

Experience of the Child Law Reform Process in Lesotho

Regional Symposium on Harmonization of
Laws on Children in Eastern and
Southern Africa

9 – 10 May 2007

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Why the process?

- Domestic child protection legislation was outdated and no longer responding to current needs of children living in the country
- Legislation was in addition not compliant with international standards (e.g. CRC, ACRWC)
- The rights of many OVCs were not legally protected
- Alarming increase in the numbers of children in need of legal protection due to violation of their rights

Why the Process?

- Social workers not legally mandated to handle in social protection matters
- The existing child protection legislation had no room to key institutions/structure (family, chieftainship, communities, schools) relevant to child care and protection
- Research-based information pointed at many problems affecting children such as substance abuse, “property grabbing”, dropping-out of school, begging, neglect, abandonment, etc.

Why the Process?

- Problem of children without parental care was beginning to get out of hand especially due increasing HIV/AIDS related orphaning
- Numbers of children infected by HIV were also increasing at an alarming rate
- Conditions of children in institutions were worsening yet not properly monitored
- The justice system for children in conflict with the law was very rudimentary
- There was evidence that a lot of children were exposed to violence, abuse and exploitation including child labour

How we did it?

- There was no magic plan at the beginning of the child law reform process but we kept our mind open about what we needed to do
- We learnt by doing and faulted along the way, but fortunately we had experiences from other countries (e.g. South Africa, Ghana) to learn from
- We have individuals and countries who knowingly and sometimes unknowingly contributed to our process
- We also learned a lot from ongoing debates around issues such as child rights, child labour, juvenile justice, diversion and restorative justice, sexual/reproductive health, OVCs, foster care and adoption, etc.
- There was commitment and consensus from partners/ stakeholders involved in the process

Duration

- Started in 2001 and ended in June 2004
- Very long and taxing process but we feel it has paid off
- Involved intensive and broad consultations and sensitization at different levels of society (community, district, legislature, executive, judiciary)
- Final draft now awaiting to be in Parliament
- We have a very comprehensive Bill covering child welfare and juvenile justice
- The Bill will be one of the first to be discussed according to the King's speech when opening the Parliament beginning of 2007

Role of LLRC in the Process

- Overall coordination
- Provision of expert advice regarding process activities
- Drawing annual action plans
- Financial and human resource mobilization
- Allocation of resources
- Ensuring that the process is transparent and involved all key stakeholders
- Identification of priority issues and activities
- Identification of expertise
- Reporting to stakeholders and development partners
- Identifying needed capacity building activities
- Advocacy and lobbying
- Civic education on the rights of children thru' radio, publications
- Ensuring children's participation in the process

Participating partners

- Government representation
- Ministry of health and Social Welfare
- Ministry of Gender Youth, Sports and Recreation
- Ministry of Justice, Human Rights and Rehabilitation (including the children's prison, magistracy and prosecution)
- Ministry of Education and Training
- Ministry of Employment and Labour
- Ministry of Finance and Development Planning
- Non-Government representation
- NGO Coalition on the Rights of the Child
- Lesotho Girl Guides Association
- Selibeng (organization working on gender-based violence)
- SOS Villages
- Beautiful Gate
- Development partners (Save the Children-Sweden, UNICEF, Save the Children-UK)

Key Process Activities

- Thematic groups discussions
- Training workshops for stakeholders who would be responsible for implementing the legislation once enacted
- Dialogues on topical issues (e.g. restorative justice, adoption, child rights, child labour, etc.)
- International conferences
- Public consultations with adults, service providers, children
- Research and publication of issues papers
- Study tours
- Radio phone-in programmes
- Child participation
- Radio drama by children
- Participation in relevant national processes (e.g. development of the PRS)

Coverage of the draft legislation (Child Protection and Welfare Bill)

- Very broad, comprehensive and somewhat progressive
- Enshrines the rights and responsibilities of children
- Obligations of duty bearers visibly stated
- Covers protection of different categories of OVCs
- Covers child justice and welfare of children
- Provides for the establishment of an independent children's rights commission

Achievements

- Broadly disseminated to stakeholders hence there is a lot of buy-in and consensus around the legislation (during the process and continuing)
- Generally, there is now increased knowledge and awareness about child rights
- Increased understanding of child protection issues
- Consensus is also being demonstrated from several quarters regarding the need to promote and protect the rights of children

Achievements

- There is a lot of enthusiasm to have the law enacted
- Different stakeholders already drawing from the draft legislation and implementing piece-meal as reflected below and in the next slides
- Related policy and guidelines formulated e.g. OVC Policy, OVC Action Plan that is costed, OVC M & E Plan have been developed
- Greater collaboration and strong partnerships among stakeholder organizations and agencies are ensuring effective implementation of the new law
- Training has already taken place for intermediaries and in play therapy

Achievements

- Funding opportunities have opened-up e.g. for training the team that is going to cost the Bill following its enactment (UNICEF), for work related to OVCs (DFID and EU)
- Child and Gender Protection Unit has been established within the police service
- The National OVC Coordinating Committee (NOCC) with a multi-sectoral membership was launched on 21 November 2006
- Establishment of district child protection committees has taken place to push the agenda of the NOCC throughout the country
- Restorative justice has been piloted and evaluated to inform further programming

Achievements

- A task force to work on human trafficking legislation has been established (under the auspices of UNESCO)
- A government circular regarding the registration of orphaned children in the near future has already been issued
- The process of drafting an action programme for the elimination of the worst forms of child labour is underway and children have again participated in this process
- A draft school health policy for instituting child-friendly school environments is complete
- In line with the new Bill, the Education Act has been amended to make primary education not only free but also compulsory; in addition, corporal punishment is outlawed
- Financial institutions are already complying with the requirement of the Bill that they have to work with the Office of the Master of the High Court in operating bank accounts that are in the names of orphaned children

Challenges

- Lack and inadequate numbers of suitably qualified personnel especially social workers will slow down the implementation of the law
- Poor spending capacity of available financial resources
- Demotivated public servants
- No NGOs working in the area of juvenile justice
- Indifferent, unknowledgeable/uninformed legal fraternity e.g. on issues of child rights, restorative justice and diversion, adoption

Challenges

- Extreme delays in getting the Bill through to Parliament
- Very low knowledge and appreciation of child rights especially among public officers
- Lack of information about the predicament of children especially in areas such as child trafficking, sexual exploitation
- No sensitivity to children's issues among policy and decision-makers

Challenges

- Many adults are negative about child rights often due to ignorance
- Disempowered and unresourced NGO movement
- Lack of political commitment
- Political leadership that is uninformed about child rights
- Declining capacity and effectiveness within the Lesotho Law Reform Commission
- Need for regulation to guide the implementation of different sections of the Bill

Recommendations for the way forward

- Advocacy for children's rights must continue
- High scale political commitment should be solicited through lobbying
- Commission/ombudsman for children's rights should be prioritized
- Child rights education targeting political leaders, decision and policy makers, legal fraternity is extremely necessary
- A massive programme for training of social workers should be launched

Recommendations

- Development of a comprehensive data collection system and a data base on all issues covered by the CRC to facilitate legal and policy review as well as monitoring and evaluation
- Integration of child rights content into the syllabi throughout the educational system
- Translation of legislation and policies relevant to children into Sesotho (local vernacular) and for effective and broader dissemination
- Intensive capacity building – play therapy, intermediaries, child justice, restorative justice, diversion, probation services – must be put in place
- Change in law and social work curriculum is necessary and urgent