

Children's participation¹

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 governing the right to participate

The obligations on the state to protect, respect and promote the right of children to participate in decisions that affect them are governed by international, African and national legal instruments. These include:

- The United Nations Convention on the Rights of the Child (United Nations, 1990);
- The United Nations Convention on the Rights of the Child General Comment 12: The Right of the Child to be Heard (UN Committee on the Rights of the Child, 2009);
- The African Charter on the Rights and Welfare of the Child (African Union, 1999);
- The Constitution of the Republic of South Africa (Republic of South Africa, 1996).

2. National policies, laws and programmes

The National Education Policy (Department of Education, Act No. 27 of 1996) regulates the procedures for the determination of national education policy and requires consultation with national student representative bodies as part of the policy development process.

The Choice on Termination of Pregnancy Act (Republic of South Africa, Act No. 92 of 1996) recognises the right of all girl children to consent to an abortion.

The South African Schools Act (Department of Education, Act No. 84 of 1996) provides the regulatory framework for governance and disciplinary processes within schools and obliges learner participation in both.

The Local Government Municipal Systems Act (Republic of South Africa, Act No. 32 of 2000) recognises the right of local communities (which include children) to participate in the planning of local government services.

The National Health Act (Department of Health, Act No. 61 of 2003) regulates the participation of children in local health planning and their consent to research and experimentation on them.

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 which includes provisions requiring the consideration of children's views in matters affecting them.

The Child Justice Act (Republic of South Africa, Act No. 75 of 2008) provides for the participation of children in conflict with the law in all processes that affect them.

The Prevention of and Treatment for Substance Abuse Act (Department of Social Development, Act No. 70 of 2008) requires consulting children in the treatment of substance abuse problems.

The National Youth Development Agency Act (Republic of South Africa, Act No. 54 of 2008) requires the participation of all youth between the ages of 14 and 35 years in democratic decision-making processes.

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The White Paper on the National Climate Change Response (Department of Environmental Affairs, 2011) requires that all vulnerable groups, the definition of which includes children, should be involved in the development of climate change policies and programmes.

3. Situation assessment and analysis

3a. The status of children's participation in South Africa

Since 1996, numerous laws have been passed that expressly recognise and promote the right of children to participate in the making of decisions in the home, school, community and government. Moses, Bray and Jamieson identify and discuss these laws in some detail (Bray & Moses, March 2011) (Jamieson L. , 2011) (Moses, 2008).

Most notably, the Children's Act recognises that "[e]very child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration."² Moreover, the right to participate applies to "all proceedings, actions and decisions by any organ of state in any matter concerning a child or children in general."³

In addition, a multiplicity of laws (listed above) make provision for the participation of children in judicial and administrative proceedings, certain policy- and law-making proceedings, their health-care decisions, disciplinary and governance proceedings within schools and decisions at a community and home level.

Examples include the obligations to:

- Consult children in the development of climate change policies (Department of Environmental Affairs, 2011) and in the development of local health planning (Department of Health, Act No. 61 of 2003);
- Consult children in conflict with the law in all judicial and administrative proceedings (Republic of South Africa, Act No. 75 of 2008);
- Consult children in divorce and adoption matters and other alternative placement decisions (Republic of South Africa, Act No. 38 of 2005, as amended);
- Obtain children's consent to medical treatment, marriages and customary rituals (Republic of South Africa, Act No. 38 of 2005, as amended) (Department of Social Development, Act No. 70 of 2008) (Republic of South Africa, Act No. 92 of 1996);
- Consult children in the development of school codes of conduct, disciplinary matters, school governance, education policies and family-level education decisions (Department of Education, Act No. 27 of 1996) (Department of Education, Act No. 84 of 1996) (Republic of South Africa, Act No. 38 of 2005, as amended).

3b. Policy and implementation gaps

Since the 1970s, children have, and continue to, participate in the political and social participatory spaces created at law and through other instruments. Participation has included street-based protests; participation in school governance fora; and participation in policy-making processes, research and evaluations (Bray & Moses, March 2011) (Jamieson L. , 2011) (Jamieson & Mukoma, 2009) (Moses, 2008) (UNICEF South Africa, 2011) (Nomdo & Roberts, 2011) (University of the Western Cape, 2001) (Clacherty & Budlender, 2007) (Pendlebury, 2011).

