

Child Protection¹

This is one in a series of topical guides developed for PAN:Children that provides key information on the current state of affairs in South Africa related to the topic and highlight practical guidance, lessons learned and case studies (both national and international) that will be helpful in policy development dialogue and knowledge sharing.

1. International, African and national instruments guaranteeing the right to child protection

The obligations on the South African State to protect, respect and promote the right to child protection are governed by international, African and national legal instruments. These include:

1. The United Nations Convention on the Rights of the Child (United Nations , 1990);
2. The United Nation's General Comment No 8. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (UN Committee on the Rights of the Child, 2006)
3. The UN's A World Fit for Children (United Nations General Assembly, 2002)
4. The UN's Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979);
5. The International Labour Organization's (ILO's) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (International Labour Organization, 1999);
6. The ILO's Convention concerning the Minimum Age for Admission to Employment (International Labour Organization, 1973)
7. The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague Conference on Private International Law, 1995)
8. The UN's Optional Protocol to the Convention on the Right of the Child on the sale of children, child prostitution, and child pornography (UN General Assembly, 2000)
9. Council of Europe's Convention on Cybercrime (Council of Europe, 2001)
10. The African Charter on the Rights and Welfare of the Child (African Union, 1999);
11. Constitution of the Republic of South Africa (Republic of South Africa, 1996).

All the preceding instruments guarantee the right to child protection. Child protection, as defined by UNICEF, refers to “preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking, child labour and harmful traditional practices” (UNICEF, 2006). The realisation of the right depends on the provision of services that protect children against “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse which is intentionally inflicted, either threatened or actual, which results in, or is highly likely to result in actual or potential harm to the child's health, survival, development or dignity” (United Nations, 2006). It also includes programmes targeting the protection of children who are uniquely vulnerable to abuse, such as those living without parental care, those with disabilities, and those in conflict with the law (UNICEF, 2006).

2. National policies and laws

The Prevention and Treatment of Drug Dependency Act (Department of Social Development, Act No. 20 of 1992) governs the provision of programmes for the prevention and treatment of drug dependency and the regulation of treatment facilities.

¹ This topical guide was prepared for PAN:Children by Patricia Martin (Advocacy Aid)

The Prevention of Family Violence Act (Republic of South Africa, Act No.133 of 1993) provides for the protection of children against violence within the family.

The Films and Publications (Republic of South Africa, No. 65 of 1996, as amended) prohibits and criminalises the production, possession, sale or any form of dealing in child pornography.

The South African Schools (Department of Education, No. 84 of 1996) provides a legislative framework for basic education and prohibits corporal punishment against children in schools.

The Abolition of Corporal Punishment (Republic of South Africa, Act No. 33 of 1997) prohibits corporal punishment as a sentence in both criminal and traditional courts.

The White Paper on Social Welfare (Republic of South Africa, 1997) articulates South Africa's commitment to a developmental approach to the provision child protection services with an emphasis on prevention, rather than treatment.

The Basic Conditions of Employment Act (Department of Labour, No. 75 of 1997) prohibits the employment of children under the age of 15 years and harmful employment of children older than 15 years.

The Domestic Violence Act (Republic of South Africa, Act No. 116 of 1998) allows for a child or someone acting on behalf of a child to apply for a restraining order against a perpetrator of violence against the child.

The Children's Act (Republic of South Africa, Act No. 38 of 2005, as amended) provides the legislative framework for a holistic child protection strategy and makes provision for prevention, early intervention and other remedial statutory services for children in need of care and protection.

The Criminal Law (Sexual Offences and Related Matters) Amendment (Republic of South Africa, Act No. 32 of 2007) criminalises an extended range of sexual offences against children.

The Child Justice Act (Republic of South Africa, Act No. 75 of 2008) is a comprehensive law governing the situation of children in conflict with the law in accordance with their rights contained in the United Nations Convention on the Rights of the Child.

The Social Services Professions Act (Department of Social Development , Act No. 110 of 1978) and the **Social Service Professions and Occupations Bill** (Department of Social Development, 2008) regulate the registration and functions of child protection professionals.

The Child Labour Programme of Action 2008 – 2013 (Department of Labour, 2008) is a multi-sectoral plan of action to address the underlying causes of child labour, and to provide support to children forced to engage in paid labour as well as domestic responsibilities.

The Prevention and Combating of Trafficking in Persons Bill (Republic of South Africa, 2010)criminalises trafficking of persons and makes provision for services for victims of trafficking.

The Integrated Social Crime Prevention Strategy (Department of Social Development, 2011) (2010) provides a framework for interventions designed to address a number of the social and economic causes of violence amongst vulnerable children and communities.

