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Children's political rights: Participation in legislative processes in the South African Parliament

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A minor dissertation (with revisions) submitted in *partial fulfilment* of the requirements for the award of the degree of Master of Social Science in Political Studies

Faculty of the Humanities

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2012

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COMPULSORY DECLARATION

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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Key terms

Participation

Public participation

Children's participation

Legislative processes

Constitutional and legislative framework

Civil society networks

Law-reform

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Abbreviations and acronyms

ANC	African National Congress
C	Children
CAB	Children's Amendment Bill
CB	Children's Bill
CBO	Community Based Organisation
CJB	Child Justice Bill
CROC	Committee on the Rights of the Child
CSN	Civil society network
CSVR	Centre for the Study of Violence and Reconciliation
DEAFSA	Deaf Federation of South Africa
DICAG	Disabled Children's Action Group
NEPAD	New Partnership for African Development
NGO	Non-governmental organization
Oth	Other
PMG	Parliamentary Monitoring Group
SOB	Criminal Law (Sexual Offences and related Matters) Amendment Bill
SENT	Criminal Law (Minimum Sentencing) Amendment Bill
SUBS	Prevention of and Treatment for Substance Abuse Bill
TAC	Treatment Action Campaign
UNCRC	United Nations Convention on the Rights of the Child

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Abstract

Participation is one of the foundations of democracy. And in South Africa, political rights (except the right to vote and hold office) extend to everyone regardless of age. The specific right to participate in legislative processes is enshrined in Constitution together with the best interest of the child and the principle of equality, thus children's legal right to participate in legislative processes that affect them is clear. Children's participation in legislative processes can improve the quality of the laws and contribute to developing children's political identity. Yet, despite many practical and legal imperatives seemingly few children participate in legislative processes.

The aim of my study was to measure the extent of children's participation in legislative processes that affect them and examine the factors that facilitate or inhibit such participation. I formulated propositions based on a review of the literature and my own professional experience of working with different groups of children on law-reform campaigns. To test these propositions I conducted an empirical study of six cases. I used two methodologies to gather data: (1) documentary analysis from parliamentary records, campaign group records and media databases; and (2) semi-structured in-depth interviews with civil society campaign coordinators.

The data gathered from these cases supports a number of tentative generalizations about children's participation in legislative processes. Firstly, levels of children's participation in legislative processes are generally very low. Across a set of laws that gave effect to the children's rights in section 28 of the Constitution there was absolutely no children's participation in three cases, low and medium levels of participation in two and a high level of participation in only one case.

Secondly, I found that children's rights organisations formed networks to maximise their influence on the legislative processes; and that these children's rights networks dominated the formal processes, contributing up to 89 per cent of the submissions in one case. Some, but not all, of the networks facilitated the direct participation of children in the parliamentary hearings and this was a critical enabling factor of the 37 submissions made by children 31 (83%) were supported by children's rights networks. However, my findings show that the children's rights networks do not integrated children fully into their campaigns, and that the attitudes of campaign coordinators, not the resources available to children's rights networks, do the best job in explaining variation in levels of children participation. Children's rights campaigners often adopt a paternalistic approach to children's participation either protecting them from harm or limiting their influence by valuing their own expertise over children's views.

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Finally, if children have accurate information and hearings are held close to their homes children can participate in legislative processes without the support of children's rights networks. However, at present few accurate sources of information on legislation are available to children, little news media coverage of Bills prior to public hearings, and most hearings are held in Cape Town. I conclude by making recommendations for Parliament and civil society on steps to take to maximise children's participation in legislative processes.

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1. Problem statement and literature review

The South African Constitution protects the rights of *all* citizens to make political choices, to form or participate in political parties; to free, fair and regular elections in all legislative bodies, and grants *adult* citizens the right to vote and stand for public office (Section 19). The Constitution explicitly excludes children[1] from selecting or being representatives; but grants them other political rights. How far do these rights extend? For instance, do children have the right to participate in legislative processes? To answer this question one must analyse the Constitution, South African legislation, and international law.

1.1 Children's right to participate in legislative processes

Children's right to participate is enshrined in a number of key documents to which South Africa is a signatory.

