

South Africa case study:

Producing change in law and practice on children's wellbeing

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1. Introduction

This case study is implemented within the project 'Fostering policy support for child and family wellbeing - Learning from international experience'. Using a thematic and analytic framework for the project that draws on Kingdon's multi-streams theory,² we are gathering and sharing evidence and learning on what has led to increased policy recognition of and policy change in family and child health and wellbeing (FCHW). In specific countries that have demonstrated policy recognition and change in FCHW post 2000, we are exploring within their context how different policy actors have come together to raise policy attention, develop policy options and promote their political adoption as processes for policy change, taking advantage of windows of opportunity for that change. The case studies were implemented with a local focal person with direct knowledge or experience of the policy process and include evidence from published and grey literature and interview of key informants involved in the policy processes.

This case study explores the drivers in the passing the 2005 Children's Act and 2007 Children's Amendment Act that introduced a rights based, comprehensive and collective approach to child wellbeing.

The anti-apartheid democratic struggle and change in South Africa and the passing of a new national Constitution in 1996 created an opportunity for a change from a reactive, racially unequal approach to child wellbeing, towards a proactive, rights-based approach.

Building on alliances formed in the democratic struggle, multiple civil society organisations working with children formed a coalition that pooled their own evidence and grassroots experience and brought children's voices and unified proposals that were used in advocacy and outreach on reform of the two laws. Effective and transparent co-ordination by the Children's Institute (CI), with thematic groups within the coalition, enabled specific interests to be advanced. It also built solidarity across groups and strengthened their combined influence on shared goals. The CI provided information, convened dialogue, built capacities and helped to prepare submissions by coalition members.

The statutory law review commission, the SALRC, convened wide consultation on the law reforms, setting principles for adjudicating submissions and using a mix of targeted research, dialogue and submissions, including from children, to generate compromise on and legitimacy of the reforms. To avoid the whole Bill not being passed, the gazetted Bill excluded some reforms for which the society was seen to be unprepared. These issues were then taken up in ongoing advocacy.

Parliamentary hearings opened opportunities for further social advocacy on the reforms, including testimonies from children and parliamentarian visits to see their realities. This built champions for the reforms. Concerns over feasibility, cost and the possibility of litigation against the state as a result of the proposed measures were heard and addressed through studies and multiple forms of person-to-person interactions. The continuity of engagement was demanding. It was sustained by networks and committed individuals. The law reform process, while long, was viewed by those involved as not an end in itself. It was rather seen as a process of continuous reform and a foundation for the time and participatory processes needed to make real change in social norms and institutional practice.

2. The context

South Africa is a middle-income country in southern Africa with a population of 55.4 million (in 2018) and a high level of social diversity. It has eleven official languages. The population is youthful, with 28% under the age of 14 years, but is gradually aging. The total fertility rate fell from six children per woman in the 1960s to 2.2 in 2014. The country has a three tier system of government, with local, provincial and national levels. It has the second largest economy in Africa, with a gross domestic product (GDP) per capita in 2017 of US\$13 600.

Despite this, there is a relatively high rate of poverty and unemployment and the country is ranked in the top ten countries in the world for income inequality. A rapidly growing HIV epidemic in the 1990s led to a national HIV prevalence that increased from 0.8% in 1990 to 22.4% by 2000. The high level of early adult mortality from AIDS was associated with a high level of child-headed households (Karim and Karim, 2002; UNICEF, 2015).



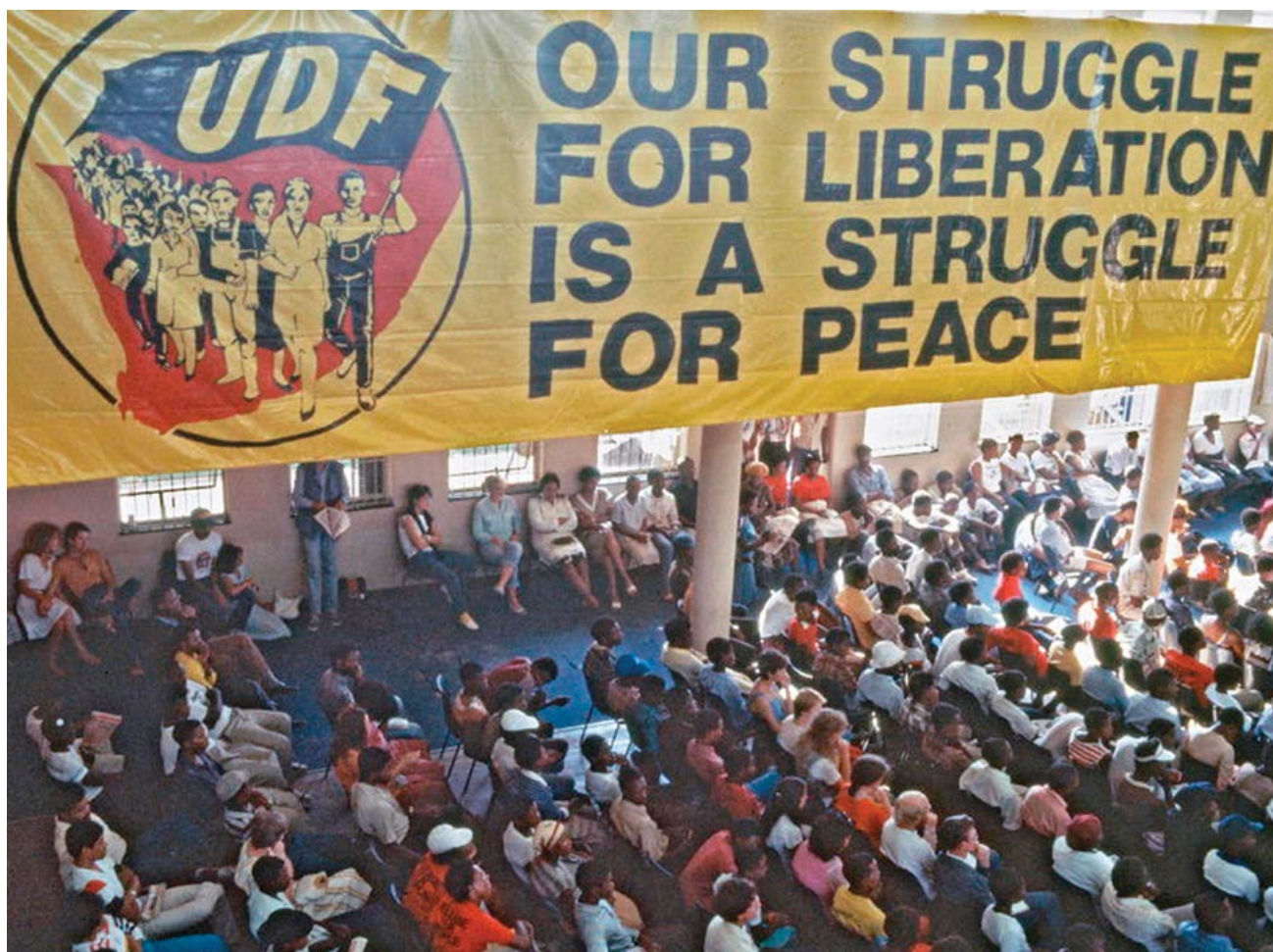
Map of South Africa. Source: Wikimedia commons

The first multi-racial, democratic elections in 1994, following the end of apartheid, opened both the opportunity and challenge to address the apartheid-era's institutionalized racial and social inequalities, including those affecting children. South Africa's approach to child wellbeing prior to the 1990s, as articulated in its 1983 [Child Care Act](#), focused on state protection services for children only *after* problems such as neglect or abuse arose. The Act did not obligate the state to provide prevention or early intervention services for children. In practice the majority of black, poor families were excluded from whatever services were provided (Proudlock and Jamieson 2010).