Green Paper on Families (Department of Social Development, 2011(a)) provides a statement of national commitment to, and a call for measures for family preservation and strengthening by addressing underlying social and economic risks such as poverty, gender inequality, unemployment, gender based violence and child abuse.

3. Situation assessment of child protection in South Africa

3. a Situation assessment of violence, abuse and exploitation of children in South Africa

Statistics

The level of violence against children in South Africa is high. In 2010/11, the South African Police Service recorded 54 225 crimes against children. The majority of these were sexual offences (28 128), followed by common assault (13 387) and assault (11 018) (South African Police Service, 2011).

These figures do not represent a complete picture of the scale of violence against children as many crimes remain unreported. A number of commentators observe that most crimes against children remain unreported because of gender, cultural and economic pressures on women and children. Potentially adverse consequences

of reporting violence include further violence, loss of income, threat to the extended family and the risk of rejection (Makoae, Warria, Bower, Ward, Loffell, & Dawes, 2009) (Townsend & Dawes, 2004).

Corporal punishment against children is common in homes and schools. One in five children experience corporal punishment at home where one in three parents uses severe corporal punishment (UNICEF, 2011) (Jewkes, et al., 2009). Despite a clear legislative prohibition, the prevalence of corporal punishment has increased in schools. In 2011, 17,2% of learners in South Africa reported having experienced corporal punishment, compared to 16,8% in 2009. The practice is more prevalent in certain provinces such as the Eastern Cape (30,2%), KwaZulu-Natal (22,5%), the Free State (22,1%) and Limpopo (19,3%), compared to provinces such as Mpumalanga (7%), the Northern Cape (16,5%), Gauteng (5,9%), and the Western Cape (3,7%) (Statistics South Africa, 2012).

Child labour - whether domestic or for economic gain - is common in South Africa, especially in households made vulnerable by poverty and HIV and AIDS (Department of Labour, 2008). In 2010, 24,2% of children in South Africa were engaged in economic activities either for market production or for the production of goods and services for households, 62,5% were involved in trade, 22,9% in other economic activities and 14,6% were engaged in private household economic activities. Black African children engaged more in economic activities than children in other population groups. Of the children who were engaged in economic activities, 41,6% were exposed to at least one hazardous condition (Statistics South Africa, 2011).

The Child Justice Act has seen a substantial reduction in the number of children entering the criminal justice system. Between 2008 and 2010 the number of children charged per month by the South African Police Services dropped from approximately 10 000 to 6 500 per month (Badenhorst, 2011). There has also been a reduction in the number of sentenced children in prisons from 536 in April 2011, to 51 in December 2011. However, contrary to the intent of the Act, there has been a drop in the number of cases diverted from the criminal justice system in the first year of implementation of the Child Justice Act (2010) (Badenhorst, 2011) (Department of Justice and Constitutional Development, 2012).

Underlying causes of high levels of child abuse, neglect and exploitation, and requisite responses

A host of underlying and interlinked social and economic factors contribute to the high rate of violence, abuse, neglect and exploitation of children in South Africa. These include poverty, the high rate of unemployment, gender inequality and harmful stereotypes, fractured families and absent fathers, harmful customary attitudes and practices among some cultural groups in relation to children and women, societal acceptance of violence and authoritarian discipline, and high levels of substance abuse (Jewkes, et al., 2009) (Makoae, Warria, Bower, Ward, Loffell, & Dawes, 2009) (Townsend & Dawes, 2004) (Ward, Dawes, van der Merwe (Eds), 2011) (Dawes, Kropiwnicki, Kafaar, & Richter, 2005) (Martin & Mbambo, 2011).

Appropriate and effective solutions depend on the development of an ecological child protection system that recognises, responds to, and addresses the multiple underlying causes of violence. This requires a comprehensive and multi-sectoral set of prevention interventions such as poverty alleviation, substance abuse prevention and treatment, gender education, the promotion of positive discipline, parenting support and education, as well as interventions that offer protection from harm or the threat of harm through effective policing, social services, child justice, judicial services, and strengthened family and community responses (Jewkes, et al., 2009) (Ward, Dawes, van der Merwe (Eds), 2011).

The inadequacy of South Africa's responses

The South African child protection policy framework has, in principle, recognised the need for a comprehensive ecologically modelled child protection system. This is reflected in the multi-sectoral comprehensive approach which includes a focus on prevention, early intervention as well as treatment services, in laws such as the Children's Act (2005) and the Child Justice Act (2008).

