

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1 According to Cilliers (2008:1) “ubuntu has been described as a way of life, a universal truth, an expression of human dignity, an underpinning of the concept of an open society, African Humanism, trust, helpfulness, respect, sharing, caring, community, unselfishness, etc. In short it means: humanity, or humanness. It stems from the belief that one is a human being through others – ‘I am because you are.’”
especially the pain they endured as a result of the public’s negative attitude towards them. This information, disturbing as it was, contributed in shaping direction for subsequent activities for the research project.

- Discussions with social workers in Bloemfontein (Free State Province), Cape Town (Western Cape Province), Johannesburg and Pretoria ( Gauteng Province), Polokwane ( Limpopo Province), Umtata ( Eastern Cape Province); and
- Focus group interviews conducted by a seasoned field worker in 2011 with children living on streets in the City of Tshwane.

The analysis of data took into consideration the views of the participants in the research project (Bryman, 2001) which afforded them a platform to illustrate their capabilities to reflect on their own social world.

3. Definition of the concept ‘street children’

There is no commonly agreed definition of street children (Else, 2006) as there are various meanings attached to the term. For instance, researchers and organizations working on this issue hold different views on what exactly the concept ‘street children’ defines (Iqbal, 2008). It should be borne in mind that, the label ‘street children’ was adopted by international agencies to avoid negative overtones for children who had been known as vagrants, rag-pickers, glue-sniffers, street Arabs (Panter-Brick, 2003 cited Williams).

However, Murithi (2007:277) signals a warning that “What is true is that the current international human rights standards, beginning with the Universal Declaration of Human Rights, were not developed through a global, broad-based consultation of the different values from around the world.” Nevertheless, in the evolving African culture, there are still resources such as *ubuntu* that could be useful for the promotion of children’s rights.

A few definitions will be provided to demonstrate the difficulty experienced in the utilization of the concept.

In some cases the terms used to refer to children living on the streets vary according to the geographical area of their home country (De Moura, 2002). Conversely, research studies in North America and Western Europe use the term ‘homeless’ interchangeably with ‘street children’, while Africa, Asia, Eastern Europe and Latin America use the term ‘street children’.

<table>
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<tr>
<th>Table 1: Definition of street children by the United Nation and South Africa</th>
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<tr>
<td><strong>United Nations</strong></td>
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<tr>
<td>Any boy or girl...for whom the streets (in the widest sense of the word: i.e., unoccupied dwellings, wasteland, etc...) more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults</td>
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The variance between the two definitions is that the South African government acknowledge and appreciate factors that may compel children to leave their homes.

The term ‘children of the street’ refers to those who live on the streets without adult supervision while ‘children on the street’ refers to those who beg and do menial work on the street and return home to contribute towards their families’ livelihood (Richter, 1988). UNICEF (2005) later included another category of ‘children at risk’ constituted mostly by poor children from urban areas who end up living and working on the streets.
According to Schimmel (2006:211) the term ‘street living children’ is “unambiguous and self-explanatory and therefore appropriate to use to refer to children living in the street without parental care or supervision.” On the other hand, Iqbal (2008:201) regards the definition by West as comprehensive: ‘street children’ is “a shorthand for children who transit to the streets – children who work on the street, or children who live on the street, with a variety of occupations including, beggars, garbage pickers, shoeshine boys, flower sellers, sweet shop workers, commercial sex workers and petty criminals.” The challenge with this definition is that the majority of the ordinary people will not know that the label is a short version of children living and/or working in the streets.

The author is of the view that, other people may have reservations using the term because of its emotional overtones. In a diverse society such as ours, it is expected that people will attach different meanings to the term. Some may find it appropriate and acceptable while others may find it inappropriate, offensive, derogatory, dehumanizing, perpetuating social exclusion and stigma towards children in adversity.

