

PARLIAMNENT WEBINAR: CHILD RIGHTS GOVERNANCE

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Many decades prior to the establishment of a democratic government in 1994 in South Africa, the rights and welfare of children were informed by the apartheid system policies that were characterised by racial discrimination and segregation. Social and economic services were divided and graded along racial lines, with black communities, families and their children provided with none or very poor services, resulting in generations that were and still are trapped in poverty, unemployment and low educational standards.

The rights of children are protected in our Constitution, and since 1994 we have instituted a range of legislative, policy and regulatory instruments to advance and promote these rights.

Despite our significant developmental gains as a nation since the advent of democracy, widespread poverty and inequality persists, and continues to have a particularly dire effect on children's lives, education and health outcomes

It is 25 years since South Africa ratified the UN Convention on the Rights of the Child. This ground-breaking Convention, which sets out the civil, political, economic, social and cultural rights of children, was the first international treaty ratified by the new democratic government.

The endeavour to uphold and protect the rights of children in South Africa, dates back to intense political struggles to eradicate the apartheid system and replace it with freedom and equal human rights for all, including children. The intense conflict against the apartheid system was demonstrated by the uprisings of 1976, led by school children, against racial discrimination and repression. In 1987, the conference, *Children, Repression and the Law in Apartheid South Africa*, was convened in Zimbabwe to address the issue of children in South Africa. The late President of the African National Congress, Oliver Tambo proclaimed,

“We cannot be true liberators unless the liberation we will achieve guarantees all children their rights to life, health, happiness and free development, respecting the individuality, inclinations and capabilities of each child. Our liberation would be untrue to itself if it did not, among its first tasks, attend to the welfare of the millions of children whose lives have been stunted and turned into a terrible misery by the violence of the apartheid system.”

Following this conference, the United Nations Children’s Fund (UNICEF) published the report, *Children on the Frontline: The Impact of Apartheid, Destabilization and Warfare on Children in South and Southern Africa*.¹ This added momentum to the child rights movement in South Africa, motivating organizations to advocate, lobby and campaign for a child rights protection system. By 1990, the National Committee on the Rights of the Child (NCRC) was formed, comprising more than 200 organizations working with and for children by tackling issues that impact their lives. In 1992, the University of the Western Cape’s Community Law Centre hosted the International Conference on the Rights of Children in South Africa.

As part of the conference, the NGO sector facilitated the first Summit on the Rights of Children in South Africa. The summit brought together over 200 children from different geographic backgrounds, races and ethnicities from across the country. The children spoke out about their concerns and the effects of apartheid on their lives. This conference resulted in the drafting of the Children’s Charter of South Africa, which was a turning point towards child participation and advocacy in South Africa.

The children’s charter also served at the NCRC, to present the voices of children in the negotiations for democracy at the Convention for a Democratic South Africa (CODESA). Political parties were called upon to give priority to the rights of the child, in shaping a new and democratic South Africa. By 1993, the NCRC had established itself as a strong force, calling for the inclusion of children’s rights in the new Constitution for South Africa. In addition to all other rights afforded in the Bill of Rights, Section 28 of the Constitution bore the fruits of the NCRC’s efforts and outlined the

civil and socio-economic rights of South Africa's children. In the same year, the NCRC and UNICEF launched the report, *Children and Women in South Africa: A Situation Analysis*. This report explored themes such as education, health, nutrition, violence and abuse, analysing how these relate to the rights of children and women - and providing baseline data for governance planning and interventions. The report noted that there were major data constraints in the official national statistics system on the Black population, particularly those residing in "previously independent homelands".

Section 28 of the Constitution stipulates that a child's best interests are of paramount importance in all matters concerning the child. This is affirmed by Article 3 of UNCRC which requires member states to observe the best interests of the child as a primary consideration in "*all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.*" The principle of best interests of the child is transversal and must be applied by all sectors in matters concerning the child. Child rights monitoring should focus also on practice in relation to best interests of the child. In South Africa, the Children's Act No.38 of 2005 makes provision for the best interests of the child in all matters that concern a child and outlines implementation guidance in this regard. As a result, this principle applies throughout all sectors and is enforceable by law.

The participation of children in matters that affect them should not only be an event, but the starting point of meaningful and respectful engagements between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives. Child participation anchors the contribution of the child rights sector to sustainable transformation and social cohesion.