² Section 10

³ Section 6(1)(a)

There have been at least three general overviews of the current status of children's participation in South Africa in the last four years. Two were authored by Rachel Bray and Sue Moses, and the third review, by Lucy Jamieson, was one of a number of articles in the 2010/2011 South African Child Gauge focusing on children's participation.

In sum, the reviews share two common messages:

1. While there has been considerable legislative development recognising the rights of children to participate in decisions that affect them, there is a significant disjuncture between the intent and actual implementation and outcomes of the laws in question.
2. Child participation has not been systematised as an obligatory state-funded democratic-prescribed process in all political and social spaces – it remains a largely ad hoc NGO-driven intervention (Moses, 2008) (Bray & Moses, March 2011) (Jamieson L. , 2011).

More specifically, the key policy and implementation gaps include the following:

The most vulnerable are not included

The majority of laws governing children's participation, as well as the participatory processes that are followed, exclude the participation of pre-teen children and, indeed, many of the other most vulnerable groups of children in society, such as children with disabilities, children living in extreme poverty and children living on the street (Bray & Moses, March 2011) (Percy-Smith & Thomas, 2009)(Bray, 2011).

Implementation is frustrated by lack of skills, knowledge and resources

The implementation of the law requiring children's participation– even for older children – is not implemented as prescribed. This is largely because of a lack of skills, resources and understanding of participatory processes, as well as adverse social and cultural attitudes among adult professionals and caregivers.

For example, in the health setting, medical professions and parents lack the skills and harbour social and cultural norms related to ill children that are inimical to the attitudes, knowledge and practices necessary to implement the provisions in the Children's Act related to children's informed consent (Bray & Moses, March 2011) (Kruger & Coetzee, 2011) (Moses, 2008)(Bray, 2011).

Likewise, in the educational setting, participation by learners in school governing bodies (SGBs) has not been meaningful. Instead, the routine lack of meaningful engagement with learners on SGBs has been criticised. Commentators conclude that, rather than promoting participatory democracy, "SGBs have turned into an exercise in marginalisation" (Bray & Moses, March 2011) (Pendlebury, 2011).

Cultural barriers to implementation

In Southern Africa, cultural practices and attitudes related to the status and role of children within the family and community inhibit the protection and promotion of children's participatory rights. Legislation alone is not sufficient to secure participation within the family and at a community, local and even national policy level. Advocacy, awareness-raising, parenting support and participatory processes at traditional, local and national political levels should foster an appreciation among traditional leaders, families and politicians of the value of children's participation and create participatory spaces for children within current traditional, local and national governance structures. Moreover, the development of participatory processes and laws should actively involve traditional communities, families and traditional leaders (Save the Children Sweden, 2010) (Martin & Mbambo, 2011).

Children's voices are not taken seriously

Where participation has taken place, children's views have not been taken seriously enough by politicians and policy-makers. This is evidenced by the common failure to act on inputs received from children through participatory processes and to provide children with feedback on the outcomes of their inputs (Bray & Moses, March 2011) (Nomdo & Roberts, 2011) (UNICEF South Africa, 2011).

No formal systemic political participatory spaces and processes

Despite the progressive legal framework around children's rights and democratic processes, there are no formal systematised political participatory processes to allow children's participation in all policy and law reform processes (Bray & Moses, March 2011) (Moses, 2008) (Nomdo & Roberts, 2011) (Percy-Smith & Thomas, 2009) (UNICEF South Africa, 2011).

Thus, while there have been various child participation initiatives around the development of some policies and laws, including the Children's Act, the Child Labour Programme of Action and others, these have been ad hoc, led by researchers, NGOs or the South African Law Reform Commission, arbitrary and limited in the number and representivity of the children reached (Bray & Moses, March 2011).

As a result, children's participation in policy processes has not been secured as a matter of right, but, instead, has depended on the discretion and willingness of relevant government departments to incorporate the views of children and "according to the decisions of researchers or advocates around the means of gathering and communicating children's perspectives" (Bray & Moses, March 2011).

Child participation processes are not only absent at a policy development level; there is equally little engagement with children in the design and delivery of community services provided by local government or NGOs (Bray & Moses, March 2011). The reasons for the lack of engagement with children at a local level include not only adult and traditional authorities' attitudes and disregard for children's viewpoints in local governance issues, but also the perception among young people that involving themselves in matters of service delivery at local government level is a waste of time. The attitude in question appears to be caused by the disregard of children's views by adults and authority figures in this political domain, the perceived untrustworthiness of politicians, corruption and other factors shaping local governance that have made young people "cynical about the impact and benefits of participation" (Roodt & Stuurman, March 2011).

