

**SUBMISSION BY CHILDREN NOW, AN ALLIANCE OF SOUTH AFRICAN NGOS
BROUGHT TOGETHER TO PREPARE THE ALTERNATE REPORT TO THE UN
COMMITTEE ON THE RIGHTS OF THE CHILD. PREPARED FOR THE
UNIVERSAL PERIODIC REVIEW OF SOUTH AFRICA, SCHEDULED FOR APRIL
2008**

November 2007

This submission will focus on children's rights in South Africa for the period 2003 to 2006 inclusive. It has been prepared for, and according to the Guidelines of, the Universal Periodic Review (UPR). South Africa is due to report to the Human Rights Council at the United Nations in April 2008. It was developed by a group of organisations¹ working on the development of the Alternative Report to the United Nations Committee on the Rights of the Child.

A The methodology and the broad consultation process followed nationally for the preparation of information provided to the UPR by the country under review

We are not aware of any consultation process around the preparation of this Report. Indeed, the fact that the Universal Periodic Review was even being prepared was not widely known, and is still not at the time of writing of this submission (November 2007).

B The current normative and institutional framework

Constitution and domestic legislation and policy

The Constitution [108 of 1996] of South Africa, and in particular the Bill of Rights contained within it, protects the rights of citizens, including children. This protection is extended by various statutes. Many of the laws and their associated policies which have been promulgated in South Africa in recent years are positive and protective of the rights of children. These include the Children's Act [38 of 2005], its Amendment Bill [B19F of 2006], the Prevention of Family Violence Act [75 of 1998], the Firearms Control Act [60 of 2000], the South African Social Security Agency Act [9 of 2004], the Child Justice Bill [B49 of 2002,] and the Criminal Procedures (Sexual Offences) Amendment Act [B 50B of 2003].

However, it is of grave concern that many of these pieces of legislation have been in development for a number of years. Work on both the Children's Act and the Sexual Offences Act, for instance, was commenced in 1998 – they have only just been passed by Parliament in November 2007; similarly the Child Justice Bill has been in development since the mid-1990s – and is still not finalised. These long delays have had a negative impact on large numbers of vulnerable children, whose access to services vital for survival and development has been compromised. It is also important to note that the Sexual Offences Bill was passed with the many omissions mentioned below – and without public hearings being held on certain aspects.

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In addition, clauses critical to the protection of children's rights which were included in the original drafts of many pieces of legislation have been excised or significantly watered down. Examples include clause 139 of the Children's Amendment Bill, which would have prohibited corporal punishment in South African homes, and has been removed from the Bill, notwithstanding the fact that the government confirmed the need for prohibition in its response to the governmental questionnaire of the UN Secretary General's Study on Violence Against Children in June 2006. In addition, several clauses in the Sexual Offences Bill which would have afforded child victims and witnesses additional protection within our adversarial criminal justice system have similarly been removed. Also, funding for early childhood development services and programmes, which form a key part of the prevention system, remains discretionary and vulnerable to other demands at provincial level and local levels.

The National Child Protection Policy, also in development for over a decade, has not yet been implemented. The policy, critical to effective, inter-sector and coordinated intervention, remains a draft policy. This retards both the commitment of resources to child protection and the implementation of a functional child protection system.

The Child Labour Plan of Action (CLPA) was set up to address child labour in South Africa. A survey of the income-generating activities of young people led to the development of the CLPA in 1998, and a programme of technical assistance to the Department of Labour (Towards the Elimination of Child Labour [TECL]) was put in place. TECL is nearing the end of its project term although there have been some successes, an evaluation of good practice in projects addressing child labour that have formed part of the TECL project has found that addressing child labour has been mainstreamed with difficulty, and only in isolated types of labour².

Despite this apparent prioritisation of child labour issues, large numbers of children in South Africa are being used by adults in the commission of crime, and find themselves in situations of commercial sexual exploitation. In addition, significant numbers of children are allegedly being trafficked into, out of and around South Africa. Objective data on the numbers of such children is virtually non-existent, and very little research of sufficient quality has been undertaken in this area. Some estimates, though, put the number of children trafficked into South Africa from neighbouring countries as high as 30,000³.

