

Children's right to social services in South Africa

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The right of children to social services has not been defined by South African courts to date. Only a few academics have explored the topic. It is therefore not clear what this right entitles children to and what obligations it places on the State.

Literally, the term 'social services' refers to interventions that help people to deal with social problems arising from social, economic or political changes. Social services are the service delivery arm of the welfare system of a state. They run alongside other social welfare programmes such as social security, housing and health programmes. Together, these interventions make up the overall welfare system of a state.

Approaches to social welfare in South Africa

The old and the new

There are different approaches to social welfare. The services that a state provides depends on the type of welfare system it adopts. Since South Africa is a constitutional democracy, the type of welfare system and services it delivers should be guided by South Africa's Constitution of 1996 (Constitution).

During apartheid, South Africa operated under a 'residual model' of social welfare. Under this model, state intervention was minimal. The state only intervened when the 'normal' structures such as the family or the community had broken down. People were basically expected to provide for themselves. The welfare system was racially fragmented and focused on remedial interventions

through casework. Social workers only got involved after the problems had already occurred and they did not perform preventative, developmental or protective functions.

The residual welfare system was based on models of social work in the United States and Europe and was not responsive to the local needs of South Africans. Tied to the oppressive machinery of the apartheid State, the welfare system failed to address serious problems of poverty, underdevelopment, declining economic growth, large-scale unemployment and lack of access to land and social services. These problems represented a depressed state of social welfare or 'distorted development', which occurs when economic development has not been accompanied by an appropriate level of social development.

The political change in South Africa in the early 1990s led to the recognition in government, social work and academic circles of social services as part of the overall welfare system, with a role in addressing 'distorted development'. Since the residual approach to social welfare would not be successful in

achieving this task, there was a need for a developmental approach to social welfare, which is the only approach that encompasses both economic and social development.

Both the Constitution and the White Paper for Social Development 1997 (White Paper) reflect this shift in thinking.

It is arguable that the drafters of the Constitution envisaged a developmental approach to social welfare in post-apartheid South Africa. When debating the right to

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social services for children, for example, they agreed that it should, among other things, deal with children with family problems, neglected and abused children and children with learning disabilities. They also agreed that social services

should be based on social work and contribute to the welfare and development of both individuals and groups in the community.

These ideas are reflected in the Constitution, which contains a number of socio-economic rights meant to address issues of socio-economic development in areas such as housing and health. Section 28(1)(c) guarantees every child the

right “to basic nutrition, shelter, basic health care services and social services”.

The Constitution also provides that children have the right to be cared for by their parents [s28(1)(b)] and to be protected against abuse, neglect and degradation [s28(1)(d)].

Welfare rights indirectly contribute to the protection of these rights because they enhance the ability of parents to provide for their children.

Like the Constitution, the White Paper endorses a developmental approach. It states that social welfare should contribute to the reduction of poverty through a developmental approach. It stipulates that services should be aimed at preventing poverty and promoting people’s capacity to get themselves out of poverty rather than just addressing the consequential problems through a casework approach (para 27).

Furthermore, it emphasises that appropriate programmes should be put in place to deal with poverty-related problems (e.g. family disintegration, children in trouble with the law and substance abuse) in order to enhance social integration through support and assistance for individuals and families [para 27(c)].

Since strengthening the family lies at the root of the developmental approach, the White Paper gives the highest priority to the promotion of family life and the survival, protection and development of children.

In view of the foregoing, the right to social services in the new constitutional order should be understood to require strengthening the ability of parents to care for and protect their children from abuse and neglect.

Social services under international law

The United Nations Convention on the Right of the Child (CRC), like the Constitution, links the right of the child to be cared for in a family or family-like environment with the right to be protected from abuse, neglect and degradation. State parties are obliged to protect children from abuse or neglect while in the care of parents or any other person exercising parental care over a child (article 19). Such protective measures include social programmes to provide necessary support for children and for those exercising parental care [article 19(2)].