The processes that led to new laws and policies on children's rights emerged from the wider struggles for democracy and against apartheid in the 1980s in South Africa. They were reinforced by development of more comprehensive social protection policies for children in neighbouring countries after their own independence. Publications such as UNICEF's 1989 *Children on the Frontline: The Impact of Apartheid, Destabilisation and Warfare on Children in Southern and South Africa*, international conferences and champions within the Mass Democratic Movement (MDM) positioned children's rights in South Africa as an issue for the liberation struggle.

In 1987, at a Radda Barnen sponsored conference entitled "Children, Repression and the Law in Apartheid South Africa" held in neighbouring Zimbabwe, the then African National Congress (ANC) leader Oliver Tambo stated: *We cannot be true liberators unless the liberation we will achieve guarantees all children the 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* (SAHRC 2014:1).

MDM members embedded children's issues within the democratic movement. A National Committee on the Rights of the Child (NCRC) was formed in 1990 in Botswana, following meetings between the MDM, non-government organisations (NGOs) from South Africa and UNICEF. The NCRC provided an umbrella body and national level co-ordination for more than two hundred NGOs and community-based organisations working with children in South Africa (Abrahams and Matthews, 2011).



United Democratic Front (UDF) protest meeting South Africa, UN, 1985

Inside South Africa, street committees brought people's views on children's issues as part of their wider socio-political, economic and gender concerns. People carried out street campaigns, protests and debates, produced posters and wrote to newspapers, despite the risk of detention this brought.

UNICEF supported a human rights-based understanding and approach to children's wellbeing in these discussions. Children's rights were viewed as interdependent with adult rights and duty bearers were expected to address the barriers children faced in achieving their rights. A [Children's Charter of South Africa](#) was adopted in 1992 as part of the NCRC's mobilization, drafted with involvement of 200 children from twenty regions representing different race, class, gender and social groups, for the first time involving children directly in these processes.

The Charter was used to engage the Convention for a Democratic South Africa (CODESA) negotiations to include children's rights in the processes for shaping a new democratic, South Africa. (UNICEF nd; SAHRC 2014). In 1993 a National Plan of Action for Children was jointly signed by then President FW de Klerk and ANC President Nelson Mandela.

In the 1994 transition to an independent government many political cadres from the anti-apartheid struggle entered the state administration. A year after independence, the UN Child Rights Convention (CRC) was ratified and an Inter-ministerial committee set up to facilitate its implementation (UNICEF 2007; SAHRC 2014). The new 1996 Constitution gave momentum to the alignment of law and practice with its provisions, as further discussed later.

3. Policy reforms on sexual offenses, FGM and domestic violence

This context provided an important foundation for the passing of the 2005 [Children's Act](#). It would, however, have been possible for the issues to have lost profile in the face of the many demands on the post-apartheid government. It would also have been possible for a more token policy content to be enacted than what was envisaged in the campaigns before 1994.

So when the [1996 South African Constitution](#) included children's rights in its social, economic, political and civil rights, this was an important gain. It sets out in Section 28 rights to family, parental or to appropriate alternative care; to basic nutrition, shelter, basic health care services and social services; and for children to be protected from maltreatment, neglect, abuse or degradation. It states that *a child's best interests are of paramount importance in every matter concerning the child* (Rep SA 1996; Article 28).

In 1997 the government mandated the [South African Law Review Commission](#) (SALRC) to review existing law and to recommend reforms. This process, which took more than ten years, culminated in the new comprehensive *Children's Act*, 38 of 2005 and the [Children's Amendment Act](#) of 2007. The *Children's Act* 2005 was one of the first laws to speak directly to the rights and needs of all children (Swadener and Ndimande, 2014). With a wider understanding of children as individuals with rights, the process towards framing the Act raised awareness of the situations that made children vulnerable and deprived them of opportunities to exercise these rights.

This section describes the policy content that was embodied within these legal changes. The subsequent sections describe how these changes in the approach and content of the law and policy came about.

The 2005 *Children's Act* focused on national duties, with founding provisions put into effect in 2007 and some only fully effected by 2010. The 2007 Amendment focused on provincial duties and services, passed after extensive consultation within the provinces. Regulations to give it full effect were passed in 2010 (Proudlock and Jamieson, 2010; Budlender et al., 2007). While the initial intention was for both to be passed at the same time and the principles of both were presented to Cabinet in 2003, the 1996 Constitution required that they be split. The 2005 Act was passed first at national level and the 2007 law passed by the provincial legislatures and signed into law in 2008.

The new law takes a rights-based approach to provide structures, services and measures for promoting and monitoring the sound physical, intellectual, emotional and social development of children (UNICEF, 2007:27). It moves from an approach in which the individual child interacts with various fragmented and reactive services to one that addresses children collectively, through comprehensive multisectoral approaches.

The law provides principles; parental rights and responsibilities; measures for care, early childhood development; child protection; prevention and early intervention for vulnerable children, for fostering and adoption and for addressing child abduction and trafficking. Its implementation calls on many sectors and disciplines.

The 2005 Act specifies that *all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and wellbeing of children must cooperate in the development of a uniform approach aimed at coordinating and integrating the services delivered to children* (Rep SA, 2005:Article 5).

The timeline overleaf captures the key policy events associated with these changes in law and policy.

Timeline of processes leading to the Children's Act 2005 and the Children's Act Amendment 2007

Year	Policy/ law/ program/institution
1980s	<i>Child Care Act</i> of 1983. MDM conferences and champions raise children's issues. 1987 conference on "Children, Repression and the Law in Apartheid South Africa"
1990s	NCRC formed in 1990; Children's Charter of South Africa adopted in 1992; National Plan of Action for Children signed by President FW de Klerk and ANC President Nelson Mandela in 1993
1995-1999	South African democratic government in 1994; UN Child rights Convention ratified in 1995 and children's rights included in the 1996 <i>Constitution</i> . 1998 child rights co-ordination moved from the health department to President's office.
2000-2002	Government mandates the SALRC to review existing law on children. A SALRC discussion paper released in 2001 to draw input. A draft bill developed in 2002 by the SALRC for consultative processes;
2003	SALRC Draft Bill is finalized. Government gazettes the Children's Bill with a number of clauses excluded. A Children's Bill Working Group is set up as a network of networks to continue to engage on the Bill.
2004	National elections are held. The Bill is tabled in parliament and consultative processes held with government departments, civil society and children. Children make direct submissions to parliament through the Dikwankwetla project and Children's Institute (CI). A costing study is commissioned and implemented on the Children's Bill. Regular CI briefs are disseminated on the process to the CBWG.
2005	<i>The Children's Act</i> , 38 2005 is enacted Simplified materials on the Act are produced and disseminated
2006/7	Annual Children's Gauge reports initiated by the CI
2007/8	<i>Children's Amendment Act</i> 41 2007 is enacted in 2007 and signed into law in 2008.
2009-2015	<i>Children's Act</i> 2005 and <i>Children's Amendment Act</i> 2007 and regulations come into full force in 2010. New amendments are tabled in 2015.

