

Protecting South Africa's children: what difference will the new Children's Bill make?ⁱ

Children's rights have increasing prominence in many countries.

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The rights of children have become paramount as a result of many international initiatives to highlight the plight of children across the world. The key authoritative international instrument governing children's rights is the United Nations Convention on the Rights of a Child. This was ratified by South Africa in 1995, and recognises the rights of all children to protection and care, social services, and special protection and assistance to children in difficult circumstances.¹ In addition, South Africa has ratified the African Charter on the Rights and Welfare of the Child, and has instituted one of the most progressive constitutions in the world.

Children's rights feature strongly in the Constitution's Bill of Rights and form the cornerstone of South Africa's legal obligations towards children. The Children's Bill, which has been in the making for the past 10 years, is a significant piece of legislation aimed at giving effect to some of the constitutional rights of children.

The first part of the Bill, known as the Section 75 Bill, was passed in June 2005 and is now known as the Children's Act (No. 38 of 2005). The Act is not in force yet as the second part of the Bill, currently known as the Children's Amendment Bill,ⁱⁱ has yet to be passed as law. Prior to elaborating further on the Children's Bill, it is necessary to present a brief overview of the situation of children in contemporary South Africa.

The context for children living in South Africa

Children in South Africa continue to be afflicted by the consequences of apartheid. Twelve years into a democratic South Africa, gross inequalities and poverty persist, fuelled by high unemployment rates and poor access to resources for the marginalised. A rapid assessment of the situation of children in South Africa, conducted in 2003, revealed that major role players in the child rights arena identified poverty, child abuse and violence, HIV/AIDS, and a lack of access to services as the most significant challenges facing children. The fragmentation of the family unit and the loss of parents were also highlighted as challenges.²

Available statistics on children paint a bleak picture of the conditions in which children live, learn, and socialise. Based on a review of current data on children, the situation for children is improving in some arenas; however on the whole, progress is gradual.

Of the 18 million children living in South African households, 19% have been orphaned,ⁱⁱⁱ and 0.7% live in child-headed households.^{iv,3} More than half (54%) of the country's children live in rural areas.⁴ Key indicators of the status of children reveal the following:

- Two-thirds of children are living in income poverty.^{v,5} As an attempt to ameliorate the severe poverty that many children and families experience, the Child Support Grant programme^{vi} is proving to be very successful – 84% of eligible children were receiving the Child Support Grant at the end of July 2006.⁶
- Among children younger than 5 years of age, 95 die per 1 000 live births – 40% of deaths in this age group are HIV/AIDS related.⁷
- 96% of children aged 7 - 17 years are attending a school or educational facility.⁸
- 65% of children live in formal housing,⁹ and 58% of children have access to drinking water on site.¹⁰

Data on child abuse, neglect and exploitation are scarce. Although not an ideal source of information, the South African Police Services crime statistics¹¹ provide some indication of the extent and nature of child maltreatment in South Africa:

- In 2000 and 2001, the 3 most common crimes committed against children were rape and attempted rape, common assault, and assault with attempt to do grievous bodily harm.
- In the period from January to September 2001, more than 15 500 cases of child rape or attempted rape were reported to the police.

Children are exposed to violence in different settings, including their homes, schools, and communities, increasing their risk of injury and psychological trauma. Corporal punishment in the home is considered to be a common and acceptable child rearing practice – only 43% of parents report never having smacked their children.¹²

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Violence in schools is increasing, and the incidence of domestic violence against women and children is extremely high. Gangsterism in urban areas is prevalent and poses a risk to the safety of children living in affected communities.

Child neglect, abandonment and exploitation are additional challenges that prevent the realisation of children's rights in South Africa. These offences frequently occur within the child's family environment, indicating the fragility of the family and the erosion of this fundamental social unit. Patel, Triegaardt and Noyoo¹³ state that families are also confronted with special needs and problems resulting from the HIV/AIDS pandemic, as well as other social problems such as substance abuse, and a lack of support systems. These practices, as well as others such as child labour, child trafficking and sexual exploitation persist in South African society and render children vulnerable and in need of protection, care and support.