Whilst there are a number of policy gaps, notably the absence of a law prohibiting corporal punishment in homes (Bower, 2008) (Dawes, Kropiwnicki, Kafaar, & Richter, 2005), and the absence of a policy framework governing onerous domestic responsibilities (S Giese and R Koch, 2008) (Martin & Mbambo, 2011), the critical

concern with the current child protection system is the disjuncture between policy intent and practice (Ward, Dawes, van der Merwe (Eds), 2011).

Prevention and early intervention services, as well as remedial and alternative care, reunification services, child justice and child labour interventions are frustrated by inadequate human and financial resources. As a result of resource constraints, there are not enough social workers, not enough children's courts, not enough places of safety for children, not enough labour inspectors, etc., especially in rural poor areas, to realise the holistic child protection policy objectives (Badenhorst, 2011) (Barberton, 2006) (Budlender, Proudlock, 2011) (Budlender, Williams, Saal, Sineke, & Proudlock, 2011) (Martin, 2010).

Insufficient provincial social development budgets, and a lack of social service practitioners, have frustrated the provision of services contemplated in the Children's Act, as have insufficient skills development programmes for better recognition of the risks children face and how these can be addressed. In 2010/11, approximately 45% of the basic costs of the Children's Act were covered; however this varied significantly between provinces, with the Eastern Cape and Limpopo only allocating 25% and 29% of the necessary budget to implement the Children's Act in 2010/11 (Budlender, Williams, Saal, Sineke, & Proudlock, 2011). In addition, poor planning, management and implementation have seen certain provinces under-spending the allocated child protection budgets, resulting in aggravated provincial inequity in relation to the availability of, and access to child protection services (Budlender, Proudlock, 2011).

As a result of insufficient funds, too few practitioners and low levels of political commitment, prevention and early intervention services have not been realised in sufficient quantity or quality, and there has been a dearth of social welfare services to meet the demand of abused, neglected or exploited children and their families (Department of Social Development and UNICEF, 2011) (Loffell, Allsopp, Atmore, & Monson, 2008) (Barberton, 2006) (Budlender, Proudlock, 2011).

Low state capacity to deliver services has resulted in NGOs and CBOs assuming the bulk of the service delivery responsibility. However, the state does not provide them with sufficient funds to sustain the provision of quality services to reach all children in need of care and protection (Department of Social Development and UNICEF, 2011) (Budlender, Williams, Saal, Sineke, & Proudlock, 2011) (Mathambo, Sokolic, Wilson, Wilson & Makusha, 2009).

Moreover, the limited funds provided are not used effectively to ensure adequate coverage of essential services in under-serviced areas. This is, in part, because of lack of coordination of funding inputs and alignment of funding priorities with national and provincial objectives. As a result, there is often a duplication of services and gaps in coverage of child protection services (Budlender, Williams, Saal, Sineke, & Proudlock, 2011).

Resource problems also undermine realisation of the core objectives of the Child Justice Act (Barberton, 2006). There are insufficient probation officers to implement the Child Justice Act. In 2010, there were approximately 484 probation officers employed by the Department of Social Development serving 388 magistrate's courts, 88 high courts, and 299 periodical courts (Badenhorst, 2011) (Department of Justice and Constitutional Development, 2012). In addition, there are insufficient mental health professionals to conduct assessments of the criminal capacity of children aged 10 -14, thus delaying the determination of their criminal capacity and prejudicing their rights in terms of the Child Justice Act (Badenhorst, 2011) (Department of Justice and Constitutional Development, 2012).

Victim empowerment, the prosecution of criminal cases of abuse, neglect and exploitation, and protection through the criminal justice system remains problematic because of poorly developed and poorly integrated services and systems, poor prosecution of cases, as well as insufficient courts and child-friendly court infrastructure. The problem is especially acute in rural areas (Waterhouse, 2008) (Martin, 2010).

As a result of, inter alia, insufficient resources, child protection laws are not effectively implemented. Remedying the situation is made difficult by the lack of accurate, comprehensive and effective data collection

systems across the child protection spectrum. The regular and coordinated collection of accurate data is critical for evidence-based programme development, implementation and policy-making. Data collected by the criminal justice system with regards to children in conflict with the law continues to be inaccurate and unreliable (Badenhorst, 2011) (Department of Justice and Constitutional Development, 2012). Similarly so, the collection and quality of data with regards to violence, abuse and neglect of children is poor (Makoae, Warria, Bower, Ward, Loffell, & Dawes, 2009) (Chames, Lomofsky, & Mangokwana, 2010).