1.1.1 The right to participate in the South African Constitution

Legislative authority is vested in Parliament, provincial legislatures and municipal councils in their respective spheres of government (section 43); however, the Constitution requires that elected representatives engage directly with the public during the legislative process. There are four sections in the Constitution that form an effective right to participate in legislative processes[2]. Sections 59, 72 and 118 place a duty on all legislatures and their committees "to facilitate public involvement in the legislative and other processes", and "conduct its business in an open manner, and hold its sittings… in public". Section 160 (4) obliges Municipal Councils to publish all by-laws for public comment.

Only the Constitutional Court can decide whether Parliament has fulfilled a constitutional obligation (section 167 (4)(e)), and has the final say when interpreting the Constitution. When interpreting rights and obligations the Court looks at the context, the ordinary meaning of the words, international law, and case law in South Africa (Rosa and Dutschke, 2006). While, it has not yet examined children's right to participate in legislative processes there have been several cases looking at Parliament's obligation to facilitate public participation.[3] By analysing these cases and

[1] Section 28 (3) of the Constitution defines a "child" as 'a person under the age of 18 years'.

[2] The rights in the Constitution are based on international and regional law, the participation rights are found in Article 25 of the ICCPR and article 13 of the ACHPR. General Comment 25 explains that '"the conduct of public affairs", is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.' The Constitution incorporates this right and applies to the different spheres of government.

[3] *Doctors for Life International v Speaker of the National Assembly* and Others [2006] ZACC 11; 2006 (6) SA 416 (CC); Other cases on the nature of participatory democracy include: Minister *of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others* (Treatment Action Campaign and Another as Amicus Curiae) 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC); *King and Others v Attorneys Fidelity Fund Board of Control and Another* 2006 (1) SA 474 (SCA); 2006 (4) BCLR 462 (SCA) at para 22; 2006 (12) BCLR 1399 (CC); *Matatiele Municipality and*

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applying the same interpretative methodology I argue that Parliament does indeed have an obligation to facilitate the participation of children in the legislative process.

The Court's interpretation of Parliament's obligations

In the opinion of Justice Ngcobo the right to political participation is dynamic; it is "an evolving human right...open to elaboration, reinterpretation and expansion" (*Doctors for Life International v Speaker of the National Assembly and Others:* para 97). Accordingly, the Court believes that "'Public involvement' is necessarily an inexact concept" (*King and Others v Attorneys Fidelity Fund Board of Control and Another*: para 22). Thus, Parliament has "significant leeway" in deciding who to consult and how (*King*: para 111). "What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say" (*Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as* Amicus Curiae*)*: para 630). The extent of the obligation is dependent on "the nature and importance of the legislation and the intensity of its impact on the public" (*Doctors for Life*, para 128). The judges do not answer the question of who should decide what is important, but a Parliamentary Legal Advisor argues that Parliament should consult the specific groups affected by the relevant legislation after taking account the level of public interest (Jenkins, 2010). The question still remains, however, whether or not children are part of the 'public'?

Of the political rights in section 19, only sub-section (3) explicitly limits the right to vote and to hold office by age, participation rights in contrast do not have an age limit. The obligation on the legislatures and their committees "to facilitate public involvement in the legislative and other processes" as per sections 59, 72 and 118, also has no explicit limitation. The use of the term "public" rather than "citizens" is intended to include disenfranchised groups such as asylum seekers and refugees, but the word "public" could be age specific. Rehfeld (2011) argues, "Participation rights are, and rightly should be, linked to the possession of political maturity". Is this the case in South Africa? The Court uses the common dictionary meaning of a word: The Collins English Dictionary (Harper Collins, 1994) defines public as "of, relating to, or concerning the people *as a whole*" (emphasis added) thus there is no age restriction, in the Constitution.