The limitation in the use of the label ‘street children’ as a working concept relates to the fact that it:

- Refers to a place of abode and the absence of proper care by adults from a family home and in society (Panter-Brick, 2003).
- Fails to recognize that children work in the street, dance in the street, beg in the street, sleep in the street, but the street is the venue for their actions not the essence of their character (Hecht, 1998).
- Has the stigmatising effect as children are allocated to the streets and to delinquent behaviour (Panter-Brick, 2003).
- Conceals variation in the experiences of children who share the common condition of being in the street, spending their lives largely outside the spheres typically considered appropriate for children, such as home, school and recreational settings (Raffaelli & Larson, 1991).
- Is used to categorise and pigeonhole children living on the streets (Hanschur, 2009).
- Is regarded as emotionally charged and does little to serve the interests of the children in question (Panter-Brick, 2003).
- Has been difficult to uphold the typology of children ‘of the street’ (those who have access to their families but make the streets their home) and ‘on the street’ (those who return at night to their families) established by UNICEF to differentiate street-based or home-based street children (Panter-Brick, 2003).
- Labels children and once a person has been given a label, the person becomes defined by that label and consequently the entire person’s experiences, feelings and desires become defined in terms of that label (Saleebey, 1997). This assertion is evinced by the following except from an interview conducted with a successful young African man who laments that:

  The negative attitudes of some people towards us make me doubt myself. You hear people say that you were a street kid or you are a street kid. They say this not as a complement but, in a demeaning way that is demoralizing as you are constantly reminded of your unpleasant past. These comments make me lose confidence in myself at times. Sometimes I feel that I may not be able to sustain my success or fear that should I experience problems with my business and become bankrupt, it means I will have to go back to the streets.
4. The African perspective

People’s understanding of reality is influenced by their social, cultural and historical background (Hanschur, 2009). The question is, whose lens are South Africans using to acquire an in-depth understanding of the labelling of children who live on the streets?

Traditionally, Africans lived as a commune as opposed to being individualistic. The interdependence and interconnectedness was demonstrated by their reliance on each other for their growth and development in various spheres of life. However, current trends indicate that many Africans no longer observe or conduct some of the cultural practices because they have assimilated the westerners’ way of doing things. Urbanization with its pull effects of employment opportunities has also contributed towards the dismantling of extended families which served as custodians of the African culture and offered support to newly established families. Despite these factors, the African belief systems dictate that all children regardless of their circumstances should be embraced for the benefit of humanity and posterity. Hence, there is an adage that says: it takes a village to bring up a child.

The presentation will not be able to exhaust the richness of the concept ubuntu but to highlight some significant points and to encourage a relook at the use of the label ‘street children’ in South Africa. The use of the concept ‘street children’ is a misnomer since it is in stark contrast with ubuntu, which refers to a sense of pride to be an African because you know that ‘I am what I am because of who we all are’ (Leymah Gbowee). Ubuntu is deeply embedded in the diverse African cultures and the concept has become well known all over the world as being typical of African and specifically South African culture (Cilliers, 2008).

The voices of the children are loud and clear. We need to take heed as they serve as a reminder that children are also human beings of worth and dignity. They say:

Why can’t we be called children?

We are children just like any other child. The difference is that I do not have parents and my relatives are not prepared to take care of me and that is why I ended on the streets to fend for myself.

I had parents. I am not a street child but a child.

I left home because my father does not love me. He ill-treated me to a point where I felt it is best to leave home but, I am still a person.

5. Suggested action

Different countries and communities have different life experiences, interpretations and expectations and therefore, joint deliberations and actions are meaningful in the context in which they are generated (De Moura, 2002). Consequently, countries and communities may learn from the experiences of others.

The classification of children on the streets is most often, done for the convenience of policy makers, researchers and service providers who are charged with the responsibility of designing appropriate programmes that would safeguard the children’s rights and enhance their development cognitively, socially, psychologically and emotionally. However, if the children who live or work on the streets are excluded socially, professionals and communities may fail to develop long-term sustainable interventions for these children.

The time has come to open a dialogue based on the precepts of ubuntu with all role players to:

- Go back to the basics/fundamentals and explore the meaning of the label ‘street children’ in the South African context. Research endeavours could be accomplished through fostering collaboration between government and
institutions of higher learning. It should be borne in mind that, the definition of ‘street children’ plays a central role in research and may be a source of disagreement about the results of studies (Koller & Hutz 1996).

- Encourage public participation in the process of re-conceptualization that would demonstrate the interconnectedness among all members of society.
- Conduct reflexive exercises that would serve as ground work for charting a better future for children who have been outside mainstream society.

6. Conclusion

Any society that sacrifices its values, norms and identity does that at its own peril. As South Africans we need to re-enter the debate and assume the leading role in defining who we are and how we would like to define our children. Such a perspective will be of value in developing suitable intervention strategies for children in adversity.