In addition, the lack of effective coordination across the different departments and levels of government frustrates the realisation of an effective multi-sectoral ecological child protection system (Department of Social Development and UNICEF, 2011) (Giese & Sanders, 2008). Cooper and Tomlinson (1999) and Makoae, Richter and Jubber (2012) observe a missed opportunity for the expansion of child protection services in the failure to integrate routine screening and referral for child abuse and neglect into maternal and child health services.

3. b Key innovations necessary to improve child protection in South Africa

1. There ought to be a shift towards a stronger systems-approach to child protection (Department of Social Development and UNICEF, 2011) (Jewkes, et al., 2009) (Ward, Dawes & van der Merwe (Eds), 2011). This in turn requires some of the following innovations:

- 1.1 Policy gaps related to corporal punishment and onerous domestic responsibilities ought to be filled (Dawes, Kropiwnicki, Kafaar, & Richter, 2005) (Giese, Koch, 2008) (UN Committee on the Rights of the Child, 2006).
- 1.2 Funding and human resources must be increased to ensure resource and technical capacity to provide all legislated child protection services (Barberton, 2006) (Budlender, Proudlock, 2011) (Budlender, Williams, Saal, Sineke, & Proudlock, 2011).
- 1.3 Budgeting for implementation of child protection services should be based on adequately costed projections based on national child protection delivery priorities. In addition, a national funding framework should be developed by the State to inform and guide donor funding of child protection services to ensure equitable coverage in relation to essential services in areas of greatest need (Budlender, Williams, Saal, Sineke, & Proudlock, 2011).
- 1.4 Data collection and information management systems must be strengthened and synergised to allow for the regular collection of accurate data across all child protection domains (Makoae, Warria, Bower, Ward, Loffell, & Dawes, 2009) (Dawes, Willenberg & Long, 2006).
- 1.5 Coordination and integration must be strengthened. Likewise, all levels of protection, starting with the family and community, must be strengthened to ensure that all risk factors are addressed and all protective opportunities maximised (Dawes, Willenberg & Long, 2006) More specifically, child protection screening, support and referral services should be mainstreamed into core maternal and child health services (Cooper & Tomlinson, et al, 1999) (Makoae, Richter & Jubber, 2012).

4. Guidelines and advice on the design, implementation, monitoring and evaluation of child protection policies and programmes

UNICEF's **Protective Environment Framework** provides a checklist for policymakers. It lists the eight essential elements that must be included in effective child protection policies and programmes. These include strengthened government capacity to realise a full complement of protection services; adequate legislation; addressing harmful attitudes, customs and practices; encouraging open discussion of child protection issues among the media and civil society; developing children's life-skills, knowledge and participation; building family and community capacity; providing prevention, recovery and reintegration services; effective monitoring, reporting and oversight (UNICEF, 2006).

The Policy and Programming Resource Guide for Child Protection Systems Strengthening in Sub-Saharan Africa is a guide to policymakers for the development of effective child protection systems characterised by a systems approach, with an emphasis on the use of holistic strategies and strategic partnerships to increase protection for children (Plan, 2011).

The Child Protection Systems: Mapping and Assessment Toolkit provides a practical and user-friendly methodology for policymakers and programme developers to prepare for the development or strengthening of their national or community-level child protection systems. It provides a framework and method for the identification of key national child protection risks within the rights framework, and a tool for analysing the scope and capacity of the current system, accountability mechanisms and approaches to resource mobilization to effectively meet the nature and scale of the risks. “The ultimate objective of the Toolkit is to support the development of country-level comprehensive child protection systems, appropriately structured and resourced” (UNICEF, 2010).

Youth Violence in South Africa: Sources and Solutions provides an in-depth analysis of the underlying cultural, economic, social, political, community and relational factors that both expose young people to violence and cause them to adopt violent behaviour towards others. The purpose of the book is to “provide a summary of the evidence to date, so that policy makers and those who implement programmes to prevent youth violence may be alerted to the critical need for interventions that are based on evidence for effectiveness.” The authors provide guidance for the development of youth violence prevention policies and programmes that address the multiplicity of risk factors, that are evidence-based, “age and culturally appropriate, comprehensive, intensive and sufficiently resourced” (Ward, Catherine; Dawes, Andrew; Amelia van der Merwe (eds), 2011).

What Are We Learning About Protecting Children in the Community? recognises that community-based child protection structures are essential to an effective comprehensive child protection system. Based on their review of global evidence on community-based child protection groups, the authors offer guidance for policy prioritisation and the necessary preconditions for community-based approaches to be “successful, sustainable, and scalable” (Wessells, 2009).