1.1.2 The right to participate in South African legislation

Children's rights are also incorporated in ordinary legislation. Section 10 of the South African Children's Act guarantees, **"**Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an

Others v President of the RSA and Others [2006] ZACC 2; 2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC) (Matatiele 1); *Merafong Demarcation Forum and Others v President of the RSA and Others* 2008 (10) BCLR 968 (CC)

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appropriate way and views expressed by the child must be given due consideration." This right is dependent on maturity; but what does that mean? Are all legislative processes matters that affect children, or only some? Is it appropriate for children to participate? The Court is obliged to use international law as a guide when interpreting rights (Rosa and Dutschke, 2006), there are two treaties, which deal with legislative processes: the African Youth Charter and the United Nations Convention on the Rights of the Child (UNCRC).

1.1.3 The right to participate in African Regional Law

The African Youth Charter[4] applies to people between the ages of 15 and 35, Article 11 requires States to "guarantee the participation of youth in Parliament", and to "provide access to information such that young people become aware of their rights and opportunities to participate in decision-making". So older children are entitled to participate.

1.1.4 The right to participate in international law

The text of Article 12 of the UNCRC, the right of children to have their views taken into consideration in all matters affecting them, does not specifically refer to legislative bodies. However, the UNCRC's implementation guidelines state that all rights are independent and indivisible. Thus, Article 12 must be read in conjunction with Article 3, the best interest principle, which states that "in all actions concerning children, whether undertaken by a public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The guideline says, "the extension of the obligation to "legislative bodies" clearly indicates that every law, regulation or rule that affects children must be guided by the "best interests" criterion" (CROC, 2009: para 72). During legislative processes MPs determine children's best interests, but are they required to listen to children before making any such determination? The CROC[5] says:

> "If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children", (CROC, 2009: 73).

[4] Parliament ratified the African Youth Charter in May 2009, it came into force in August 2009 upon ratification by 15 AU Member States. It is legally binding in South Africa.

[5] The Committee on the Rights of the Child is a group of experts that advise the United Nations and State Parties on how to interpret the CRC and monitors implementation of the treaty.

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Legislative decisions that indirectly affect children could be interpreted very broadly. For example, in relation to NEPAD[6] Mezmur and Sloth-Nielsen contend that virtually every decision taken affects children and the best interests of the child principle requires that children should have a right to have an opportunity to influence the process on a continuous basis (2009). Freeman (2007) argues that all decisions whether they are about the building of roads, global warming, or even armed conflict affect children. But does Parliament really have to consult children on *every* law? Justice Sachs advises that best interest principle[7] is not unlimited:

> "The word "paramount" is emphatic. Coupled with the far-reaching phrase "in every matter concerning the child", and taken literally, it would cover virtually all laws and all forms of public action, since very few measures would not have a direct or indirect impact on children, and thereby concern them... This cannot mean that the direct or indirect impact of a measure or action on children must in all cases oust or override all other considerations. Accordingly, the fact that the best interests of the child are paramount does not mean that they are absolute. Like all rights in the Bill of Rights their operation has to take account of their relationship to other rights, which might require that their ambit be limited." (*M v S*: para 25).

So what would constitute a reasonable determination of issues affecting children? The Court has ruled that Parliament must consider the level of public interest when deciding what kind of consultation they would have for each Bill. Children are rarely represented in civil society organisations and have few structures that coordinate or support engagement with the State. Thus it is difficult for children to demonstrate an interest in legislation; and, legislatures must not assume that silence (i.e. lack of formal response) is an indication of lack of interest. Parliament ought to use a different approach with children.

To which children does the right to participate apply? There is evidence that even premature babies are capable of expressing an opinion (Alderson, Hawthorne, and Killen, 2005), so a broad interpretation of this right could include all children. CROC advises that restrictions of age and maturity should only be taken into consideration when deciding what weight to give to a child's opinion but not when deciding which children to listen to (Committee on the Rights of the Child, 2009: 29). However, Parliament has to be practical. Participation in legislative processes means

[6] Know as the New Partnership for Africa's Development (NEPAD) is a programme of the African Union which aims to tackle a range of multi-faceted crises threatening development on the continent such as low standards of education, health care, economic development, and poverty.

[7] Section 28 (2) of the Constitution reads, "A child's best interest are of paramount importance in every matter concerning the child".