References


1. Introduction

South Africa, like other developing countries, is in nutrition transition which includes the coexistence of under- and over-nutrition and has a malnutrition problem of public health significance. Despite various national nutrition and primary health care programmes being initiated in South Africa over the last decade, recent findings have indicated that child malnutrition rates and hence child health has deteriorated. At the national level, stunting and underweight remain the most common nutritional disorders affecting 1 out of 5 children and almost 1 out of 10 children respectively (Labadarios et al, 2008).

Survival, growth and development of children are crucial for sustainable socio-economic development. Children represent the future and ensuring their healthy growth and development ought to be a prime concern of all societies (WHO, 2010). Malnutrition remains one of the highest contributors to mortality among under-five children in developing countries (Achoki et al. 2010). Furthermore, it is a consequence of inadequate dietary intake and disease in combination with multiple social, economic, cultural and political elements (Syed & Raafay, 2010).

Adequate nutrition is essential for proper growth and physical development of children. Furthermore it ensures optimal working capacity, normal reproductive performance and adequate immune function (Syed & Raafay, 2010). The WHO (2010) estimated that about two million children worldwide are severely malnourished which makes them more vulnerable to illness and even death. Malnutrition has a serious long term consequences for the children and adversely influences their development as it weakens the immune system (Rayman & Khan, 2006). Early under-nutrition and micro-nutrient deficiencies have been associated with impairment of intellectual performance, work capacity and overall health and nutritional status during adolescence and adulthood (UNICEF, 2007). It is known that severe forms of malnutrition in childhood can lead to development of chronic diseases later in life (Berry & Hendricks 2009).

2. Child nutrition and health

Nutritional status can be influenced by various factors, including those in the UNICEF conceptual framework of causes of malnutrition in children (UNICEF, 1990) which include immediate, underlying and basic causes. Some of the nutrition-related factors may be changed by nutrition education; however, certain basic and underlying causes of malnutrition cannot be changed by nutrition education, as these need bigger socio-economic interventions. Eradicating extreme poverty and hunger, reducing child mortality and achieving the Millennium Development Goals (MDG’s) related to health and education are largely dependent on nutrition (Veneman, 2006).

Poverty and poor nutritional intake are significant causes of the high levels of poor infant and child physical growth and development. Poor nutrition has been implicated in delayed cognitive development; long-term damaging effects on infant and child intellectual and psychological development; severe infection; and because under-nutrition is a major contributor to the chances that an infant and child will succumb to a life threatening disease, it is estimated that poor nutrition accounts for about 70% of under-five mortality in the developing world.

Malnutrition is not only an urgent global health issue. It is also an obstruction or impediment to productivity, economic growth and poverty eradication. The first MDG is directly related to eradicating hunger and malnutrition but many of the MDGs such as improving education; reducing child mortality; improving maternal health; and combating HIV and AIDS, malaria and other diseases all require good nutritional status if they are to be achieved efficiently.

South Africa’s infant and under-five mortality rates have increased from 44 to 48 and 56 to 67 deaths per 1 000 live births respectively from 1990 to 2008. Most of these deaths are caused by conditions that are either preventable or treatable such as AIDS, neonatal causes and pneumonia and diarrhoea (Shisana et al, 2010). Achieving the MDGs will prove difficult unless there is a dramatic decrease in new HIV infections in mothers and children.
Despite the fact that breastfeeding is still considered to be the norm in South Africa, the HSRC study found that only 25% of infants were exclusively breastfed during their first six months; the vast majority (75%) were either formula fed or mixed fed. It is recommended that the current policy and approach to the promotion and support of exclusive breastfeeding be revised to put a stronger focus on community and home-based support for mothers through community-based organisations, community leaders and community workers.

3. Maternal health

According to UNICEF (2003) a child’s nutritional future begins with the mother’s nutritional status during adolescence and pregnancy. Adequate nutrition must begin during pregnancy as maternal under-nutrition has lifelong consequences for children, including impaired prenatal growth, low birth weight and increased risk of developmental disabilities. The size of the baby at birth is a risk factor for stunting, wasting and underweight (Rayman & Khan 2006).