Obtaining accurate information about these violations of the rights of children is very difficult. In its Concluding Observations to the Initial Country Report from South Africa, the United Nations Committee on the Rights of the Child recommended that the system of data collection be reviewed with a view to incorporating all the areas covered by the Convention, and that specific emphasis should be placed on particularly vulnerable children (girls; children with disabilities, child labourers, children living in remote rural areas, and other disadvantaged Black communities, children working and/or living on the streets, children living in institutions, children of economically disadvantaged families and refugee children). There has been little progress in this regard, and the collection of data regarding children is characterised by inconsistencies and inadequacies.

² Bower, C. 2007. *An evaluation of good practice in addressing child labour*. Unpublished report, ILO, Pretoria.

³ Chichava, M and Kiremire, M. 2007. *A Situational Analysis of the Abuse and Trafficking of Children in Southern Africa*. Unpublished research commission by the Southern African Network against Trafficking and Abuse of Children, Maputo.

More recently, however, with the undertaking of a national Community Survey, data have been collected regarding population size, composition and distribution; migration, fertility and mortality; disability and social grants; school attendance and education attainment; labour force; and income. The initial report from this survey was released in October 2007⁴, and provides information about and insights into the situation for children which were hitherto not available.

A Child Abuse Surveillance System is being researched at present. This is a joint project that is drawing on expertise from a similar project in Canada.

Poverty is a significant factor mitigating against the realisation of the rights of children in South Africa. Diseases of poverty and HIV/AIDS account for 30% of the under-five child mortality rate⁵, and our infant mortality rate is escalating. There is a critical need for increased roll out of prevention of mother-to-child (MTC) transmission and antiretroviral (ARV) treatment of children, neonatal care, the roll out of the primary health care programme, and other poverty reduction initiatives. The Child Support Grant, currently available only to children up to the age of 14 and based on a means test, goes some way to addressing child poverty; however, the exclusion of children aged 14 to 18 years, the lack of identity documents – a prerequisite for obtaining the grant, the long distances that children often have to travel to access grants, and a lack of information in especially the rural areas of South Africa ensure that many thousands of eligible children are excluded from receiving this form of support.

A new National AIDS Plan has been developed for the implementation period 2007 to 2011. Children are explicitly mentioned in this plan. However, the belated roll out of ARVs and the suspicion around their use, in part resulting from the mixed messages from South Africa's political leadership, has resulted in the loss of numerous parents, thus contributing to high levels of orphanhood.

Although the UNCRC made strong recommendations with regard to resource allocation and the development of comprehensive policies and programmes to improve the health situation of children, particularly in rural areas, the reality is that our infant mortality rate remains unacceptably high at 59 per 1,000 live births⁶, and is not decreasing. The under-five mortality rate is 95 per 1,000 live births⁷.

Malnutrition is still a significant health hazard, and 10.3% of South African children were underweight in 2000, with 1.4% being severely underweight⁸, with the highest proportion among the under 3s⁹. Child overweight and obesity are also a growing problem.

Adequate access to safe drinking water and sanitation is still denied to many South African children - in 2005, only 54% of children had access to basic sanitation and

⁴ Statistics South Africa. *Community Survey 2007*. The statistical release presents a selection of key findings and tables based on the data, at national and provincial levels. The next release, due at the end of January 2008, will present results at municipality level. Further thematic reports on mortality, fertility, migration and service delivery are also expected.

⁵ Monson J, Hall K, Smith C & Shung-King M (eds). 2006. *South African Child Gauge 2006*. Children's Institute, University of Cape Town

⁶ Op cit

⁷ Op cit

⁸ Op cit

⁹ Op cit

only 58% had access to drinking water at their homes¹⁰. Over 6 million children (35%) live in informal housing or traditional dwellings. It is also of concern that 27% of children live in over-crowded households (defined as more than 2 people per room, including kitchens and living rooms)¹¹.

Human Rights machinery

Six state institutions have been established in South Africa, under chapter 9 of the Constitution, for the protection of our constitutional democracy. These include the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Commission for Gender Equality. None of these Chapter 9 institutions has a specific focus on protecting the rights of children. In the period under review, it has been of concern to child's rights activists that this is the case. The Human Rights Commission has stated its intention to focus more attention on the rights of children in the future, and a coordinator of children's issues is now in place in the Commission, but this is a relatively recent development.