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sharing an opinion with, or giving information to MPs during deliberations on a specific Bill. One can do this in a variety of ways such as testifying at a public hearing, or writing a submission. It can also be done outside formal hearings such as contacting MPs by letter, telephone or through face-to-face meetings, or more indirectly by making statements through the media or organising protests. Any child who is capable of articulating their views in one of these ways should have his or her opinions considered during any legislative process that affects him or her.

1.1.5 Measures to support children's participation

The CROC has specified the measures states must take to enable children's participation. It says that children need to be "informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child" (CROC, 2009: para 25). Information must be accessible to children and in age appropriate language. Legislative bodies are obliged to create "an environment in which the child feels respected and secure when freely expressing her or his opinions" (CROC, 2009: para 23). Creating the right environment applies to physical surroundings, but also to the general atmosphere, conditions must take account of "the child's individual and social situation" (CROC, 2009: para 23). Children cannot speak free if they feel intimidated, do not understand the procedures or feel that they are not being taken seriously. Being heard is dependent on the listener and "adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities" (CROC, 2009: para 134). The right is not dependent on children being able to express themselves in 'adult language' (Lansdown, 2010), so adults need to be trained on how to listen to children in a specific way. In summary, children need:

- Information on the decisions to be made, and general information about how to participate in legislative processes;
- A child-friendly space to present in; and
- Adults who are trained to listen to and interact with children.

What is not clear in the guidelines is who is responsible for providing this support.

The Constitutional Court has said that affected groups must be given a reasonable opportunity to influence the MPs, but "Reasonableness also requires that appropriate account be paid to practicalities such as time and expense, which relate to the efficiency of the law-making process." (Doctors for Life, para 128). So can Parliament restrict the measures it takes to facilitate children's participation in the name of efficient law–making? Ncgobo clarifies that reducing consultation on the grounds of insufficient time should only be done in exceptional circumstances, "The timetable must

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be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable." (Doctors for Life, para 194). The Court also reflected on the value of public participation in legislative processes and concluded that it has both intrinsic and instrumental value, i.e. that the effort itself is worthwhile. Thus, Parliament should make some effort to include children.

1.2 Other reasons for supporting children's participation in legislative processes

Participation improves the quality of legislation and increases the efficiency of service delivery

Participation in legislative processes furnishes MPs with relevant evidence that enables them "to produce the best possible laws" (*Doctors for Life,* para 235), because as one child put it "when parliamentarians make laws they talk about things they do not necessarily have experience of" (Jamieson, 2008).

Bartlett argues that at local government level most policy-making, planning and resource allocation are viewed as benefiting some "universal" citizen (2005: 1) but that in reality the needs of adults and children differ, and so does their experiences of services. The same is true at national level. Children can contribute information to decision-makers about their specific needs and experiences, information that ought to improve the resultant laws and make services more efficient (Hinton, 2008; Hinton et al, 2008; Smith 2009)[8].

Participation has the potential to strengthen support for democracy

Active participation also helps to deepen the quality of democracy: "It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government" (*Doctors for Life,* para 115). Citizens feel a sense of inclusion in the national polity that will in turn "promote the achievement of the goals of transformation" (*Doctors for Life,* para 115). Political theorists throughout history Rousseau, Mill, and more recently Pateman (1970), Benhabib (1992), Cohen (1997), Young (2002), Gutmann (2007), argue that active participation not only improves the quality of decision-making but also increases political-socialisation. Finally, including children in public affairs has positive developmental impacts i.e. they learn new skills but it also entrenches respect for democracy (Butler et al., 2009; Rizzini, Butler, and Thapliyal, 2009).

1.3 The problem

Children's entitlement to participate in legislative processes is protected by a set of rights that are enshrined at national level in the South African Constitution, and South Africa legislation and at an

[8] In 2010/11 the government committed 14% of its total expenditure to basic education, and further 4.5 % to child grants and social services for children (Department of Finance, 2010) that equates to almost a fifth of government expenditure on services for exclusively for children.