To speed up the progress in dealing with malnutrition, adequate food, health and care must be ensured throughout the lifecycle. Good nutrition during pregnancy reduces the likelihood of low birth weight and improves pregnancy outcomes.

In most communities, the basis of malnutrition starts before birth. Mothers of low body mass index (BMI) on average are giving birth to babies of low birth weight (James, 1998). The direct relationship between maternal weight is not a new finding, however, the nutritional state of women, both before pregnancy and during pregnancy needs to be given emphasis, especially by major policy makers. The maternal consequences of malnutrition extend beyond those of maternal risk of underweight babies. The ability of women to sustain and their physical capacity to cope are dependent upon their body mass (James, 1998). This adds a new dimension of malnutrition.

The education level of women, who are the main caregivers of children, has an influence on the quality of care, because more educated women are more able to process information on nutrition, acquire skills and display positive caring behaviours and this is reflected in the child’s nutritional status. According to the IFPRI (2000), improved education levels in women were responsible for almost 43% of the total reduction in child malnutrition that took place from 1970 to 1995. Several studies have shown that children of mothers with no formal education or only primary education were more likely to be stunted when compared to their counterparts with mothers who had secondary or college education (Chen & Li, 2008; Semba et al., 2008; Hendricks et al., 2006; Sakisaka et al., 2006; Wamani et al., 2004; Tharakan & Suchindran, 1999).

Encouraging breastfeeding is a prime example from a popular image of massive resource distribution to simple, low-tech, affordable, village-by-village interventions. Reducing malnutrition is an important aim and other powerful objectives include:

- Making sure children get a good/healthy foundation for the future
- Fostering greater self-sufficiency
- Improving overall health & disease prevention efforts

It is however cautioned that it is less effective to talk narrowly about increasing productivity, future earnings, and political stability without setting a broader context and focusing on basic, first-order concerns.

Shisana et al (2010) recommended that the Department of Health (DOH) prioritise the strengthening of the primary health care system as the national health response, particularly expanding the number and scope of work of community health workers to include high impact but low cost child health and nutrition interventions. Policy-makers and managers in the public and private health sectors should also routinely offer HIV testing for sick children and develop the HIV capacity of primary health-care providers for early HIV identification and timely referral and management of advanced HIV infection in children.
It is recommended that the DOH put a greater emphasis on improving the quality of care, particularly in maternity and neonatal care units. WHO (1999) have recommended that INP should address both nutrition and psychosocial issues that affect the nutritional status of the population, especially of children and women. Integrated strategies are more effective and efficient when compared with fragmented approaches, because there is increased access to services and they use the same facilities to address multiple causes of malnutrition simultaneously (Allen & Gillespie, 2001). In addition, integrated strategies should incorporate child psychology in health services by including developmental milestones on health cards and messages on how to facilitate psychological development, the promotion of child services combined with supplementary feeding for malnourished children, community development and income-generating projects, maternal health services and nutrition education (WHO, 1999).

4. Food security

The measurement of food insecurity at the household (HH) or individual level involves the measurement of those quantitative, qualitative, psychological and social or normative parameters that are central to the experience of food insecurity, qualified by their involuntary nature and periodicity. Risk factors for food insecurity include any factors that affect HH resources and the proportion of those resources available for food acquisition. Potential consequences of food insecurity include hunger, malnutrition and (either directly or indirectly) negative effects on health and quality of life. The NFCS 2005 reported that at the national level, one out of two HH (51.6%) experienced hunger as determined by the hunger scale; approximately one out of three was at risk of hunger and only one out of five appeared to be food secure.

5. Socio-economic investment

If governments can ensure that most rural people have access to resources such as land for food production, modern agricultural technologies and credit, household food security can be improved significantly, resulting in adequate dietary intake and better nutritional status of the families (Ajani, 2008). Governments should develop agricultural and economic policies and provide financial institutions that support smaller rural farmers with the provision of input to revive the agricultural sector, which has been neglected for decades (FAO, 2009). The economic growth of a country, especially equitable growth, when social services become affordable and accessible and when adequate investment is made in human resources (including the empowerment of women), is more likely to improve the nutritional status of the community, particularly that of young children (FAO, 2009).