A recent review¹² of the Chapter 9 Institutions was carried out by an ad hoc committee set in place by the South African Parliament. This made several recommendations, including that:

- the failure of state departments and other organs of state to respond to recommendations made by the respective institutions should be pertinently brought to the attention of Parliament;
- the National Youth Commission's mandate should be widened to encompass both children and the youth;
- the Commission on Gender Equality Act, which is out of date, should be amended as soon as possible to bring it into line with the Constitution;
- that an umbrella human rights body be established, to be called the South African Commission on Human Rights and Equality, into which the National Youth Commission, the Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities (together with the Pan South African Language Board) and the Commission for Gender Equality should be incorporated together with the Human Rights Commission.

The Office on the Rights of the Child (ORC), which is located in the Office of the President, chairs the National Plan of Action for Children (NPA) – many national Departments, as well as UNICEF, the Human Rights Commission, the Gender Commission and the Youth Commission are represented on the NPA Steering Committee. The National Children's Rights Committee (NCRC), an NGO which claims to be an umbrella organisation of children's organisations in South Africa, is intended to represent children's sector NGOs on the NPA. The ORC and the NCRC work very closely together. However, it is of concern that few of the organisations which focus specifically on child rights and which work from a child rights perspective are members of the NCRC. Consequently, the 'voice' of these organisations is seldom represented in national forums.

¹⁰ Statistics South Africa. 2005. *General Household Survey 2005*. Pretoria

¹¹ Op cit

¹² Parliament of the Republic of South Africa. 2007. *Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions. A report to the National Assembly of the Parliament of South Africa*. Cape Town, South Africa

Despite an oft-stated commitment to coordinated action to ensure their protection in South Africa, service delivery to children continues to be fragmented and piecemeal; this is particularly true within rural provinces.

International obligations

South Africa has ratified several international instruments for the protection of human and child rights including, the Convention on Economic, Social and Cultural Rights (CESCR), the Convention on Civil and Political Rights (CCPR), the Convention to End all forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC) and its two Optional Protocols on children in armed conflict (CCR-OPAC) and the sale of children (CCR-OPSC). South Africa has also ratified and domesticated the Hague Convention on the civil aspects of international child abduction, as well as the Hague Convention on the protection of children and co-operation in respect of intercountry adoption.

Domestic law, however, has been slow to reflect obligations under these treaties and conventions. For example, a comprehensive law against trafficking is still being developed. In addition, and even when law has been developed, implementation continues to be fragmented and uncoordinated. So, while CEDAW was ratified some years ago, and domestic legislation has been harmonised to a significant extent, violence against women and children continues to be one of the most pressing issues in the country, with many thousands of women and children at risk. Approximately 50,000 rapes are reported in South Africa each year, and around 50% of these are perpetrated against children.

At the presentation of the report on the Global Study on Violence Against Children in New York in October 2006, the South African government stated that corporal punishment had been prohibited in South Africa. Abolition of corporal punishment in the public sphere has been legislatively (if not actually) achieved. However corporal punishment is still legal when administered by parents.

Although South Africa regularly highlights issues related to the rights of children, it is our experience that this commitment is not reflected in the daily realities of children's lives and that implementation of law and policy remains a challenge. The rights to survival and development, to a name and nationality, to access to basic education and health care, and to family life of large numbers of children in South Africa are violated daily.

According to the National Welfare, Social Service and Development Forum (NWSSDF), the number of children in statutory foster care has increased by over 650% in six-and-a-half years, and the numbers are still climbing. In January 2007, about 60,000 children were known to be awaiting placement. This is mainly attributed to the HIV pandemic and the resultant need to place children who have been orphaned. Given that each child requires a social work investigation and a children's court enquiry, as well as continuing social work services and ongoing monitoring by the provincial Departments of Social Development, it is of deep concern that there has been no commensurate increase in staffing and infrastructure of the relevant systems. They have therefore been plunged into crisis¹³, with

¹³ National Welfare, Social Service and Development Forum. 2006. *Use of the statutory foster care system to support long-term kinship care: impact on the social welfare system and the social work profession*. Unpublished discussion document. Available at <http://www.ci.org.za/depts/ci/plr/pdf/publichearings/gauteng/Submissions/PostHearing/nwssdfcbillsubmissionmar07.pdf>

children whose primary need is that permanent placements be found for them clogging the system to the detriment of the many children at risk because of sexual abuse, exploitative labour, disability.