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international level in regional law and universal treaties. The Constitutional Court has ruled that specific groups must have a meaningful opportunity to influence legislation that directly affects them. Yet, According to a number of studies children identify the right to participate as one of the most frequently violated rights (Lansdown, 2001; Kilkelly and Lundy, 2007; Clacherty and Donald, 2007; West 2007). They complain that adults do not listen to them in general, and despite the legal and practical imperatives outlined above, it would appear that few children are involved in relevant legislative processes.

1.4 What do we know about children's participation in legislative processes?

Few authors have written about children's participation in legislative processes and there is very little empirical evidence on what factors promote or inhibit children's participation, so it is necessary to look at related issues, such as children's participation in similar processes in South Africa; or look to children's participation in legislative processes in other parts of the world; as well as to general works on children's participation. One finds few if any empirical studies. Almost all are normative in nature. Finally, we might find some suggestive evidence about barriers to children's participation by looking to empirical studies of adult participation in legislative processes in South Africa.

1.4.1 Structural factors

Money and education are commonly held to be predictors of citizen participation in general "Higher-status citizens are more likely to have the time, the money, the access to political information, the knowledge, and the ability to become politically involved" (Dalton 1988, p.49). Stasiulis (2002) observes that marginalised and poor children are less likely to participate in consultations with government decision-makers than their more affluent peers; thus, she concludes that dealing with structural inequalities and poverty are 'preconditions for participation'. Manor (2004) also claims that inequality is a factor and that marginalised sectors of society are effectively excluded from participatory processes, due to a lack of resources. These barriers have been overcome in some parts of the world.

1.4.2 Access to resources

The Concerned for Working Children group in India has led children's participation projects at local, regional, national and international levels. Reflecting on the factors behind their success Lolichen (2006) identifies three essential elements for the empowerment of marginalised groups: information, resources and mandate. The resources they needed were money, staff, and infrastructure to share information (Lolichen, 2006; Ratna, 2006). These are exactly the kind of resources held by organised civil society (see below).

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1.4.3 Information

Lavery's (2012) analysis of Afrobarometer data shows that only 1-5% of South Africans contact their MPs in any given year. An earlier survey showed that less than 1% of adults have participated in public hearings or have made a submission at national level (Houston, Liebenberg, and Dichaba, 2001: p.157). The authors attribute this lack of participation to limited knowledge of the functions of political structures, of their right to participate and of how to participate; they also demonstrated that feelings of political inefficacy lead to apathy and act as a further barrier to participation (Houston, Liebenberg, and Dichaba, 2001). Graham, Shipway, and Fitzgerald (2009) argue that children are also more likely to engage as active citizens, if they are told how legislative processes work.

In South Africa, Parliament runs broad public information programmes to educate the public about its work. General information is freely available, and accessible i.e. it is published in all eleven official languages and there are comic books aimed at younger children (see www.parliament.gov.za). Groups of learners are invited to go on tours and there are child-friendly materials that explain the role of the different officers. But children also need information about the debates. The problem is that Parliament does not provide information about its legislative and oversight programmes (Murray and Nijzink, 2002), and little information is distributed on current debates. The media is not a better source of information, there are too few journalists covering Parliament and most of them are juniors who do not possess the necessary skills to produce quality reports (Murray and Nijzink, 2002). After a group of children affected by HIV, *Dikwankwetla-Children in action,* participated in three sets of public hearings in South Africa, they identified accessible information as the most important factor facilitating their participation (Mũkoma, 2007). Adults from the civil society network provided the children with information. The support team used materials from the Public Education Office to explain how Parliament works, but produced their own child-friendly version of the Bill (Proudlock, Nicholson, and Dyason, 2003) and briefings on the debates.

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1.4.4 Language

Policy-speak versus creative methodologies

Children and adults express themselves differently; children find their voices through 'multi-modal creative forms of expression' such as drama, photography and radio (Henderson, 2009). Studies in Scotland found that politicians cannot understand these forms of expression (Tisdall and Davis, 2004; Tisdall, Davis, and Gallagher, 2008). Children in one project produced a rap CD that articulated their concerns in their own style and language; the CD on its own had little discernable impact on actual policy change. The Scottish policy networks deem creative methodologies to be 'outsider strategies', they believe that mimicking the language of policy makers is a more effective way to

influence the policy-process; so the adults facilitating the children's project translated the children's concerns into a written report (Tisdall and Davis, 2004).