Sources: UNICEF, nd; SALRC 2002; Barberton 2006; Budlender et al., 2007; UNICEF 2007; CI, 2007a; Jamieson 2007b; Proudlock and Jamieson 2010; Abrahams and Matthews, 2011

While pressures to further strengthen particular areas of child wellbeing and address the needs of particular social groups continue, the 2005 Act represented a significant break with the past. It reflected a shift towards a more holistic approach to child wellbeing. It integrates and addresses the determinants of rights and duties in child wellbeing. It significantly changed the understanding of the relationships between parents, other care givers and children.

It moved South African law away from the old notions of parental powers over children towards one based on the right of children to parental care, specifying what this implies and what parental or care-givers have to do to deliver on their duties. The law specifies and integrates state duties to ensure that families can access prevention and early intervention programs and services and that these be delivered in ways which are participatory and empowering for families. In general, rather than blaming vulnerable families, it focuses on creating enabling environments for children and their care-givers (September, 2008).

Gaps remain between these intentions as stated in the law and the daily lives of children and their access to services. However, the law is seen to also provide a platform for the future changes needed. Its enactment was reported to have contributed to public debate, investment in training and to socio-political discussions that are shifting social perspectives, even without using the punitive force of the law. As one key informant expressed it '*the law is not the end: it's the beginning*'.

4. The story of the change

4.1 Raising the issue: Generating social evidence and advocacy on child rights

The 1994 political change opened a window of opportunity that gave weight to the voice and needs of the community. Within this, the engagement of the national coalition of South African NGOs and CBOs in the NCRC with political champions in the MDM and with international agencies provided a foundation for post-independence advocacy on children's issues. The human rights approach opened the possibility of combining social activism with legal advocacy. This section outlines the actors and processes drawing attention to the changes needed to address child wellbeing.

Multiple organisations involved with children linked their work to the wider democratic movements, bringing a range of evidence and experience regarding children's rights and conditions. Official data had many gaps, particularly given the exclusion of the black population and of marginalised communities. The NCRC thus raised doubts about the validity of these official statistics on children. The Early Learning Resource Unit, for example, compiled its own comprehensive body of evidence on early child development (ECD). Using evidence from members and input from UNICEF, the NCRC published their own analysis of the situation relating to education, health, nutrition, violence and abuse of women and children (SAHRC 2014). They used this in their advocacy, bringing a more comprehensive picture of children's conditions and services, and contributing this also into later reports by the [Children's Institute](#) (CI) on the wide variations in the state of South African children.

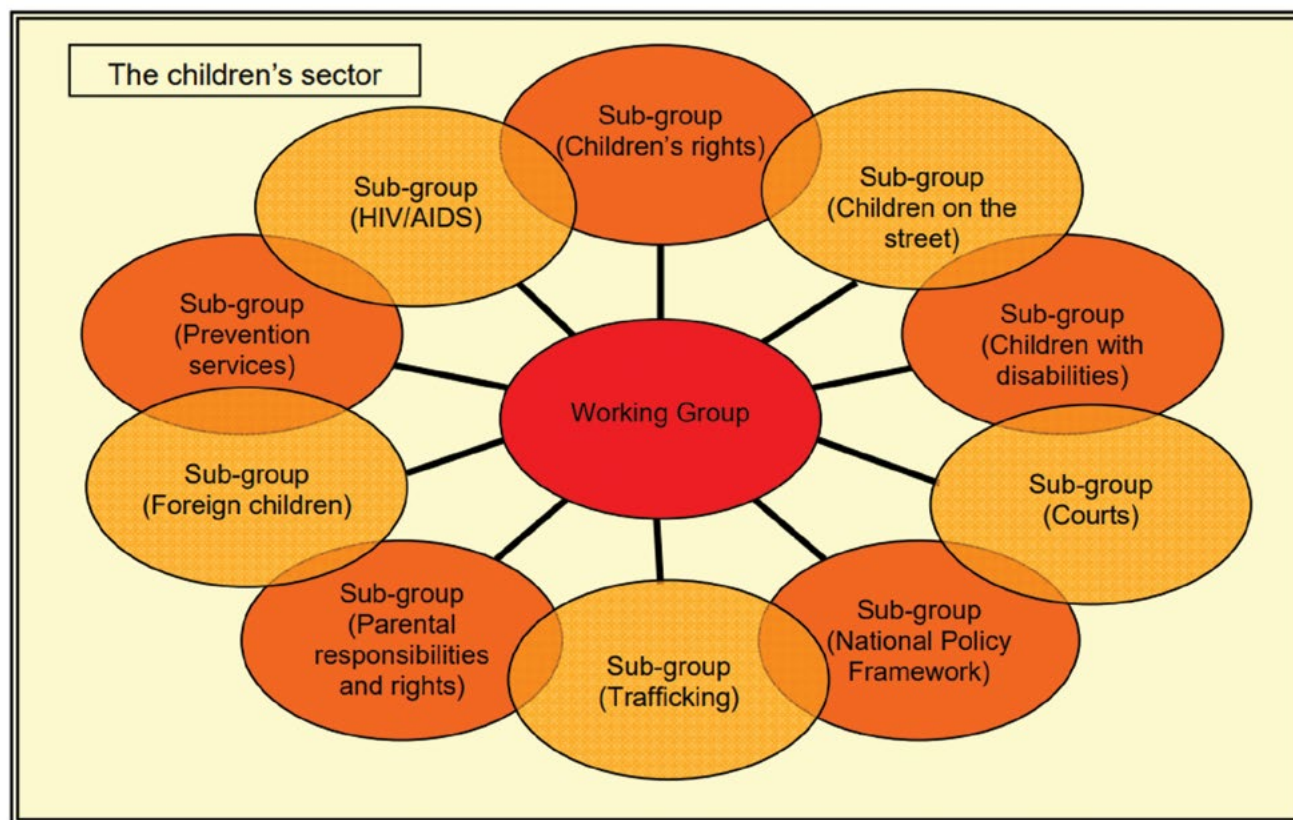
What mattered in this early period to raise the visibility of children's issues, perhaps even more than data, was the presence, voice and agency of the NCRC, the NGOs in the coalition and of children within key processes. Already by the 1990s, children were involved, such as in the drafting of the 1992 Children's Charter of South Africa noted earlier and in a 1995 second Children's Summit that updated it. The conference gave voice to children to state their right to be first, not last, on the political agenda and to show the effects apartheid had had on them. The updated Children's Charter covered issues raised on discrimination, identity, violence, family life, health, education, child labour and welfare (UNICEF nd; Abrahams and Matthews, 2011).

The wide coalition of NGOs, political champions, children and international agencies gave the NCRC leverage in its engagement on the National Plan of Action for Children, in the CODESA process, and in successfully advocating for the inclusion of the children's rights noted earlier in the 1996 South African Constitution. The constituent organisations covered a range of groups and issues, such as the [Disabled Children's Action Group](#) (DIGAC), that engaged in advocacy, literacy outreach, litigation and awareness-raising from community to national level on the rights of children with disabilities, the National Association of the Child, raising advocacy on behalf of children and youth at risk and Black Sash, that monitored law and access to social security (Berry and Guthrie, 2003).