Lack of political commitment to children's participation

Many of the current gaps and challenges are caused by the lack of political commitment by politicians and government to children's participation. Child participation continues to be driven by researchers and NGOs, with little sustained political and budgetary commitment to institutionalising, scaling up and sustaining child participation as a recognised political participatory process. Government is not seen as being serious about, and is failing to pursue, a meaningful children's participation agenda. The current status of children's participation as an ad hoc, less than meaningful intervention is shaped by the lack of commitment to children's participation (Bray & Moses, March 2011) (Save the Children Sweden, 2010) (UNICEF South Africa, 2011).

3c. Policy and practice solutions

The full range of gaps and disjunctures requires a holistic and systematic innovation. There is a need for the development of a funded national systemic child participatory framework which must be institutionalised at all levels of government – from national down to local level. This requires a wide range of policy, legislative, practice and budgeting provisions "which establish both entitlement and the opportunity to governments and others accountable to realise that entitlement" (Percy-Smith & Thomas, 2009). The range of measures necessary to realise the systematisation of children's participation includes:

- The establishment of legal entitlements through laws governing access to courts, legal representation, the definition of parental responsibilities in family law and others;
- Systematic provisioning of information on rights for children through, for example, an obligation on the state to produce child-friendly policy documents open for public comment;
- Sensitisation and awareness raising of adults through professional training and parenting education programmes;
- Systematic mechanisms for influencing public decisions at all levels through, for example, the development of child-friendly and collaborative public services, support for child-led organisations, peer education, access to the media, community mobilisation, child representation on local and national policy-making bodies and routine access to government to facilitate ongoing policy dialogue;
- Mechanisms for remedy and redress to enable children to challenge transgressions of their participatory rights (Percy-Smith & Thomas, 2009) (Committee on the Rights of the Child, 2006).

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

The Implementation Handbook for the Convention on the Rights of the Child provides guidance to the state on policy and implementation measures that should be taken to promote and protect the rights of children, including the right to participation. The guidance is based on more than a decade's worth of interpretation and concluding observations of the Committee on the Rights of the Child. Recommendations and guidance include the need not only to review laws and policies to ensure that they provide adequate protection of the right, but also to give guidance on the measures necessary for ensuring implementation. Recommended measures include the promotion of a social climate conducive to child participation through various means, including addressing traditional and cultural attitudes and practices that inhibit children's participation and the provision of training and capacity-building at family, community and school level. In addition, the document recommends that children's participation not be viewed as a once-off, or series of once-off events, such as a Children's Parliament, but that participatory processes be systematised at all levels of society and government. The report provides a checklist for the review and revision of policies, laws and practices to ensure full recognition, promotion and protection of the right to participation (Hodgkin & Newell, 2007).

The UN Committee on the Rights of the Child's **Day of General Discussion on the Right of the Child to be Heard** documents a series of recommended policy and implementation recommendations addressed to subscribing states to protect, promote and realise the right of children to be heard and participate in decisions that affect them. The recommendations are based on common gaps, good practices and priority issues identified by the Committee in its review of state reports. The report stresses the need to promote the right among vulnerable children in particular, especially with regards to combating traditional and cultural attitudes that inhibit the right. Specific recommended actions include parent education and dissemination of information among parents on the right, measures that should be adopted within the education system to ensure children's full participation in education decisions and, at a community level, the Committee stresses the need to move from events to systematic inclusion of children in policy matters. The report further provides specific recommendations to secure the right of children to be heard in judicial and administrative proceedings (Committee on the Rights of the Child, 2006).

Every Child's Right to be Heard: A resource guide on the UN Committee on the Rights of the Child General Comment No.12 provides detailed and practical guidance to policy, law and programme developers on the legislative and other steps that should be taken to implement children's right to be heard. The focus is particularly on steps which will ensure that especially marginalised children – children living in extreme poverty, girl children, children without documents and others – enjoy their participatory rights. It provides examples of legislation and policy, guidelines for practitioners, evidence from research and examples of meaningful participation in practice (Lansdown, 2011).