The South African Integrated Nutrition Programme (SAINP) is implemented as an integral part of the primary health care approach within the District Health System. There are several interventions that were implemented under SAINP, such as the promotion, protection and support of breastfeeding; vitamin A supplementation for postpartum women and young children aged six to 59 months; mandatory fortification of maize meal, white bread and brown bread flour; community-based growth monitoring and promotion; integrated community development projects; and nutrition promotion, education and advocacy (DOH, 2008). The success of the SAINP depends on encouraging community participation and involvement and ensuring a buy-in by community leaders such as traditional leaders and community members (DOH, 2008). In addition, collaboration with other sections within the health sector, such as finance, environmental health and clinic personnel, and with other departments, such as agriculture and water affairs, is encouraged.

Considerable progress has been made in the development of nutrition policy and guidelines for the improvement of the nutritional status of vulnerable groups in South Africa (Labadarios et al., 2008).
6. Conclusions

In recognition of the role of women in determining nutrition of households and societies and the nutritional status of women, are linked; and that women simultaneously exercise roles in economic production, home production and reproduction, often with damaging consequences for their own nutritional status, it has recommended that actions for direct nutrition interventions for women as well as for the strengthening of their roles as an important route towards improving nutrition for all (Kevany et al., 1990).

Firstly, greater efforts should be made to increase specifically women’s access to productive resources which directly or indirectly affect food availability at the household level. Secondly, more programmes should be directed at improving the effectiveness and reducing the time and energy cost of women’s home activities. Thirdly, ensuring the schooling of young girls and increasing young women’s functional literacy could be the most important means of improving women’s nutritional status in the long term because of the associated effects on health and nutritional awareness, fertility and social development.

Goals of intervention in summary:

- **Young children get nutrition they need for a healthy start in life**
- **Addressing the problem of malnutrition among infants and young children**
- **Helping poor & developing households become more self-sufficient in ability to grow and produce food for their own people**
- **Addressing immediate threat of starvation in situations of severe food shortages due to drought/other disasters**
- **Improving overall health and reducing the spread of life-threatening diseases such as HIV/AIDS, malaria & tuberculosis.**

Proven, cost-effective solutions can be tailored to local communities to dramatically reduce malnutrition and its devastating and permanent impact on millions of pregnant women, infants and young children. These solutions focus on educating women and families about making the healthiest choices for their young children, including three specific areas:

- **Breastfeeding for the first six months of life,** which offers babies greater immunity from disease and protection from contaminated water used to mix formula.
- **Introducing nutritious solid foods,** along with continued breastfeeding, starting at six months through age two.
- **Providing essential vitamins and minerals,** such as iron and Vitamin A, to ensure children’s healthy development.

The most effective prevention of malnutrition efforts places an equal emphasis on these programs as both a “good investment” that pays for itself in future benefits and “the right thing to do” for children on a basic humanitarian level. Of the many impacts of children’s malnutrition, focusing on the connection to other diseases and health measures as well as on opportunities for greater self-sufficiency is especially powerful.

Quickly identifying a concrete set of limited, specific, proven interventions is critical in overcoming barriers around solvability. Outside of highly expert audiences, there is a common misperception that effective solutions will be costly, hulking, and resource-intensive.
Along with powerful opportunities for building momentum and conveying greater urgency, there are also important potential stumbling blocks. These obstacles center on solvability and are perceived almost universally:

- Efficacy of interventions given local inefficiencies, and lack of infrastructure.
- Entanglement in broader, more complex and more intractable food security challenges (ranging from agricultural productivity to trade)
- Permanence and durability or sustainability of interventions that will act as a foundation on which to build

7. References


Ms Ella Monakali, Ilitha Labantu

As Ilitha Labantu we are greatly honoured to have been invited to this event to share with you some of the experiences and challenges that we as NGOs are facing today in addressing some of the major obstacles that we encounter when it comes to the protection and preservation of the rights of children.

Madam Chairperson,

Allow me to first quote Ms. Sarah Michaels, who in her thesis on the Role of NGO’s 2002 argued that:

“NGO’s are one of the most visible sets of actors in the related fields of human development and human rights that can play a significant role in helping to achieve human security. NGO’s are especially well suited to action for human security because of their size and reach, closeness to local populations, willingness to confront the status quo, and the ability to address translational threats through coalition-building.”

Therefore, some of the key obligations of NGOs are to improve the circumstances and prospects of people and to act on their concerns and issues that are detrimental to their well-being. The sector stresses the participation of and benefit for local citizens.