Formalising rights can sometimes shift attention away from social processes towards legal, professional experts. In South Africa, a combination of socio-political and legal advocacy gave momentum to social debate and organization to argue for and discuss how to operationalize policy commitments and rights, with divergent views. As discussed later, there were debates between practitioners, communities and legal expertise on issues such as fostering, referral systems in child related services, and other socio-cultural issues in the framing of the 2005 law.

To some extent parents saw children's rights as *opposed* to their rights, rather than as complementary, a view that was most marked in relation to their resistance to any state limitation of their authority to administer corporal punishment to their children. There were debates, including in the media, on whether children should access contraception, give permission for treatment or access abortion services and on local issues such as virginity testing. Compromises were made around some of these issues. However, the impact of AIDS and level of child-headed households and vulnerability associated with it called for a shift in some of these social attitudes, to address the realities children were facing.

Figure 1: The structure of the Children's Bill Working Group (2003 to 2005)



Source: Proudlock and Jamieson, 2009:12. Note protection is covered under prevention in the diagram.

When the process for the Children's Bill was initiated, civil society leaders decided, building on past experience, that the best results would be achieved by way of combined effort, co-ordinated by a central body. The Children's Institute (CI), a multi-disciplinary child policy research institute established in 2001 and based at the University of Cape Town, sought and received funding for this. In January 2003 the CI hosted a workshop to plan the campaign and thereafter, with about 100 sectoral representatives, established the Children's Bill Working Group (CBWG). The whole group convened about twice a year to *discuss policy positions, draft responses to current debates, and to strategise on engaging with decision-makers* (Proudlock and Jamieson, 2009:10).

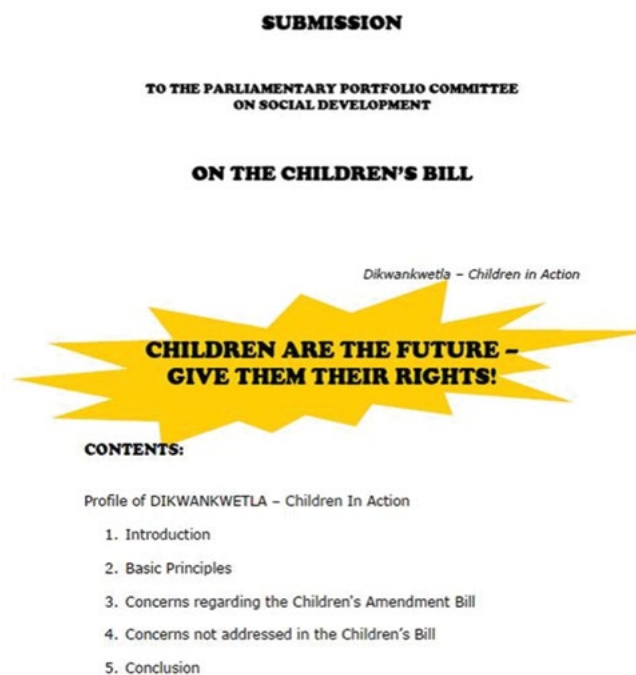
As a network of networks, the CBWG involved churches, trade unions, legal experts and academic institutions and childrens NGOs and interest groups. With most members from national umbrella organisations, each was expected to cascade information and advocacy tasks to their members to maximise participation across the country.

There was a conscious decision not to form a new organisation but to harness resources within existing organisations, co-ordinated by the CI, towards the shared short-term goal of the passage of the Children's Bill. The aim was to influence the Bill's content, but also to enrich the law-reform process and enhance participatory advocacy on children's rights (Proudlock and Jamieson, 2009).

The group sought to ensure that the new law would provide workable solutions to the major challenges facing children, including to overcome social inequalities and improve access to services and protection from abuse and neglect. To do this, the group divided into nine sub-groups working on specific issues, each with their own spokesperson. These were: children with disabilities; HIV and AIDS; discipline of children; early child education and care; protection, prevention and early intervention; role of schools in child protection; child and youth care workers and centres/care in the community; child-headed households and children on the streets (Jamieson, 2007).

Many of the groups were preoccupied with shifting the focus from only reactive approaches to earlier intervention for prevention and to promote enabling conditions for children. This meant improving the coordination of all spheres of children's rights and all sectors and tiers of government for child well-being. For example, DIGAC (introduced earlier), as a member of the CBWG, brought technical input and parents' and children's voice on disability into the processes. *As a sub-group we began with fact sheets, and invited parents and organisations to send real stories or real issues and gained real experience from the areas. These were consolidated into our submission, and we talked to parents about their direct experiences, and that was how we were able to identify the challenges.* (Interview, J Nkutha, DICAG, 2005 in Proudlock and Jamieson, 2009:16). As an organisation involved with childhood disability, it consulted and exchanged with other organisations, to integrate issues faced by children with disabilities across all areas and working groups. DIGAC thus raised awareness of the specific needs of this group of children within the wider CBWG, while the latter provided a platform for integrating concerns of children with disability within the wider proposals on children's rights. Regular CI communication to all working group members and alerts on issues and processes further enabled this integration of specific concerns within the broader process. People participated in the groups as an activity additional to their daily work and without payment, holding widespread consultations in provinces and preparing multiple submissions to influence the process.

While these sub-groups facilitated a concerted coalition across issues, each also drew on specific processes and evidence raised by their organisations and communities. For example, in 2003 the CI and partner organizations in Western Cape, Limpopo, Kwa-Zulu Natal and North West established a specific children's working group on HIV and AIDS. It involved children 12 to 17 years of age affected by HIV and AIDS. They named themselves *Dikwankwetla* (Children in Action) and drew on children's own life experiences to recommend changes in law and to raise awareness amongst other children and decision makers (Dikwankwetla 2007; Brynard nd). They also drew attention to concerns that the proposed law was not addressing, such as food insecurity or overcrowded housing (Dikwankwetla 2007).



Cover page, Dikwankwetla submission on the Children's Bill



Did you know? Poster on the 2005 Childrens Act, South African Police Service, 2012

The CI consolidated such evidence from across the working groups in a series of annual, comprehensive 'Children's Gauge' reports that provided evidence on various aspects of children's situations and on the adequacy of responses to this, with information on inequalities and resources such as pull-out maps showing provincial portraits of key child-centred indicators (CI, 2006, 2008). These reports were widely used by academic and non-state actors in their own advocacy and submissions on the law. Popular media, such as a grassroots journal called 'Children First', also brought issues and stories from communities.

The social debates, including in the media, did not end when the 2005 Act was passed. The gaps between law and practice made advocacy and accountability on implementation critical, as discussed further later. They also implied that social understanding and acceptance of the law and the thinking behind it could not be assumed. Social dialogue thus needed to continue after the 2005 Act was passed.



Some saw the Act as addressing decades of child neglect and abuse, while others warned of an erosion of children's behavior and parental rights. The debates reflected different understandings of childhood, culture and values in the country that continue today (Swadener and Ndimande, 2014). The civil society organisations continued to popularise information on the provisions of the law, to support awareness, implementation and accountability on commitments made and to review and raise social debate on issues not yet tackled in the law. For example a CI publication profiled the conditions and service deficits experienced by children with disabilities and the role of the *Children's Act* in addressing these challenges (Proudlock and Jamieson, 2009). An annual child protection week is now held; simple materials were produced explaining the *Children's Act* 2005; and media guidance produced on the Act to support media outreach, together with booklets explaining key features of the Act in local languages and in a way that would be accessible for children 11-15 years old ([Social Development, Rep of South Africa and UNICEF](#), nd).