The guidelines for periodic reports by states to the Committee on the Rights of the Child (Committee) also groups the rights related to family care and alternative care together with the right to be protected against abuse and neglect under the broad section entitled “family environment and alternative care”.

It can therefore be concluded that the CRC gives an express indication of the services that characterise a human rights-based approach to social welfare. In the first place, it requires that families should be strengthened to protect the child. In the second place, it requires that social services should ensure that the child is protected from abuse and neglect. Thirdly, it requires children with special needs to be given special attention.

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Proposed social services for the new South Africa

The Constitution, the White Paper and the CRC place great emphasis on strengthening the family to prevent the neglect and abuse of children. Drawing from these documents and academic writings, this section identifies the social services needed to achieve this objective. The list is not exhaustive but is a starting point for understanding the types of social services the State is constitutionally obliged to provide.

Children in a family environment

The following social services are needed to provide for children in a family environment:

- childcare facilities for children of working parents;
- education for adults on responsible family planning and child spacing;
- employment and tax benefits for parents as well as parental leave for both men and women;
- parental training on the development and rights of the child;
- enforcements mechanisms for maintenance claims;
- programmes to support single parents;
- assistance to families that are at risk of breaking down;
- counselling for family problems;
- centres for mothers with babies;
- school-based medical staff;
- early childhood development programmes; and
- education programmes on the rights of the child for people

working with children, such as social workers, teachers, nurses, doctors and lawyers.

Children deprived of their family environment

These children are entitled to special protection and care. They require:

- services to enable their participation in proceedings concerning their removal from the family;
- services enabling them to remain in contact with their parents;
- services to encourage their reunion with their parents;
- placement in alternative care that is consistent with national traditions; placement in alternative care should prioritise the need to retain them within their extended family or in a family-like environment. Placement in an institution should be a measure of last resort;
- training for foster parents;
- supervision of foster placements;
- adequate support to alternative care centres;
- assistance to street children and refugee children;
- assistance to child-headed households;
- periodic review of the placement of the child; and
- collection of data on child abandonment, refugee and asylum-seeking children and disabled children.

Prevention of child abuse and neglect and remedial services

Measures to prevent child abuse and neglect and to redress these problems include:

- social programmes that support both children who have suffered abuse or neglect and the person

caring for them, including, for example, rehabilitation and counselling;

- measures to identify, report, refer, investigate, treat, and follow up on instances of abuse;
- confidential help lines;
- training for people working with abused children;
- services directed at women and children suffering from domestic violence;
- research into the reasons for domestic violence and child abuse;
- clear procedures for dealing with domestic violence cases;
- procedures for interdepartmental collaboration;
- reintegration services for abused, neglected or exploited children; and
- rehabilitation services for children abusing drugs or narcotics.

Refugee children

The services needed for refugee children include the following:

- reunification and family tracing services;
- humanitarian assistance;
- registration through interviews; and
- appointment of guardians or advisors.

Children with disabilities

The needs of children with disabilities include:

- access to rehabilitation services;
- services enabling the maximum possible social integration;
- support to their families;
- information campaigns about how some disabilities can be prevented; and
- services making possible the vocational training of children with disabilities.

Conclusion

This article has shown that the Constitution requires a shift away from the residual model of social welfare to the developmental model. While the State under apartheid took minimal responsibility for the wellbeing of the majority of its citizens, the new, democratic post-apartheid State is constitutionally required to facilitate and promote the social and economic growth of the people and the country.

In terms of services interventions, this obligation means that the root causes (in most instances, poverty) of social problems should be addressed, rather than just their manifestation. Social services should also be preventative rather than being exclusively remedial.

There are two promising new developments in social services. Firstly, the Social Security Agency has now been established to take over the payment of social grants. This implies that the Department of Social Development will now focus on the provision of other social services. Until now, it has spent more money on administering social grants than on social services.

Secondly, the first part of the Children's Bill was passed in December 2005. This Bill stipulates a legal framework for children's right to social services. The second part of the Bill is currently being finalised. These developments will help to define and elaborate on the scope of the right to social services.

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