Recommendations

1. That the completion of law reform in relation to children be prioritised, and that the Child Justice Bill be finalised as soon as possible.
2. That the Children's Act (incorporating the Amendment Act) 38 of 2005 be put into operation in early 2008, complete with a set of regulations.
3. That implementation plans are made and executed in respect of all legislation and policy relating to children and implementation is monitored.
4. That implementation planning is inclusive of civil society organisations, which provide the bulk of services to children.
5. That the prohibition of corporal punishment is prioritised in the second Children's Act Amendment Bill, to be developed in 2008.
6. That data-gathering methods be streamlined and more clearly related to the protection of vulnerable children.
7. That the deep poverty in which so many South African children live be addressed via extending the Child Support Grant to all children, and that the means test be removed.
8. That primary health care programmes are rolled out more widely.
9. That mechanisms for independent monitoring of child rights in South Africa be strengthened, in particular at the level of the Human Rights Commission.
10. That NGO representation on the Steering Committee of the National Plan of Action for Children be widened to include a representative grouping of child-focused NGOs.
11. Greater coordination of services to children and families be prioritised, along with the allocation of adequate resources to the protection of the rights of children and families

C Cooperation of the country under review with human rights mechanisms, and with NHRIs, NGOs, rights holders, human rights defenders, and other relevant national human rights stakeholders, both at the national, regional and international levels

South Africa's record in this regard is somewhat patchy. It is our continuing experience in the children's sector that there is a significant gap between policy and practice; although policy is often in place, its implementation is not. Resourcing of services to children is a particular problem, with much of this work being delegated to NGOs, which lack long-term sustainability and tend to be focused in urban areas.

The Second Country Report to the UNCRC from South Africa was due in June 2002. To date, it has not been submitted. We understand that it is now complete, and that the Third Country Report is now in preparation, and will be submitted to the UNCRC together with the Second Country Report early in 2008.

The Initial Country Report to the Committee Against Torture, which was due in January 2000, was only submitted in June 2005.

Recommendation

1. That periodic reporting in terms of international conventions and treaties be undertaken timeously

D Achievements made by the country under review, best practices which have emerged, and challenges and constraints faced by the country under review

South Africa's Constitution contains a separate section on children's rights which remains one of the most impressive sets of children's constitutional protections in the world. Our courts, including the Constitutional Court, have developed children's rights and the paramountcy of the best interests of the child in a positive manner, and certain children's rights organisations have utilised litigation as a way of developing and strengthening children's rights.

Despite the length of time which it took, the passing of the Children's Amendment Bill in November 2007 completed the process of developing a new dispensation for children in South Africa. The Children's Act has ensured significant legal protection for vulnerable children, especially with regard to children living and working on the street, children with disabilities and children who have been affected by the HIV pandemic, including children living in households headed by children. The Act also includes a requirement for planning at a national and provincial level in respect of an effective roll out of services.

A best practice that has emerged is the development of a sophisticated model of costing, budgeting and implementation planning for child-related legislation. This has been documented by the UNICEF's International Research Centre as an international good practice. Children's participation has been encouraged during the law-making process, and this has also been documented.

E Key national priorities as identified by NGOs, initiatives and commitments that the State concerned should undertake, in the view of NGOs, to overcome these challenges and constraints and improve human rights situations on the ground. This includes, for example, national strategies, areas where further progress is required, steps regarding implementation and follow-up to recommendations made by human rights mechanisms, commitments for future cooperation with OHCHR and human rights mechanisms and agencies, etc.

It is critically important that the Office on the Rights of the Child develop effective mechanisms for consultation with the NGO/CBO sector to facilitate an exchange of information on challenges and constraints with regard to the enhancement and protection of the rights of children, and to engage in joint planning.

F Expectations in terms of capacity-building and technical assistance provided and /or recommended by NGOs through bilateral, regional and international cooperation.

It would be helpful if UNICEF facilitated regular discussions between civil society and Government to support open and frank discussion of challenges, possible solutions and implementation.

Thank you.
Carol Bower for Children Now.