The law itself and the public debates on it helped to change some traditional views and practices. However, this was not always the case, particularly where local communities had not participated in the changes, or where there were deficits in the resources or services needed for marginalized communities and children to benefit from the law (Swadener and Ndimande, 2014). The processes used to draw attention to children's issues exposed, but did not always change the power relations between experts and affected communities. Participatory approaches helped in this, by involving affected communities more directly in generating evidence and proposals. Such approaches were used to embed dialogue on child rights practice in familiar environments, as for example was done with a 'Champion for Children Handbook' on caring school communities (Rudolph et al., 2008).



Child nutrition, South Africa, GAIN, 2011

4.2 Developing policy options: Framing legal and service responses

The development of the National Plan of Action for Children and the inputs on child rights in South Africa's Constitution brought together and forged relationships between experts from provinces, from diverse sectors of government and from non-state actors that helped in framing the content of the 2005 *Children's Act* (Abrahams and Matthews, 2011; Welfare Portfolio Committee 1999). The SALRC consultative process and the facilitation by the CI also supported engagement across diverse forms of knowledge and evidence in the dialogue on policy options (Shung-King 2006).

As a statutory body, linked to, but independent of the justice ministry, the SALRC had an important convening role in developing the options for law reform. It has a mandate to produce research-based recommendations for law reform for consideration by the executive. It works through committees made up of experts from government and non-state actors, including civil society, academia and NGOs (UNICEF 2007). The consultative process built input and consensus around the proposals, important not only for the law reform but for their later implementation. The SALRC recognized that *this law reform process is not exclusively, or even primarily, a legal endeavour; on the contrary it is a performance that must be played out on a much larger stage* (Sloth-Nielsen, 2008: 4).

The SALRC set out from the onset the key principles informing the law: *The challenge facing the committee is to develop a systematic and coherent approach to child law: an approach which is consistent with constitutional and international law obligations of equity, non-discrimination, concern for the best interests of the child, participation of children in decisions affecting their interests and protection of children in vulnerable circumstances...The twin principles of enabling a child's growth and development within a family environment, and protecting children in vulnerable situations, therefore inform the committee's vision of the new children's law.* (SALRC, 1998:18). This setting of principles, later included in Section 6 of the 2005 *Children's Act*, was welcomed by NGOs and used in weighing up policy proposals under discussion (Sloth-Nielsen, 2008; Proudlock, 2016).

With multiple areas of law reform underway, the SALRC ensured that the different reforms did not conflict with each other. The SALRC prepared a series of research papers to draw stakeholder input in thematic areas such as child protection, children living on the street, children in out-of-home care and children affected by HIV and AIDS. In their engagement on the policy options, while NGOs had their own specific concerns, having a unified voice was seen to increase the chances of winning concessions (Budlender et al 2008). The CBWG facilitated this, while also enabling specific interests through its thematic groups.

To support the cross-cutting unity, the CI regularly updated the network on the content of the Bill, the consultation processes and the time frames for inputs, facilitating and sometimes assisting members of the group with their submissions (CI 2004a;b;c; 2005). The CI held workshops to inform and build the capacity and voice of those organisations that were directly involved with communities, as well as to build consensus positions in the network and skills to advance them in parliamentary hearings (Budlender et al., 2008; CI, 2004b). When the Bill was enacted, the CI informed network members on how its provisions related to positions they had taken.

Specific efforts were made to directly include the views of children in the consultations. Earlier law reform processes had not given children the opportunity to express their opinions directly to decision-makers on the substantive changes, relying on adults to communicate children's ideas. Children and young people face a number of constraints in participating in such processes, including in relation to: power relations; ability to influence; appropriateness of the process and the practical implications of their engagement (Adebayo, 2017).

Notwithstanding the level of social activism in South Africa, racial and social inequalities meant that these barriers were greater for those children with greater need. There were various initiatives by local non state actors to address this. For example, in the process for the 2007 Act, Soul City held 'Soul Buddyz' clubs involved government officials in their forums with a range of different communities, including youth.

Child-friendly materials were used in SALRC workshops with children, integrating their responses in formal Commission reports. The SALRC originally intended to submit a separate children's report alongside the Commission's report to the Minister, but this was abandoned when the children stated that their submissions should be accorded the same weight as that of adults and thus be integrated into the general submission (SALRC, 2002; Moses, 2008).

The involvement in the CBWG of organisations with direct links to children, like DIGAC and Dikwankwetla, brought both direct voice of families and children into the process and a greater general understanding of and support for their issues across all the organisations in the Working group. The direct involvement of children brought legitimacy to the issues raised and the proposals for how to address them. A technical consultant helped to make the legal process more accessible for DIGAC members and to facilitate inclusion of the evidence and views from parents and children in the legal processes. Concerns raised that did not easily fit in the scope of the law were not dropped, but were reframed and included. The CI also helped to broker links between organisations like DIGAC and the technical and legal actors shaping reforms.

These inputs and research by the SALRC on legislation in other countries were used to prepare a 1300-page five volume discussion paper, released in 2001 to draw further input (SALRC, 2002). A drafting committee consisting of representatives from government departments and civil society with expertise in children's rights prepared a draft Bill in January 2003. It was welcomed by the children's sector and handed by the SALRC to the Department of Social Development (CI, 2003a).

However, the Bill published a month later in the August 2003 Government Gazette for public comment excluded a number of areas that were in the 2003 SALRC draft Bill. The excluded areas related to compromises on issues for which South Africa society was seen to be unprepared, such as the regulation of corporal punishment by parents, noted earlier. Politically contentious issues were excluded to avoid the whole Bill not being passed, particularly given the proximity to elections and the implied possibility of a 'restart' of the legislative process.

There had already been concern that bureaucratic systems could narrow the holistic multidisciplinary concepts raised in the social dialogue on the Bill, such as reinterpreting early child development as 'early child education and care'. As early as 2002, civil society realised that proposals could be diluted due to their cost implications (ACESS, 2003; Budlender et al., 2008). While numerous initiatives had been implemented after the National Plan of Action for Children, these were generally at provincial level (Dept of Women, Children and People with Disabilities, 2013).

For example, in Gauteng between 2001 and 2003, in an appreciative inquiry dialogue, civil society, communities and front-line services developed cross sectoral, team approaches to implementing child rights (Liknaitzky and Rudolph, 2003). While such interventions signaled possibilities and were in line with the law, the capacities and understanding for their implementation varied across different sectors and provinces. The institutional and bureaucratic challenges that had led to compromises in framing some issues and rights in the law would also affect their implementation.

This became more apparent in the process towards the 2007 Act, given its focus on services and thus the ability of the state to fund and deliver on these duties. The norms and standards proposed in law were developed based on current best practice. They envisaged a future when there would be sufficient resources, a reality that did not prevail in the early 2000s (UNICEF, 2007). While South Africa's *Constitution* recognizes the concept of progressive realization in its Bill of Rights, that is the increasing delivery of rights based on fair and transparent application of available resources, there is political caution on setting policies into law, as it may open the state to litigation.