The **South Africa Country Report on the Situation on Prevention of Child Maltreatment Study** recognises that on the policy front, South Africa has a well-developed prevention framework in place. However, it concludes that there has been little implementation of the framework. It provides guidance on the steps necessary to ensure effective implementation of the prevention policies and laws, including developing capacity through training and adequate funding; improving and implementing information systems to generate data; monitoring and evaluation systems; and coordination of prevention interventions across different departments and between different levels of government (Makoae, Warria, Bower, Ward, Loffell, & Dawes, 2009).

UNICEF’s **Child Disciplinary Practices at Home** is a comprehensive review of disciplinary practices and attitudes to violence against children in homes across 33 middle- to low-income countries. The report uses the evidence collected to develop a set of guidelines for policymakers to follow in the development of policies and programmes to prevent violence against children (UNICEF, 2010).

Child Labour: trends, challenges and policy responses. Joining forces against child labour is an inter-agency report that documents the global child labour situation, and identifies key drivers of child labour and effective policy responses. It provides an assessment of key remaining obstacles to the elimination of child labour and provides guidance on proven strategies for addressing them (UNICEF, 2010(a)).

The National Policy Framework and the norms, standards and practice guidelines for the Children’s Act provide a detailed statement of the child protection roles and responsibilities of the Department of Social Development in terms of the Children’s Act No 38 of 2005. They provide guidelines and standards to provincial departments to ensure consistency and equity in the provision of child protection services across the nine provinces of South Africa (Department of Social Development, 2010)

The National Policy Framework for the Child Justice Act identifies child justice priorities and provides implementation guidelines, guidelines for monitoring progress, measures to ensure that different departments fulfil their roles and responsibilities in terms of the Act, and guidelines for the development of an integrated child justice information management system (Department of Justice and Constitutional Development, 2010).

Indicators for child protection provides a guide for the development of a comprehensive rights-based child protection monitoring and evaluation framework. It goes beyond quantitative measures and recommends indicators that will “tell us what we have to attend to in making policy and tracking outcomes of our services and interventions” relevant to the *why* and *where* children are most at risk of not doing well (Dawes, Willenberg & Long, 2006).

Monitoring child well-being: A South African rights-based approach provides a comprehensive guide for the development of rights-based indicators for monitoring the well-being of children across multiple domains, including child protection, the justice system, child labour and many others. The indicators are developed within a holistic and integrated framework and as such include measures of children’s social and economic living conditions in addition to child outcomes (Dawes, Bray & Van der Merwe, 2007).

5. Case studies

The Department of Social Development’s report – **The Identification and Assessment of Early Intervention and Prevention Programmes in South Africa** used a comprehensive policy and conceptual framework to appraise 20 prevention and early intervention programmes that were identified as effective, sustainable, replicable and innovative, across the nine South African provinces. The report draws together a number of “good practice principles that should be included in the design, development and implementation of prevention and early intervention programmes in South Africa to meet the objectives of these programmes and to ensure that they reach the most vulnerable children (Department of Social Development and UNICEF, 2011).

The **Compendium of Case Studies: Mapping and Review of Violence Prevention Programmes in South Africa** documents 11 gender violence-prevention case studies in South Africa operating at a family, community and broader societal level. All of the case studies have a gender dimension and a number of them deal specifically with the prevention of violence against children. It identifies good practises for preventing gender violence and draws on these to develop a violence prevention model for South Africa that involves individuals, schools, communities, traditional authorities, the media and politicians (National Prosecuting Authority and UNICEF, 2008).

RAPCAN’s **Banning Corporal Punishment** provides a detailed documentation of the law-reform process and advocacy behind the efforts of the Working Group on Positive Discipline to abolish all forms of corporal punishment through the Children’s Act. The document aims to share the lessons learned through this process to strengthen and inform further law reform processes (Bower, 2008).

Child Protection Support for Orphans and Vulnerable Children and Their Families in Côte d’Ivoire documents the development and implementation of multi-sectoral legal units in poor communities to facilitate the provision of social and judicial child protection services. The document reflects on the manner in which the units - through their composition and functions - fulfil the eight essential child protection elements of UNICEF’s

Protective Environment Framework. The guidance provided is of value for the further scaling up and development of multi-purpose support centres for South Africa (Castle, 2008).

The impact of programs relating to child labour prevention and children's protection: a review of impact evaluations up to 2007 provides an overview of impact evaluations of various policy options relating to child labour protection and prevention. The objective of the review is to identify and document best practices for emulation by policymakers (Paruzzolo, 2009).

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