Non-governmental organizations provide services that government sectors at times are unable to provide. NGOs provide a venue for citizens to come together and be heard on issues that they feel are important.

Madam Chairperson,

As an organization that deals with violence against women and children, it is scary to say that the violation of the rights of children takes place on a daily basis. We continue to see the rise of child abuse, sexual abuse and prostitution of children.

Poverty, in some cases, has been one of the contributing factors. Mothers shy away from their children being abused for the sake of bread. Young men are becoming vulnerable to the peer pressures of home and society. The circumstances that communities face are becoming more complex by the day as the perpetrators of violence are not only adults but young men and children under the age of 12. This is evidenced by the media coverage of such incidents countrywide. The nature of the incidents is becoming more violent and is encroaching on children younger than seven.

Madam Chairperson,

We are here discussing issues that were dealt with by the United Nations Convention on the Rights of the Child more than twenty years ago – now, these children are subjects with their own rights, not objects. So, what are some of the cross-cutting challenges faced by vulnerable children in South Africa today?

Madam Chairperson,

When former President Mr Nelson Mandela, on 24 May 1994, opened the first democratic parliament in South Africa as the first democratically elected Black president of our country, he quoted the poem “Die kind wat dood geskiet is deur soldate by Nyanga” (The child who was shot dead by soldiers at Nyanga) and said these words: “The time will come when our nation will honour the memory of those who gave us the right to assert with pride that we are South Africans, that we are Africans and citizens of the world.” But today, the very same shooting is not as a result of apartheid, but due to gangstarism. Sometimes I wonder what Ingrid Jonker would say, what Baba Oliver Tambo our Grandfather of our liberation would say about children dying because of drugs, the use of tick being rife in the Western Cape, and children being raped and abducted.
The economic challenge

Since the great depression the world has never seen such an intense economic meltdown as was faced during the 2008 downfall. As many people struggled to come to terms with the current failure of economic powerhouses and financial institutions, the world itself had relooked its approach on economic issues; so too did NGOs. When considering its operations, an NGO bases its expenses on the amount of aid which it receives; this may come from government or from personal donors or international donors. But as it stands, NGOs are not self-sufficient, and the difficulty of this is that they are dependent on the good will of others for their financial survival.

The traditional challenge

In the South African traditional context a child is viewed as a commodity that does not speak out of turn, and obeys all the rules set out to him or her. Children have long been regarded in a manner in which people have hopes and dreams for them, but it is not, as many believe, in the sense where parents just want success for their children in any way possible and for them to live long lives in their own right. Africa's traditions with regards to children have generally been negative, where the children cannot harbour their own emotions nor can they express themselves in every way possible. Children have been beaten, emotionally traumatised, stigmatised and used as sexual tools; these situations not only occur to them due to outside factors, but are also prevalent in the home.

Madam Chairperson,

The sense of a home for any child is the place where the child resides, where family or relatives reside, or a place where the child is known. This may be a broad example, but in the child’s mind the understanding of what a home is, is usually based on these characteristics. In a manner of speaking, even if these abuses and negative occurrences are happening in the home, the child would feel reluctant to speak out against it because it goes against the traditional meaning of a home.

The work that NGOs have put forward is in allowing the child to express their emotions; the work performed by NGOs is to delve deep into the child’s psyche and see the world as the child sees it. Furthermore, through this we can analyse what the child goes through emotionally and psychologically, but there is a constant reminder that what happens in a home stays at home. This is the traditional way of thinking that has hampered the growth of not only children but women too. The sense of loyalty to the home is one that needs to be changed, and through the relevant channels slowly but surely it has been. NGOs allow the people who seek help to perform outside of their regular surroundings, the challenge in making a new home and breaking the traditional stigma, and therefore being able to view for themselves the manner in which they have been disregarded.

Traditionally a community would not interfere with matters of the home, and that stigma is still persistent to this day. The home is where things are sacred and nothing is exposed to the outside world. This patriarchal manner of traditional thinking has been handed down on a large scale and is also viewed by the children in these homes who will tend to grow and imitate the same behaviour and therefore continue the cycle of this derogatory nature. As Ilitha Labantu we are well aware of these situations that occur and for years we have followed on our awareness campaigns.