The SALRC decided on a pragmatic approach, striking a balance between available resources, their optimal use and the realisation that services for children would need new investment in the future to fulfil its intentions, especially for the most vulnerable (Sloth-Nielsen, 2008). A 2004 costing study of the draft Children's Bill provided evidence for the legal positions, but also built capacities in government and NGOs to set and cost service delivery standards (Barberton, 2006; UNICEF, 2007).

The study found that 2004 budgets only funded about 25% of the duties provided for in the Bill, even applying a low level of service standards (Barberton, 2006; UNICEF, 2007). It recommended that government develop strategies to address shortfalls, with options for this, including in relation to the numbers, training, status and working conditions of relevant professions (UNICEF, 2007). After the 2005 law was passed, the CBWG and its members carried out consultations in interactive workshops to facilitate input from a wide range of stakeholders on the issue of service delivery.

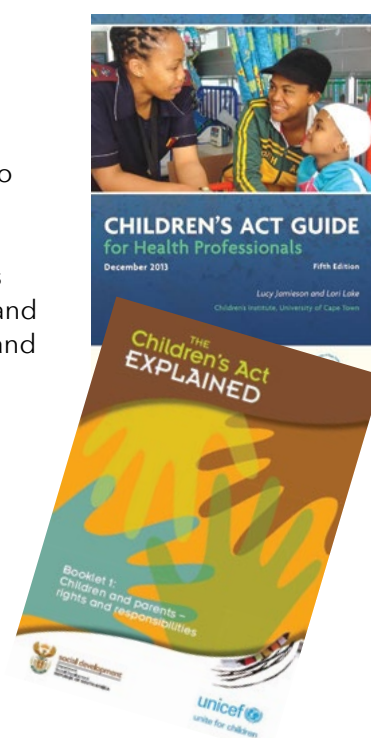
The CBWG and civil society networks sustained their links and regular interaction on the 2007 Bill (CI, 2007). Government officials also formed a working group to examine the practices involved in implementing the law. They reviewed how the different provinces and municipalities were taking forward policy concepts such as prevention and early intervention, some engaging in participatory, community-centred approaches, adding own funds to treasury funds, while others did not.

Some agencies tracked the resources applied after the 2005 Act was passed, to monitor the extent to which the legal commitments translated into meaningful investment in the measures provided for. The Institute for Democracy in South Africa (IDASA) had since 1997 implemented regular reviews on how far the budget meets duties for children's rights and services. This was used in advocacy for the 2005 law reform and continued after its enactment to monitor its implementation. IDASA built capacity in civil society and parliamentarians on budget processes. A budget analysis by the CI on the adequacy of budgets for funding children's services was used to advocate for government spending and for areas of further reform to address the budget, service and staffing shortfalls that were found (UNICEF 2007; Kgamphe 2007; Botha 2013; Budlender and Proudlock, 2013).

The Children's Act 2005, the *Children's Amendment Act* 2007 and its full set of accompanying regulations only came into full force on 1 April 2010. Lessons from implementation of earlier parts of the law were used in discussions on later reforms. Even so, the law as passed was regarded as necessary but not sufficient, with monitoring and continued engagement to ensure the necessary budgets and capacities for delivery on its provisions. Hence even while the debate on the 2007 Bill was underway, the state implemented trained officials involved with children's services, magistrates and other personnel involved with law enforcement to address skills gaps and misunderstandings and social perceptions. Such inputs were seen to demand continued investment due to the turnover of personnel. See the CI and government guides adjacent.

The Children's Act is thus seen as being in a process of continuous reform, reflecting the relative contributions of community, implementer and 'expert' voice and political receptiveness across time (CI, 2019). Sustaining the continuity of the process for the 2005 Act and into the 2007 Act, including across election cycles and new officials and political actors, was intensive and demanding. The length of time taken for these reform processes and the link with implementation may, however, have given time for changes in social views around areas in the law. For example, while supported by professionals and civil society, it took time for wider social acceptance of children's legal rights to participate in health decisions and to access a range of health information, including on access to contraceptives and to HIV testing, given social perceptions of children having limited agency (Jamieson et al., 2011; Adebayo, 2017).

These processes applied in South Africa have informed other processes in the country and shared in regional networks, such as the Southern African Child Rights Budget Advocacy Network. Across Africa, a 'Day of the African Child' on 16 June, commemorating the 1976 massacre of South African children during apartheid, has become a continental platform for advocacy and mobilization, with parades, poems, dances, road show, and marches highlighting issues that affect children. South Africa marks it as public holiday (UNICEF, 2007; Kgamphe, 2007; Adebayo, 2017).



4.3 Engaging and building political support for the adoption of law and policy

Connections between key political actors dated back to the pre-1994 period, with leading political activists in the democratic movement going into government and the cabinet. When co-ordination of children's rights and the implementation of the National Plan of Action for Children moved from the department of health to the office of the Presidency in 1998 and received President Nelson Mandela's direct support, it placed children at the highest level of government. It later passed to the Department of Women, Youth and Persons with Disabilities.

This section explores how the advocacy and proposals outlined in the previous sections were adopted in law and policy.

The Bill gazetted in August 2003, referred to earlier, was tabled in parliament at the beginning of 2004. Parliament proposed holding their own consultations with government departments, civil society and children, with a view that they needed to hear direct voices on the issues. Civil society advocates supported these parliamentary hearings, hoping that they may redress some of the shortfalls that were introduced between the 2003 SALRC draft and the 2003 government Bill. Hence, when the Minister of Social Development called for parliament to abandon hearings and fast-track the Bill for it to be passed before the April 2004 elections, the various advocacy networks successfully contested this. They argued that holding hearings after the elections would give children's issues the time and attention they deserved (CI, 2003a). The Bill was tabled in 2005 after the elections. In 2004 and 2005, various professional and civil society networks thus engaged in this parliamentary process. The CI alerted Working Group members on the hearings, supported those from outside Cape Town to attend them and held workshops to support their submissions. *Members with parliamentary experience spoke first, giving novices the chance to familiarise themselves with the proceedings before taking the floor* (Proudlock and Jamieson, 2009:20).

Children also participated in this. For example, the Dikwankwetla project helped children to make direct submissions to parliament during the process in a way that was reported to be very effective in informing parliamentarians of issues impacting on children's lives (CI 2007). Their engagement took different forms, including verbal and pictorial submissions on their needs in relation to what was being proposed in the Bill (Brynard, nd).

Civil society also took parliamentarians to their areas to expose them to the realities behind their advocacy. For example, parents in DIGAC took Mike Masutha, an MP on the disability caucus and ruling party whip for social development, to a court to see the many ways children with disabilities and their families were disadvantaged by the processes used. DIGAC also built relations and common understanding with parliamentarians who themselves had disabilities.

These political interactions often built on longer term relations, including in the MDM. The trust built in these longstanding interactions made it easier to advocate or negotiate issues with politicians. For parents and children, however, parliamentary processes could be intimidating. Here too the CI played a role, taking people who were due to submit to the chambers in advance, to build their confidence by practicing their submissions and making the environments more familiar.