It is through focused child participation facilitated by relevant stakeholders that children as future adults are enabled to responsibly embrace and internalise the principle of human rights, child rights and related obligations. When this is achieved, children are likely in the long-term, to take this understanding into adult and parenthood. This process in turn, contributes to sustainable transformation in society. Furthermore, social cohesion is promoted when children from different races, gender or social

classes participate on the same platforms on matters that connects rather than separate them.

The principle of child participation is directly or indirectly enshrined in Sections 59, 72 and 118 of the Constitution and in Chapter 15 of the NDP. Article 7 of the ACRWC and Article 12 of the UNCRC. The 1990 World Summit for Children in New York advocated among other matters, child participation. In South Africa, children are involved in both government and civil society at, provincial, national, regional and international levels; in processes that address a diversity of issues that impacts on their lives. The annual Provincial and National Children's Parliament is an important example, it has been institutionalised and serves as an imperative part of ensuring that children's voices are heard and taken seriously by decision makers and society at large.

As holders of human rights and fundamental freedoms, all children have a duty to respect the rights of others and to continuously strive for the promotion and observance of children's rights and broader human rights. In South Africa, the Bill of rights provides guidance on the responsibilities of children aligned to children's rights enshrined in the Constitution. According to Article 27 of the African Charter on Human and People's Rights, individuals and therefore by implication children, have duties towards the family, society, the state and other recognised communities, including international communities. The Charter also indicates in article 29 that every individual is entitled to the enjoyment of their rights and freedom without distinction.

Although there has been significant progress and achievements made in addressing the rights of children in South Africa, ongoing challenges remain which require interventions and concerted efforts to further improve the response to promoting the rights and needs of children and to achieve the seven priorities established by government.

Poverty levels among children in South Africa remain high, with the burden inequitably carried by historically marginalised groups.

Access to services for children, in particular black children, in the apartheid era were poor, inconsistent, or not available. Building a comprehensive system with a developmental orientation that served all children in South Africa, not only for a privileged minority, required massive scaling-up of support and services, as well as significant legislative and programmatic innovations and system-building interventions.

The challenges have been even more complex due to the growing size, mobility and social and economic circumstances of the child-population. Despite the complexity of the task at hand, the extensive policy innovations and legislative reform of the past two decades have contributed to improvements in the lives of children, notably in their standard of living, reductions in poverty and a declining child mortality rate.

Treaty Obligations

South Africa ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1995 and the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000. Based on these ratifications, the country is obliged to submit periodic reports to the United Nations in terms of article 44 of the UNCRC and to the African Union in terms of article 43 of the Children's Charter.

The country's second periodic report to the United Nations Committee on the Rights of the Child was presented in November 2014. The Concluding Observations from the Committee were received in November 2016. Furthermore the list of issues towards submission of the country's combined third to sixth periodic reports were issued in February 2021. The due date for the next report to the UNCRC has been extended to June 2022. This report will provide responses to the list of issues issued by the Committee and will cover the reporting period from 2016-2021. The drafting of the report will be finalised by the end of the year and the report will be processed through to the clusters and to Cabinet next year.

South Africa also presented its initial report to the African Committee of Experts on the Rights and Welfare of the Child on the implementation of the Children's Charter in

October 2014. The second country report on progress made on the implementation of policies and legislation relating to the ACRWC was approved by Cabinet in December 2016. The report was subsequently presented to the Committee in November 2018. Feedback from the Committee in the form of Concluding Observations was issued by the Committee in March 2019. The next periodic report to the Committee is due in March 2022. This report will outline progress made on the implementation of the concluding observations issued by the committee in March 2019. This reports is being processed through to the Clusters, targeting Cabinet for the 24th November.

During the drafting of the reports, the department facilitated the coordination of inputs from all government departments and consultations were held with the National Children's Rights Intersectoral Coordination Committee, National Steering Committee on Child Rights and the Provincial Steering Committee on Child Rights.

What are the systematic actions envisaged to strengthen children's rights delivery in South Africa

1. Coordinated effort in the implementation of the National Plan of Action for Children which was approved by Cabinet in October last year;
2. Strengthening institutional mechanisms such as ensuring that the coordination and oversight is exercised from executive authority level, such as the Presidency, Premier's and Mayor's offices;
3. Ensuring the mainstreaming of children's rights at all levels;

In terms of heightening implementation of children's rights imperatives, including the Constitutional obligations, plans are underway towards a Child Rights Governance engagement which ideally will include the Judiciary. This will be preceded by sector specific consultations to solicit input on the envisaged outcome document which will be adopted by all sectors ion South Africa.

Thank you very much for this opportunity and we looking forward towards continued engagements.