Others argue that credibility and authenticity can be lost in translation, and that decision-makers may disregard the content of what children are saying if it is presented in adult language. Bjornestad warns of two distinct dangers: the perception that NGOs put words into children's mouths, and the danger of them actually putting words into children's mouths (2010). So should children learn 'policy speak' or talk naturally?

Children's sector campaign groups in South Africa deliberately chose to make their presentations in a variety styles and languages (Shung-King, Proudlock, and Michelson, 2005; Jamieson and Proudlock, 2009). During the Children's Amendment Bill campaign academics and experts presented complex technical evidence to establish credibility, whilst parents, staff from rural community-based organisations and children told 'stories' sharing their own experiences to vividly and simply explain the problem. As the MPs are not experts in the field they actually found it easier to understand information presented in this way. Combining the two styles allowed for a simultaneous appeal to the MPs' 'heads and their hearts' (Jamieson and Proudlock, 2009).

> "I don't look so much at the actual words because they are unimportant; it's actually the feeling behind the words that matter to me. I will listen with sympathy because it fashions my thought processes." (Opposition MP cited in Jamieson and Proudlock, 2009, p.51).

This suggests that children in South Africa can present in their own language or even using creative methodologies, and that these may be deemed as more credible than if they try to present in adult languages.

English versus African languages

Interpreters are available at public hearings so people can speak in any language they choose; however, Bills are only published in English making them difficult for many children to understand (Mniki and Rosa, 2007; Jamieson and Mũkoma, 2010). The use of legal terminology is equally prohibitive. Civil society networks in South Africa wrote plain-language summaries of the key issues in each Bill, called fact sheets or discussion documents, members and MPs regarded these a useful in facilitating their participation (Shung-King, 2006; Jamieson and Mũkoma, 2010).

1.4.5 Political environment

Children's participation should be considered against the larger participation ideological background of the day. Lansdown (2001) argues that children's participation was particularly fashionable among the social-democratic parties elected in the 1990's in the UK, the US and Western Europe. Tisdall

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(2008) asserts that youth citizenship initiatives were part of a strategy to revitalise democracy and remedy a range of social problems. The honeymoon appeared to be over by the mid 2000's (Tisdall, 2008). Just at the time when many of the EU States were electing conservative or Christian-democratic parties. This raises the possibility that levels of children's participation are greater in countries ruled by social-democratic or centre left parties.

1.4.6 Creating an enabling environment

According to Young (1997) democracy can only be inclusive if participatory structures are modified to allow new groups to express themselves in different ways. This is supported by two separate studies: young people in Malawi "struggled to express themselves because they were unfamiliar with the environment" (Bray, 2010, p.50); and in their comparative study Butler et al. (2009) conclude that consultation procedures that treat children and adults in the same way create barriers to children. There are different ways of creating an enabling environment for children.

Dedicated structures for children

Some writers contend that children's participation only happens when specific structures are established to support children's participation (Tisdall, Davis and Gallagher, 2008; Austin, 2010; Lansdown, 2010). For instance, the Bolivian Children and Adolescents' National Parliament has the authority to make proposals that go directly before the national Legislative Assembly (Austin, 2010). This is unique in being the only children's structure with any true legislative competence; it has a budget and financial support from national and international donors, ensuring that participants are fully briefed on the issues and legislative programme of the Legislative Assembly. They work in a separate space, but they have genuine influence over the national legislative agenda.

The South African Parliament has run Children's and Youth Parliament to create dedicated spaces for children to engage with decision-makers. However, a review of the 2006 and 2007 Youth Parliaments shows that few MPs attend and the processes were unconnected to legislative debates (Abrahams, 2008). Even where young people are given draft legislation to consider it can take years before the legislation reaches the committee stage (Nomdo and Roberts, 2011). These "Parliaments" are one-off events; they have no structures and no resources, they may create an environment in which children can express themselves, but children have no influence on legislative processes.