The CI listed for the CBWG the key political actors to engage on the Bill, with their contacts. The CI helped draft letters and submissions and distributed regular information on the parliamentary hearings (CI 2004a; b). Strategic partnerships were formed with individual decision-makers in parliament and in government departments, especially those with a special interest in children's issues, either from their personal experience or their professional knowledge. CI staff attended and reported on all parliamentary committee meetings (Budlender et al., 2008). The coalition presented information that would resonate with political audiences, such as showing how certain options would help to address social and economic inequalities (CI, 2005a). While media engagement was used to profile particular issues, such as access for disabled children to courts, the CBWG did not implement a mass media campaign. They rather prepared targeted fact sheets to inform political actors and other decision-makers and for media reporting, to avoid 'misreporting' (Budlender et al., 2008).

The parliamentary hearings discussed contentious issues with national and provincial government officials, academics, civil society and traditional leaders. Issues found to be contentious included: access to contraception; measures for children's protection against incest in the family; virginity testing; access to condoms and reproductive health education. To some extent the contention was generated by lack of understanding of the specific limits of the law, such as the provisions in law limiting the age at which particular measures would apply.

Some legal proposals challenged social norms held by some groups. However, the reality of a growing number of child-headed households and child poverty associated with the AIDS epidemic made political actors more receptive to measures that would give children voice and enable them to access services, with support from professionals within parliament. The SALRC and civil society in the CBWG also held a sustained series of interactions during the parliamentary hearings to debate key issues. This interaction ranged from hearings and meetings to face to face sessions with particular parliamentarians. NGOs working with children, such as Childline and DIGAC brought direct voice from children and youth from marginalized communities that were attentively received by the parliament.

Following this, a number of amendments were proposed by parliament and the Children's Bill was passed with support from all political parties, except one small minority party. The Bill was enacted in 2005 (Budlender et al., 2008). The passing of the 2007 Amendment Act that would address the role of the provinces and services then demanded a further sustained engagement with the political process, including with new political actors and processes after the 2004 elections.

Political concerns were raised about whether the Bill was in line with the rights set out in the Constitution and about what duties it implied for the state. The SALRC provided information on constitutional court judgements that shed light on government's obligations in promoting and protecting socio-economic rights. It showed that the constitutional court viewed all rights as justiciable, including socioeconomic rights. The review showed that the court can examine the state's role in respecting, protecting, promoting and fulfilling its obligations, but reassured that the courts will not prescribe to the state what concrete policy choices it must make to achieve the rights and will only intervene if the policy choices fail the constitutional standard of reasonableness (Barberton, 2006; UNICEF, 2007). This was regarded as a sufficient response to political concerns.

A further political concern was the balance between rights-based policy and the demand for fiscal prudence, particularly given the adoption in 1996 of a fiscally conservative Growth, Employment and Redistribution (GEAR) economic policy. As raised earlier, costing studies were done to inform debates on this. While the 2007 Bill was being considered by parliament, the CI produced evidence on the cost implications of choices around the Bill, to inform parliamentarians on the cost implications of their policy choices, in part to avoid costs being used to introduce regressive reversals to the provisions in the 2005 Act (Budlender et al., 2007).

The evidence pointed to shortfalls in government meeting its legal obligations under the 2005 law, noting that this was not only related to funding shortfalls. Identifying that it was also caused by a scarcity of skills, poor collaboration and an inefficient approach to service delivery, the CI proposed that these could be remedied through other measures, including: investing in prevention and early action, strengthening facilities and community care, co-operating with civil society and involving a range of professionals and para professionals. They noted that such interventions could both reduce costs and address funding gaps, while also improving responses to child wellbeing (Budlender et al., 2007). Yet concerns did remain that budgets for areas like ECD were vulnerable to being raided for other perceived priorities, as efforts to earmark them were not successful.

As for the 2005 Act, collaborative relations between the SALRC, civil society and the Department of Social Development facilitated the ongoing dialogue with parliament on the provisions in the 2007 Bill. Sustaining the interaction demanded collective, often unpaid work by people from different organisations in the CBWG.

Here too, the direct testimony of young people mattered. For example, testimony by adolescent females from one low income community of how virginity testing marked them and put them at risk of subsequent rape led to an immediate response by parliamentarians on including legal provisions to address this, despite it previously being seen as an issue that would be difficult to address, due to social norms. The advocates for children's rights were persistent in "keeping eyes on the ball", engaging the state law adviser and the Minister of Social Development on critical wordings in the law, spending time in the corridors of Parliament to dialogue with members of key portfolio committees and participating in provincial forums and planning sessions.

The 2007 Bill thus went through a similarly extensive process in Parliament and in the Provincial legislatures, before it too was passed by parliament at the end of 2007 and signed into law in 2008 (Proudlock and Jamieson 2010). Both the 2005 and 2007 laws demanded similar co-ordinated coalitions, relations of trust across actors, sustained interactions in multiple forms and direct submission by children to ensure that the law reflected the comprehensive approaches intended. The law is, however, seen as being in a process of continuous reform, with continued debates on how best to include and implement a more holistic, rights-based approach to child wellbeing.



Nursery School, South Africa, D Berkowitz, 2011

5. Summary of and learning on key drivers of the policy change

5.1 Summary of drivers and processes fostering policy change

The struggle against apartheid and the democratic change in South Africa in 1994 and the passing of a new national Constitution in 1996 opened an opportunity for a change from a reactive, racially unequal approach to child wellbeing, towards a proactive, comprehensive and rights-based policy approach.

While South Africa's ratification of the UN CRC in 1995 and the inclusion of family and children's socio-economic rights in the 1996 Constitution demanded alignment of new law and practice, the many demands on the post-apartheid government could have weakened attention to children or encouraged more token policy content. However, when the more than two hundred NGOs and community-based organisations working with children in the NCRC made children's rights an issue for the wider mass democratic movement, they laid the basis for a sustained process that would unfold over more than a decade to consolidate this comprehensive rights-based approach in policy, law and practice. It led to the enactment of a new *Children's Act* in 2005 focused on national principles, rights and duties, and a *Children's Amendment Act* in 2007, focused on their implementation by provinces and services.

Building on earlier alliances, multiple organisations involved with children brought new evidence and grassroots experience on children's conditions and on their experience and proposals for change, initially in the NCRC and then in the CBWG. The human rights approach opened the possibility of combining social activism with legal advocacy. The network provided a means to address debates involving practitioners, communities and legal expertise on socio-cultural issues and on state limitations of parental authority (such as on corporal punishment of children) and to reach compromises that could be used in wider social and policy engagement.

The formation of the CBWG, effectively and transparently co-ordinated by the CI, enabled a diversity of organisations and interest groups to pool capacities, cascade information and advocacy nationally, and to strengthen their impact in shared goals of influencing the content and enactment of the Children's Bill. The CBWG coalition provided a means to raise the needs and issues of specific groups of children, including through thematic groups. However, it also provided a means to integrate specific interests within a co-ordinated approach on all spheres of children's rights and services and to build the solidarity of all organisations for specific groups. The pooling of evidence from members in reports, such as the annual, '[Child Gauges](#)', filled gaps in official data and provided resources for policy advocacy, media and social communication.

This co-ordinated advocacy was sustained for both the 2005 and the 2007 laws. It continued thereafter, given the need to popularise information on the law, to support awareness, to hold the state accountable for commitments made, to review and raise social debate on issues not yet tackled in the law and to continue social dialogue on those that remained contentious. The processes used to raise attention to children's issues and rights played a role in, but did not always change the power relations between experts and affected communities, with further approaches needed to more directly involve affected communities in familiar settings to discuss and act on their experiences, problems and proposals for change.