Child protection and welfare services are available to assist children and families who are faced with these social problems, and to a lesser degree they play a preventive role. However, service provision to children in the country is often fragmented and suffers from poor co-ordination. Non-governmental organisations are the main providers of children's social welfare services; however, financial and other forms of support for this sector have become depleted. Service providers relate that service delivery to children is inadequate, and that children often experience secondary abuse in their interactions with welfare systems that do not respond sensitively or timeously to urgent needs.¹⁴

This article outlines some of the key provisions in the Children's Bill that will create significant changes in service provision to children. It also highlights some of the shortfalls of the Bill and concerns about its implementation.

The Children's Bill: an overview of key provisions

The Children's Bill provides a legislative framework that addresses most aspects relating to the care and protection of

children. It is intended to replace the 1983 Child Care Act. However, it has greater latitude than this statute – it '...represents a complete overhaul of welfare legislation aimed at children.'¹⁵ Some of the primary changes which the Bill introduces are described below.

Key focus areas

Child rights realisation

One of the key elements of the Bill is that it provides a child rights focus, expressed in the objects clause of the Bill. This is a vast improvement on the Child Care Act, which was not written from a child rights perspective. The Bill aims to give effect to children's rights in the areas of family care, protection from abuse and neglect, social services, and legal representation in civil matters. It also deals with the implementation of the 'best interests of the child' principle, and promotes equal opportunity for children in especially difficult circumstances.¹⁶

Prioritisation of children in budgetary decisions

A major victory for children is that the Bill stipulates that all '... organs of state ... must ... take reasonable measures to the maximum extent of their available resources to achieve the realisation of ... this Act.'¹⁷ This clause requires all government departments to prioritise children in decision-making about budgets and the allocation of resources. These words are taken from the United Nations Convention on the Rights of the Child article that refers to prioritising children when making budget decisions.¹⁸

Integration and co-ordination of service delivery

The state of South Africa's social welfare provisioning to children is described earlier. It is crucial that government departments responsible for delivery of services to children, across the three spheres of government, should co-ordinate their efforts to address children's issues. However, this level of co-ordination is absent. The Children's Bill provides an intervention for this problem in '...two clauses that strongly oblige all role players to co-ordinate their services to ensure integrated service delivery to children and to co-operate with one another.'¹⁹

Regulation of local and inter-country adoption

An important inclusion in the Bill is the creation of a register of children requiring adoption and prospective adoptive parents. The financial test that previously applied to prospective adoptive parents, which prevented persons with little income from adopting a child, has been discarded. The provision that facilitated a compensatory payment to the birth mother from the adopting parents for loss of income has also been removed.

The Bill increases the age of a birth mother (minor) requiring assistance from her guardian or parents in consenting to the adoption of her child. Under the current Child Care Act, a 16-year-old can give consent to her child's adoption without the knowledge of her parents. The Children's Bill increases this age to 18 years.²¹

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The Children's Bill also tightens procedures on inter-country adoptions to eliminate the threat of back-door inter-country adoptions, ensuring that children are duly protected from inappropriate and improper removal from their birth country. Once the Bill is in force, any application for guardianship or appeal to remove a child from the country will be regarded as an inter-country adoption and will be directed through a streamlined, well-regulated procedure.²² In these provisions, the Bill gives effect to the Hague Convention on Inter-country Adoptions.

Promotion of equal opportunity and protection for children with disabilities

Children with disabilities are especially vulnerable and at risk of abuse and neglect. This risk is heightened by the lack of facilities to grant children with disabilities equal access to services and resources within the child protection system. For example, many courts do not have adequate facilities to enable children with disabilities to participate in the court proceedings. Children with disabilities therefore require special protection by law. The Children's Bill stipulates that these barriers must be removed and that the necessary support services be provided

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to facilitate equal opportunities and equal access to protection for children with disabilities.²³

These provisions in the Children's Bill, which also apply to children with chronic illnesses, are seen as major advances in recognising the rights of children with disabilities. Throughout the Bill, subsections relating to the special needs of children with disabilities that promote their equal access to services are included. Specific clauses are mentioned in the general principles section, and a section dedicated to children with disabilities and chronic illnesses is highly commendable.²⁴

Limitations of the Children's Bill

Although the Children's Bill is a groundbreaking statute in its advancement of children's rights, it has a number of shortcomings. One of these shortfalls is the failure to protect adequately the property rights of orphans. When children inherit property from their deceased parents, they require the assistance of an adult to represent them and protect their inheritance. If children are cared for by a relative, as is often the case, the relative needs to be granted guardianship in order to protect children's property rights. The Bill does not permit magistrate's courts to do this, resulting in relatives needing to access the High Court to obtain guardianship. This poses a challenge for most people as they would need to travel far distances to reach the nearest High Court.²⁵ The Bill is also criticised for not making sufficient provision for suitable alternative care options for children in need of care.