Changing the rules

The rules of the South African Parliament (Parliament of the Republic of South Africa. 2008a, 2008b, and 2009) regulate public access to Parliament, but say little about the conduct of public hearings and are completely silent on children's participation. Shier (2001) argues that meaningful

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participation only happens when organisations adopt children's participation policies. The South African Parliament could amend its rules to offer activities to support children to express their views.

Adapting procedures as required

The Irish government adopted a novel approach that addressed these challenges. When drafting the Integrated National Child Strategy the government recognised children as a key, although not the only, stakeholder group. Pinkerton (2004) remarks that the consultation was broader than the usual policy network of NGOs, research bodies and experts close to the government. Traditional consultation mechanisms were supplemented by a mass media campaign aimed directly at children. The Minister of Children issued a called to all children, she was interviewed on a popular children's TV programme, and held meetings with 10 schools (selected to ensure that the children were of varying ages and from different socio-economic backgrounds). Government developed a partnership with civil society to broaden the scope of its actions and reach more children. Children's sector CSOs organised focus groups, and used existing forums to discuss the policy document. Children as young as three-years-old participated because adults adapted the processes they used to consult on policy (Pinkerton, 2004).

1.4.7 Distance to travel

The vast majority of national Parliament's public hearings are in Cape Town. Moses (2008, p.10) argues that distance to travel is a barrier to participation, as children do not have financial resources to pay for transport. When hearings are held in Parliament children from other parts of the country are dependent on someone paying for transportation costs, and they need to be away from home possibly for a few days, which in turn means they need care. In 2009, 61% children lived below a poverty line of R552/month compared to 42% of adults[9] (Hall, 2010); children cannot afford to travel to Cape Town.

1.4.8 Time to prepare

Parliament advertises in newspapers but often the notice period is very short in which case people cannot adequately prepare or make plans to attend hearings (Buccus, 2004, p.51). Moses (2008, p.10) also cites this as factor inhibiting children's participation and I have often heard civil society representatives complain about short notice.

1.4.9 Children's attitudes as a barrier to children's participation

Young argues, "The social power that can prevent people from being equal speakers derives not only from economic dependence or political domination but also from an internalized sense of the right

[9] This is the lower of two commonly used poverty lines in South Africa. It is derived from the cost of meeting the minimum daily energy requirement recommended by the South African Medical Research Council.

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one has to speak or not speak" (1997, p.63). Henderson's (2009) ethnographic study in rural KwaZulu Natal reveals that the custom of *hlonipha* - respect- is still practiced: children are quiet in front of adults, and their 'muted responses' are identified as a sign of respect. This internalized deference to the views of adults can be reversed through rights education. Hammarberg (1990) cites the example of the introduction of the ban on corporal punishment in Sweden; he shows that when children know their own rights they take measures to claim them. However, South African studies show that children do not know they have the right to participate (Clacherty and Donald, 2007; September and Roberts, 2009).

1.4.10 Adult attitudes towards children

Conceptions of children and childhood could serve as barriers to children's participation in adult forums (Hammad, 2007, West 2007; Hinton, 2008).

First of all, adults often see children as 'vulnerable' and 'innocent' (Hammad, 2007) and in need of protection by adults, or as 'wild' and 'savage' and in need of discipline (West, 2007). Children are not deemed to be autonomous beings (African Child Policy Forum, 2009; Sloth-Nielsen et al., 2009) they are "considered to be deficient in their decision-making capabilities" (Chirwa, 2002, p.160) and highly dependent on adults, in some cultures they are vilified for speaking out (Twum-Danso, 2010). As the Chair of the National House of Traditional Leaders, Inkosi Nzimela, told a parliamentary Select Committee "when it comes to decision-making for women and children I know best because I'm a man," (cited in Jamieson, 2008, p.5).

Secondly, the notion that 'children are the future' allows adults to underestimate children's current capacity in favour of some unspecific future potential (James, 2011). According to September and Roberts (2009) 58% of South African teachers thought that citizenship is dependent on age[10], this conception of children as 'citizens in training' (Hinton, 2008) creates an impression that children are not yet equipped and that their participation should be in the future, only once they have developed capacity for rational decision-making. Yet, the capacity requirement is used discriminately; adults are not required to demonstrate rationality, and if they were many might also be excluded from political decision-making (Freeman, 2007).