The SALRC, as a statutory body, linked to, but independent of the justice ministry, had an important convening role in developing the options for law reform. The setting of key principles used in weighing up submissions and proposals, the use of research papers and consultations to draw stakeholder input in thematic areas and the direct inclusion of children's views in the consultations helped to inform and bring legitimacy to the proposals for law reform. The standards proposed were developed based on current resources, 'best practice' and an understanding of progressive realization as resources increased. There was a risk that the technical processes would overshadow the social inputs in the development of the legal content.

While expertise within the CBWG did play a key role, there were also processes for building awareness, dialogue and presentation of submissions from civil society and children, and concurrent processes for explanation and outreach on the provisions to all involved. Circulation by the SALRC of a draft Bill made the differences with the later Bill gazetted by government for public comment evident. The issues that were excluded were those which South African society was seen to be unprepared for. They were omitted to avoid the whole Bill not being passed, but remained issues for civil society advocacy in the parliamentary process for subsequent law.

There were other pressures that also needed to be addressed in framing the content of both the 2005 and 2007 Acts. Some had concerns over a possible dilution of holistic approaches by more silo'ed bureaucratic systems. Others were concerned about the costs and resource demands of the measures included and were cautious about setting policies in law that may open the state to litigation. The 2005 Act was split from the later 2007 law that focused more on implementation. This provided a useful means to enable principles to pass, and then to address more detailed implementation issues. This enabled the provincial and local levels of government to be involved and the process to draw learning from innovative practice.

Here too, a range of processes played a role, including: extensive consultations in interactive SALRC workshops; analyses on the court treatment of socio-economic rights; incorporating the contribution of evidence and advocacy from the CBWG and children; an assessment of training and capacity needs by a working group in government and outreach to train and address misunderstandings in key personnel and costing studies and budget analyses implemented by the SALRC and civil society. These processes informed proposals for the law, but also budget, service and staffing reforms to implement it.

The engagement continued into the processes within the legislature and state for the adoption of the laws, building in part on relations built in the democratic movement and the inclusion of many activists in government; but also deepening collaborative relations between the SALRC, the Department of Social Development and civil society in the CBWG. These organisations interacted with parliament in hearings, in face to face sessions, through submissions by children and visits by parliamentarians to specific settings to expose them to the realities faced by families and children, building parliamentary champions in the process. Sustaining the continuity of this process for both Acts, including across uncertainties brought by electoral cycles, was intensive and demanding. However, it also gave time for change in social perspectives and professional practice.

The processes across both 2005 and 2007 laws thus demanded similar co-ordinated coalitions, relations of trust across actors, sustained interactions in multiple forms and direct submission by children to ensure that the law reflected the comprehensive approaches intended. The complexity of the processes not only demanded persistence, it demanded a passion in many of those involved to achieve changes aimed for. The law is, however, seen as being in a process of continuous reform, with learning from practice and continued debate on how best to implement a more holistic, rights-based approach to child wellbeing.

5.2 Learning and insights on producing change in children's rights

The summary describes the network of relationships and processes that facilitated the social, policy and legal changes on child wellbeing and children's rights in South Africa. The reflections from those involved in the processes suggest some further insights and learning from the experience.

There were many insights on **raising and keeping the issue on the policy and political agenda**. Having a 'big moment' in the inclusion of Children's Rights in the new Constitution was a boost, and gave critical momentum and a framework for later work. It generated relationships and created an important window of opportunity for advancing children's rights. This was strategically responded to, through identifying points of entry for children's issues and where there were openings in the system. The response came from people who were passionate about what they believed in, communicated the urgency of it and combined knowledge, values and commitment in their work.

Being part of a network of organisations broadly pursuing children's rights and interests, albeit relating to different aspects of this, and being in the coalition of the CBWG was strategic and enabling for the organisations and individuals involved. It sustained, informed and gave greater impetus to the advocacy and influence in the engagement. It enabled the specific concerns of particular groups like children with disabilities to be profiled within and get support from the wider movement. At the same time the link that coalition members gave to the grassroots and lived experience of their members on specific aspects of children's rights brought important voice and reality into the wider process. The organization of the CBWG as a wide coalition with active co-ordination and support from the CI, and thematic groups for major policy areas provided a framework for individual organisations to work and be capacitated for the processes within a consistent alliance. It facilitated co-ordination of the campaign through the central CI hub, enabled the development of a unified stance and shared the resources for and burden in the highly intensive person-to-person and other forms of advocacy needed to build relationships, with the decision-makers.

Engaging on policy and law reform requires a mapping of allies, opponents and entry points and an array of formal and informal advocacy strategies, used at different times, with different audiences. The message is: keep it simple, review the effectiveness, don't repeat those that don't work, pursue those that do. *Campaigners need to do more than make their points during a public hearing. Advocacy is a two-way conversation: They need to follow the debates closely, listening carefully to the MPs, and then need to respond to queries and concerns. Such continuous engagement demonstrates strength of commitment and builds relationships* (Proudlock and Jamieson, 2009:55). As one key informant noted: *advocacy is clearly a process of education, dialogue and relationship*. Providing information and building knowledge of holistic approaches to child development was important, including in a sensitive manner for parliamentarians.

The development and adoption of policy options, needs to be seen as more than a technical, expert driven process. It is also a social process, linking to and bringing on board those in affected communities and implementers to consult, communicate and build legitimacy around the proposed options. There is a risk in law reform that the legal and technical processes overshadow the social processes, with more power for legal experts than those on the ground. This happened to some extent in the legal reform on children's rights in South Africa and point to the need for processes to keep sustaining the connection to communities and implementers. The parliamentary process, open to all to submit input, and the briefings and consultations by the National Council of Provinces helped to bring in wider consultation from different constituencies. The support the CI and other non-state organisations gave to those less confident in making submissions helped to facilitate uptake of these opportunities. At the same time this level of consultation is a challenge, as is reaching consensus on critical issues, particularly on emerging from a period of more conflictual politics. The policy processes involve relationships and compromise, so where disagreements occur, it may be useful to move on and work on what is agreed to sustain the process.

In building political and public support and sustaining policy implementation, the combined action of civil society, the political party in government and key individuals was key, as was the voice of communities and children in the process. Here too working as a group helped to engage and make links with political actors. On the other hand political actors themselves were willing to take risks, to move things forward in and out of government and to hand on the baton where necessary, given the time these processes take. From the onset, it is important to be aware of the potential for reversal, including in political support. The political culture can change. There may be less concern about inequity and weaknesses in delivery for families and children can weaken social support. On the other hand, electoral change can bring new energy in government. This points to the need to sustain the process, continuing the outreach of information, advocacy, policy refinement and addressing delivery challenges, building on the knowledge, relationships, laws and tools already in place.

While the 2005 and 2007 Acts represented a significant break with the past, the gaps in law and practice and in children's access to services is recognized. The relationships built and processes implemented for the legal reform are seen to have provided a platform for the future changes needed and to have contributed to a change in public discourse, institutional practice and social norms and views, as '*not the end...but the beginning*'.

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Endnotes

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- 2 See Loewenson and Masotya (2018) for information on the conceptual and analytic framework used.