UNICEF's **Children as Advocates: Strengthening Child and Young People's Participation in Advocacy Fora** consolidates a multiplicity of guidelines, protocols and resource documents related to strengthening children and young people's participation in advocacy at various national, regional and global meetings supported by UNICEF over the last few years. The report provides a systematic set of tools to any policy-maker or programme developer planning on establishing a children's participatory process. It provides guidelines for selection and participation processes and the use of chaperones, facilitators and youth journalists. It also includes what information and consent forms should be provided and ways to ensure quality follow-up (UNICEF Adolescent Development and Participation Unit, 2010).

Get Youth on Board: A toolkit for Stakeholder Collaboration and Youth Promotion is a tool kit providing guidance and support to government and non-governmental stakeholders working at local government, district and provincial levels to put together structures for the inclusion of youth in the development of policies and programmes that will impact on the social and economic well-being of young people (GTZ, 2010).

A Handbook on Child Participation in Parliament provides guidance to parliamentarians on some of the key ways in which they can ensure that children's voices, concerns and interests are meaningfully heard and addressed through parliamentary processes. The guide offers information on what child participation is, why parliaments should involve children, principles for child participation and the routes and processes for bringing children into parliament and parliament to children (UNICEF and the Inter-Parliamentary Union, 2011).

A Handbook of Children and Young People's Participation: Perspectives from Theory and Practice provides guidance to policy-makers for the systematisation of children's participation in national, local and societal decision-making structures and fora. The chapter by Patricia Ray provides specific guidance, based on successful best practices, for the mainstreaming of consistent and sustainable participation by the most marginalised children, especially those living in poverty, in participatory processes (Percy-Smith & Thomas, 2009).

Reflecting on Child and Youth Participation: A publication for programmers and policy makers in East and Southern Africa documents children's participation methodologies in use in eastern and southern Africa. It highlights key issues that must be addressed in order to encourage greater child and youth participation in policy-making and programme development (Rachel Bray; Glynis Clacherty, 2011).

Children's participation in decision making: Why do it, when to do it, how to do it provides a detailed, step-by-step guide to policy-makers and programme developers on what children's participation is, why it should happen and how to do it. It provides conceptual and legal information on children's participation. In addition, it identifies the different opportunities and spaces within the justice, health, education and community services domains that public leaders should use to review and improve children's participation – and offers ideas for participation at each level. It also describes what legislators, administrators and the media can do to promote children's participation (Inter-Agency Working Group on Children's Participation, 2007).

Operations manual on children's participation in consultations provides detailed and practical guidance for processes and decision-making criteria to use to facilitate the safe, lawful and meaningful participation of children in consultations. The guidelines provide direction on the design and implementation of steps so as to ensure compliance with the Minimum Standards on Consulting with Children. The manual covers information ranging from planning and preparation (including the development of child-friendly documents and a child-protection policy) to the selection of participants and guardians, child protection, the hosting of a preparatory workshop, preparation and terms for media engagement and follow-up guidelines (Inter-Agency Working Group on Children's Participation, 2007).

Communicating with children: Principles and Practices to Nurture, Inspire, Excite, Educate and Heal recognises that meaningful children's participation requires that children have access to accessible information

which is intelligible to them. This report guides policy-makers and state communication agencies on how to develop child-friendly and accessible material and to ensure sustained and meaningful access to education (Barbara Kolucki; Dafna Lemish, 2011).

Children's Protection and Cultural Rights Fact Sheets offers a series of practical guides for various stakeholders – ranging from traditional leaders and traditional courts, to parents, NGOs, parliament, the legislature, children's courts and human rights organisations – on the steps that may be taken to address harmful customary attitudes and practices inhibiting children's protection rights, including their rights to participation (Martin P. , 2011).

A Framework for the Ethical Principles of Children's Participation provides a clear statement of the ethical guidelines that must be taken into account in the development and implementation of children's participatory processes (Viviers, 2010).

Including Children: Guidelines on ethical practice in fulfilling children's rights to participation provide guidance on the legal and ethical obligations that must be complied with in the development and practice of children's participation at all levels of society – the family community, at school, in health care, in child care centres, and at local and national government level (Ramsden & Talbot, 2009).

Can you hear me? The right of young children to participate in decisions affecting them explores the right of young children to participate and some of the challenges to facilitating such participation. It provides guidance for overcoming these challenges in different settings – the family, the early education setting, schools and within local communities. The report argues that the current absence of spaces at local government level requires radical review and provides some guidance, based on case studies, on the processes that could and should be in place, as well as on tools that could be used to measure the extent and impact of children's participation (Gerison Lansdown, 2005).