Madam Chairperson,

Through workshops at schools, outreach programmes in communities and children’s rights awareness campaigns, we have sought to feature in the everyday lives of children in order for them to be aware that they have rights and they have the ability to put a stop to the suffering that they endure. Through active use of child sensitive material we are able to make a connection with the children and make it easier for them to interpret what is going on at home. Children need not feel like they are the possessions of their parents and that they too can encourage and entrust in their own emotions, and for that to occur we must create an environment in which they feel comfortable and create a
home in a sense that is familiar yet non-traditional, but enough for the child to feel that they too can speak and they too can share in what “traditionally” goes on at home.

The social challenge

The society we live in is rapidly developing and there seems to be a lack of identity and integrity within child and youth culture. Today’s children are under extreme pressures to find themselves and must do so in the context of peer pressure, standard of living, circumstances, family values, responsibilities and self-awareness. A child’s ‘root of learning’ is at home, but once exposed to the rest of the world that child begins to develop an identity; this is an integral part of growing and an integral part of a child’s life.

Schools are there to educate children, and they have made great strides in promoting gender equality and non-sexist behaviour through life skills lessons and so forth; but in retrospect the teachings about sexuality and the male and female form and roles, etc. is not sufficient in this day and age. The process of discovering “who you are” is an aspect that needs to be explored, as a child will never truly embrace the understanding of others if they feel insecure about understanding themselves.

The presence of NGOs in schools signifies that the educational system has lacked in areas where communication is vital and for that process to be understood those who are educators need to go beyond the regular standard of what being an educator means.

The community plays a crucial role in a child’s development, but what has fundamentally lacked is the African manner of Ubuntu and the traditional feeling bestowed onto all children that “your child is my child”; the communities have failed to act as responsible members of the society in the manner in which children are brought up. The lack of role models within a community, the lack of rearing children in solidarity, and the concept of ‘those who have and those who have not’ is prevalent.

Madam Chairperson,

In this day and age children face countless challenges - those who have been made orphans, those who have no home after the age of 18 due to the foster care system, those who are in prison, those who are raped by their peers, those who wish to commit suicide rather than face another day, etc. But what can one sector do alone? We are especially addressing those NGOs that do wish to work with government but fail to receive the necessary support. Who do we blame for those children’s lives who become shattered?

From the moment a child takes their first step, even though they might fall and fail, they will continue to pursue that step until they can achieve it. But if we as parents, the community, government, NGOs and society at large put blame to their failure instead of encouraging and supporting them to try again, then we are headed for a nation which will never and can never understand the plight of children. And where other areas have failed, we as NGOs step in to do the work, but it is a challenge that we cannot meet on our own, so what do we do from here and how do we make it work?

Recommendations

Madam Chairperson,

I believe that we need to bring back moral regeneration programmes in government and the community and I believe in patriotism. The children need to be provided with examples of the model citizen and we need to teach children a sense of belonging and ownership. This will assist by reminding them of the background which they came from so that they can be better equipped with the basic skills of human integration.
Schools should educate children about children’s rights policies. As far as foster care is concerned, what do we do when children are adopted and they reach the age of 18 at which point, by law, they are adults, but traditionally they are still children? What is the government doing in terms of those who do not have parents and the laws of adoption are against them as far as grants and support from government is concerned?

Until what age does a child remain a child?

One of the fundamental issues is that in most cases children sometimes become victims of procedures rather than benefiting from the protection that these procedures offer. Our prisons are full of children from all walks of life. What are we doing as citizens? The rights violations experienced by children remain undocumented. Our work at Ilitha Labantu on child rights indicators has shown that in many areas we do not have the necessary data and information to know the nature and extent of fundamental rights abuses experienced by particular vulnerable children.

To give you one example: throughout our provinces few, if any, have collected relevant data regarding the sexual abuse of children. If data collection is not improved, we will remain in the dark; we will not know the true extent of the problem. The result: we will not be able to develop targeted and evidence-based policies and mechanisms to address the problem.

There are issues of classism as there are children who have and those who have not. What has government done in terms of family values? Since 1994 things have changed due to peer pressure, how do we go back to those moral destinations?

Madam Chairperson, Ladies and gentlemen,

Many people have said:

“A society’s greatness is measured by how it treats its most vulnerable members.” In this case, the children.