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Another shortcoming is the exclusion of a mechanism to ensure co-ordination of government departments in relation to integrated service delivery. Previous drafts of the Bill had included a 'National Policy Framework', which would require that all government structures with responsibilities for children develop plans accordingly –

this provision was subsequently removed.²⁶ However, such a mechanism could be stipulated in the regulations.²⁷

Notwithstanding the tremendous gains to be brought about by the new Children's Bill, current issues of human resource capacity and the financial demise of non-governmental organisations are not sufficiently addressed by the Bill.²⁸ In addition, the cost of implementing the Bill per year is estimated to be in the region of R25 billion rand for priority services only, an amount 4 times that which National Treasury has approved for the 2006/7 year.²⁹

Conclusion

The Children's Bill portrays significant progress toward the realisation of children's rights, and the fulfilment of South Africa's constitutional obligations and international commitments. It is a vast improvement on current welfare legislation governing children's issues. Nonetheless, the Bill is hampered by a lack of thorough planning for its implementation and the concurrent financial planning required for its complete delivery to children. Only once these necessary components are in place, will the Children's Bill be able to give full effect to its intentions, and create and sustain the changes it envisions to improve the lives of children in South Africa.

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Footnotes

ⁱ The author wishes to acknowledge Mira Dutschke, child rights researcher at the Children's Institute (UCT) for her comments on this article.

ⁱⁱ For simplicity, the author will use the term 'Children's Bill' or 'The Bill' to refer to both parts of the Bill, and will generally not indicate in which section provisions are found.

ⁱⁱⁱ An orphan is defined as a child under the age of 18 years whose mother, father or both parents have died.

^{iv} A child-headed household is defined as a household where everyone who lives there is under 18 years old.

^v Children are defined as poor if they live in households with an income of less than R1 200 per month for all the household members combined.

^{vi} The Child Support Grant is a social assistance cash grant of R190 per month, which government provides to the caregivers of eligible children.

In a nutshell

- The rights of children have become paramount as a result of many international initiatives to highlight the plight of children across the world.
- South Africa has ratified the United Nations Convention on the Rights of the Child and has constitutional obligations towards children in South Africa.
- The Children's Bill is a new piece of legislation aimed at giving effect to constitutional rights for children. The first part of the Bill has already been passed as law.
- The context for children in South Africa points to some improvements, yet the context of abuse, exploitation and maltreatment remain the same.
- Child welfare services are fragmented and uncoordinated, and the financial resources needed to render appropriate services are lacking.
- The Children's Bill provides a legislative framework addressing most aspects related to the care and protection of children.
- One of the key focus areas of the Bill is the realisation of child rights in the areas of family care, protection from abuse and neglect, social services, and legal representation in civil matters.
- The Bill prioritises children in budgetary decisions, and ensures integrated and co-ordinated service delivery to children.
- It regulates adoption more stringently, and promotes equal opportunity and protection for children with disability.
- The Bill has a few limitations, the most notable one being that appropriate mechanisms and measures for its proper implementation have not been taken into account.

single suture

Fixed-dose antimalarial now available for adults and children

A new antimalarial combination treatment to be taken as a fixed dose once a day has been developed by a non-profit organisation for use in developing countries. The combination of artesunate and amodiaquine will be known by the brand name Coarsucam in private sector sales.

The non-patented drug is the first result of the drugs for neglected diseases initiative (DNDi), a non-profit product development organisation, and was produced in partnership with one of the world's largest drug companies, Sanofi-Aventis. Two other major sources of funding were Médecins sans Frontières and the European Commission.

Artesunate is a water-soluble derivative of artemisinin, which comes from the shrub *Artemisia annua*, long used in traditional Chinese medicine. The World Health Organization recommends treating malaria with artemisinin in combination with another antimalarial drug rather than on its own to prevent the development of resistance.

Until now the combination of artesunate and amodiaquine was available only in multi-tablet formulations. The new drug is a single tablet, which ensures that the two drugs are taken together and in the correct proportion. The drug is also the first combination of artesunate and amodiaquine that is available at three strengths suitable for children, including infants. To public sector organisations the 3-day course of the drug will cost less than \$1 for adults and less than \$0.50 for children under 5 years.

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