Monitoring and Evaluating with Children (A short guide) recognises the value and legal imperative to involve children not only in the design and implementation of policies and programmes, but also in the monitoring and evaluation of their success or failure. The document provides guidance to the evaluation specialists on the design of participatory evaluation methods and tools that will allow children to be both evaluation subjects and data collectors; both the providers and retrievers of information. It provides guidance on how to involve children in the process of evaluation and on “what needs to change or be taken into account when working with them.” The guidance is based on contributions made by children in an evaluation of the Girls First Club in Togo (Bonati, 2006).

Children Participating in Research, Monitoring and Evaluation (M&E) – Ethics and Your Responsibilities as a Manager provides technical guidance to the developers of M&E frameworks on the design of research, M&E activities and data collection tools that comply with the ethics of children's participation (UNICEF Evaluation Office, 2002).

Exploring the Impact of Climate Change on Children in South Africa reviews the impact of climate change on children in South Africa. It notes that, while children are especially vulnerable to climate change, they are invisible in the majority of policy and legislative responses to the issue. A key solution to addressing this policy gap is to ensure children participate in future climate change policy dialogues. The report provides a number of concrete recommendations for policy-makers to ensure that children are systemically included in the shaping of climate change policies and law moving forward (UNICEF South Africa, 2011).

5. Case studies

The Children's Participation Process: Towards a South African Child Labour Programme documents the rationale for and design and outcomes of a children's participation process related to the development of South

Africa's national child labour programme of action. The report documents the research approach, ethical issues, the benefits to participating children, the feedback to and follow-up of children, the selection of research participants, research activities, and a summary of findings. The depth of process and outcomes detail makes this a useful document for planning children's participatory processes in law and policy reform processes (Clacherty & Budlender, 2007).

Children and the creation of a new Children's Act for South Africa documents the children's participatory process followed by the South African Law Reform Commission in the review of the Child Care Act, in preparation for the drafting of the new consolidated Children's Act. The report documents the ages of the children, the location of the groups, the participatory methodology of the process and the questions that were asked of the children (University of the Western Cape, 2001).

Dikwankwetla – Children in Action documents a case study of the South African Dikwankwetla project, which was established to “facilitate children's participation in the debates and decision-making processes that inform the final provisions of the Children's Bill, with a particular emphasis on children made vulnerable through adult illness and death in the context of HIV/AIDS.” The report documents the criteria for choosing participating children, as well as the preparatory steps taken, including preparatory workshops to build capacity, prevent secondary trauma and make the complex policy text accessible to children. The report documents the process at the national and provincial policy levels and also assesses the impact of the process on the final law (Jamieson & Mukoma, 2009).

Reinforcing Child Participation was a study commissioned by Save the Children Sweden in preparation for the development of guidelines on child participation at a regional level for the Civil Society Organisation Forum on the African Charter on the Rights and Welfare of the Child. The study included a review of best practices in the region which can be replicated, as well the identification of child participation mechanisms that have secured the inclusion of marginalised children. The study included in-depth case studies of five child participation initiatives, one in each of the African regions. These were: Children's Voices, in Kenya; *Mouvement African des Enfant et Jeunes Travailleurs*, in Senegal; Voice of the Young, in Gambia; Children Who Cross Borders, in South Africa; and the regional Children's Consultations on the Convention on the Rights of the People with Disabilities, in Yemen (Ward, 2012).

The Regional study of children's participation in Southern Africa: South Africa, Swaziland and Zambia documents initiatives in the region to promote children's participation. It identifies elements of good practice and barriers to meaningful participation. The initiatives covered include those that: 1) facilitate participation in public policy, including budget analysis, research, advocacy and litigation; 2) relate to children and the media; 3) community-level initiatives; 4) school-level initiatives; and 5) family/caregiver related initiatives, including parenting skills and psycho-social support (Save the Children Sweden, 2010).

Children's involvement in Community-led Total Sanitation (CLTS): A case study of Oboyambo community in central region of Ghana documents the involvement of children in the CLTS programme from design through to evaluation. The case study documents the impacts on the success of the programme as a result of the children's participation – impacts which included voluntary behaviour change by children to improve water health levels, the responsive design of the programme to meet children's needs (for example, the provision of child-friendly toilets at schools) and teaching of their parents to support and sustain the programme interventions. The report concludes that the participation of the children was essential to the responsive design, effective implementation and sustainability of the programme, and argues that children's participation in all local service-delivery programmes is essential for the same reasons (Sarpong, 2008).

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