

***Promoting Cross-departmental
Cooperation and Allocation of
Resources for National Law Reform
and Implementation***

Jacqui Gallinetti
University of the Western Cape
South Africa



COMMUNITY LAW CENTRE



UWC

Resourcing for children's rights

- Art 4 “maximum extent of available resources”
- Role of government starts at the macro-economic level. No matter how “child -friendly” the policy of the government is, it is the state budget that will really show where the priorities lie. Budgets often do not expressly show spending on children, eg education is clear, but spending in the policing or justice budgets on children is less obvious.
- Government must be able to show that it is giving priority to children's rights when it decides how to allocate resources. Must give attention to core services first, and then improve and expand these. Retrogressive steps of cutting budgets that relate to children are unacceptable.

New child laws for South Africa

- Child Justice Bill (CJB)- process started in 1996, Bill introduced to parliament in 2002
- CJB creates a comprehensive criminal procedure statute for children - includes assessment, diversion, alternative sentencing and mechanisms aimed at ensuring detention is a last resort
- A review child protection laws in started in 1997 - resulted in Children's Act 2005 (CA) and Children's Amendment Act 2007 (CAA)
- Children's Act and Amendment Act create comprehensive legal framework for child protection and abuse, reporting of child abuse, parental rights and responsibilities, child abduction, child trafficking, adoption and inter-country adoption, children's institutions and others
- Neither are in operation yet - CJB set for 1/4/2010 and CA anticipated next year



Resource allocation and costing

- Maintenance Act and Domestic Violence Act of 1998 - innovative new laws, but struggled with implementation
- 1999 Public Finance Management Act - requires draft legislation assigning new power or function to a province must be accompanied by projection of financial implications
- While the SALRC was still busy developing the CJB, they appointed economists at the University of Cape Town to undertake a costing of the Bill
- Therefore when the Bill was presented to the Department of Justice for consideration, it came with an indication of the fiscal implications of the proposed new law

Resource allocation and costing

- Costing mapped the flow of children through the stages of the criminal justice system and estimated costs
- 3 scenarios - baseline /current costs; full implementation /ideal scenario; roll-out scenario/ half-way implementation scenario
- Demonstrated cost -effectiveness and savings proposed through diversion and new procedure called preliminary inquiry
- CJB costing followed by second, updated costing done by Technical Assistance Project (TAP) to DOJ
- Updated cost-effectiveness analysis confirmed earlier findings

Resource allocation and costing

- TAP had initiated the ISCCJ, which then proceeded to get various departments to do departmental budgets for MTEP cycle and implementation plans on CJB
- CJB first draft legislation to undergo costing
- All departments briefed parliament on budgets and implementation plans when Bill introduced in 2003. But Bill not passed... calls the usefulness of costing and implementation planning into question
- However, Bill in parliament in 2008 and departments again presented on plans. Emphasis on budgets and implementation stressed by parliamentarians. Bill passed in June, awaiting final hearing in National Assembly

Resource allocation and costing

- Children's Bill costing not undertaken until Bill already introduced into Parliament
- Budgeting and implementation planning built on the experiences with the CJB
- Led by government, inter-sectoral process Assisted by a team of consultants, which drove the process, provided training and advice, developed costing models, quality control, and capacity building

Resource allocation and costing

- The process and the product was much more comprehensive, but didn't actually assist gov departments to budget and plan for implementation.
- The model was activity based: eg **How many** adoption likely to take place annually? **Who** carries out the tasks? **What is the value** of that person's time? **How long** does each step take? What **other costs** are associated with these activities? - these are incorporated via a formula
- This in turn had to be based on certain norms and standards, and these were developed in a consultative manner
- SOA and FPA no costing, pure criminal laws?

Cross-departmental co-operation

- Both CJB and CA have implications for departments other than the lead departments CJB= DOJ; CA= DSD
- Both are comprehensive pieces of legislation requiring different services across various government departments
- CJB - DOJ; NPA; Police, corrections, social development
- CA- DSD, DOJ, health, home affairs, police, foreign affairs, local government

Cross-departmental co-operation

- There already exist a number of forums for both areas of law where different departments serve, e.g. ISCCJ for child justice
- But no framework, mandate, obligations for departments
- CJB and CA now create mandated inter-sectoral co-operation and mechanisms for this

Cross-departmental co-operation

- CJB - section 2 sets out objects incl:
 - 'promote co-operation between government departments, and between government departments and the non-governmental sector and civil society, to ensure an integrated and holistic approach in the implementation of this Act.
- Section 93 mandates Min of Justice to draft a national policy framework which must, inter alia:
 - ensure a uniform, co-ordinated and cooperative approach by all government departments, organs of state and institutions in dealing with matters relating to child justice and promote cooperation and communication with the non-governmental sector and civil society in order to ensure effective partnerships for the strengthening of the child justice system
- Section 94 establishes ISCCJ and mandates functions including responsibilities and functions - ensures inter-departmental co-operation

Cross-departmental co-operation

- CA in section 4 discusses implementation and states:
- This Act must be implemented by organs of state in the national, provincial and, where applicable, local spheres of government subject to any specific section of this Act and regulations allocating roles and responsibilities, in an integrated, co-ordinated and uniform manner.
- In section 5:
- To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.

Cross-departmental co-operation

- Also requires Minister of DSD to consult with Ministers of Education, Health, Home Affairs, Justice to develop comprehensive national strategies regarding child and youth care centres, drop in centres, ECD, and an inter-sectoral strategy for a properly resourced, co-ordinated and managed national child protection system
- But provisions for a National Policy Framework were excised from Bill before it was even debated

Cross-departmental co-operation

- For the first time legal recognition of duty to co-operate inter-sectorally in both CJB and CA
- Recognition that children require a multi-disciplinary approach
- Discarded isolationist approach of the past where each department operates separate to others dealing with similar issues
- Challenge is planning for effective co-operation and change of mindsets for departmental officials
- SOA has steering committee and National Policy Framework, but none for FPA

Conclusions

- Article 4 of CRC requiring states to implement Convention is obviously multi-layered
- Law reform in relation to child rights necessarily needs to include resource allocation and provide for inter-sectoral co-operation between all spheres of government and civil society
- South Africa has been fortunate to recognise these aspects of law reform for children as opposed to other law reform processes in Africa - e.g Mozambique and Swaziland
- Political will is critical in the process, buy in and understanding of needs are crucial for decision makers in executive and legislature, therefore apart from good governance issues, advocacy is still key in this aspect of law reform too
- Challenge is loss of inter-connectedness of different legislation and failure to recognise cross-cutting aspects