Finally, as Hammad suggests, there are hierarchies in the fulfilment of rights. "As long as the basic needs and essentials for the survival and dignity of adults are not attained, people will continue to question the legitimacy of children's rights" (2007, p.19). So whereas some adults, including MPs,

[10] As compared to Australia where 70% of teachers though that citizenship started from birth (Graham et al, 2009).

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might agree with the concept of children's rights they see them as secondary to adults' rights, and that participation rights in the context of poverty are a luxury.

1.4.11 Partnership

Many scholars see partnership between adults and children as the key to meaningful participation, but are divided on how such partnerships are conceptualised. Some propose a 'partnership' in which children are supported by adults to develop the capacity to articulate their views (Smith, 2005; Lansdown, 2010). Others such as Cockburn (1998) and Jans (2004) claim that the citizenship of adults and children is interdependent, as they are both social actors in the same community. Cahill and Hart (2007) claim that the intergenerational partnerships that form part of everyday life can be used to support children's participation in public decision-making and were at the heart of the civil rights movement in the USA.

Bjornestad's case study of the Child Parliament in the Zambezia province of Mozambique (2010) is one of the few empirical studies where interviews were conducted with both adults and children. After examining logistical factors such as the role of funding, he concludes that relationships and values are a key factor. He highlights the need for partnership between adults and children stating that they must be "seen to be working together for a common cause rather than against each other" (Bjornestad, 2010, p.143). He also points to the need to create sustained dialogue. Bray (2010) recognises that policy design is a process and that the quality of the relationship between the adults and children is equally important as the method chosen, and that these relationships are essential for sustained dialogue. But are adults willing to partner with children?

1.4.12 Support from civil society

Participatory politics can be highly 'elitist' with those with skills or expertise dominating the discussions. In a system where skills and expertise are valued children are dismissed because they are not recognised as experts (O'Toole and Gale, 2008). Friedman (2004) argues that most of the formal opportunities in South Africa are dominated by organised civil society because have they access to resources and those resources have allowed them to develop the capacity for advocacy. Civil society could potentially crowd out the public space and limit the potential for children's participation by creating the impression that specific skills are required. Sadie (1998) argues that interest groups provide a valuable link between citizens and the government by sharing their resources. Such sharing can gain these groups strategic advantage, for example, the TAC has been successful because they combine "high-quality policy work and a litigation capacity with social mobilisation" (Calland, 2006, p.251). TAC professionals support the participation of ordinary members by providing information, expertise and financing – these factors have been critical to the successful participation of the public in a variety of settings including Parliament (Calland, 2006).

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Children's sector organisations have formed networks to run law-reform campaigns, (Kirsten, 2004; Shung-King, Proudlock and Michelson, 2005; Shung-King, 2006; Bower, 2008; Budlender, Proudlock, and Jamieson 2008; Jamieson and Proudlock, 2009; Proudlock, 2010). Like the TAC they have adopted a multi-dimensional approach to campaigning and share resources. The campaigns display similar characteristics: they employ dedicated staff to raise funds and coordinate the campaign; they share information with individuals and organisations in their networks (Jamieson and Proudlock, 2009), and they involve grass-roots organisations to establish credibility (Proudlock, 2010). Money was a key part in these campaigns. The lead organisations provided infrastructure to share information, they arranged round-tables and conferences to enable civil society reach consensus on controversial issues, and paid for members to travel to Parliament. These groups also contracted in experts: lobbyist to liaise with Parliament, and lawyers to rewrite recommendations in legal language so they could be inserted straight into the legislation without being translated by executive officials (Shung-King, Proudlock and Michelson, 2005; Jamieson and Proudlock, 2009). The Child Support Grant Extension Campaign combined expert lobbying, litigation, and involved parents and CBOs resulting in a mass-based professional campaign (Proudlock, 2010), but there is little evidence to suggest that they shared these resources with children. These organisations promote children's rights, and should be aware of children's participation rights. So why do they not involve children in their campaigns?

1.4.13 Civil society campaigners attitudes toward children's participation

Work in South East Asia demonstrates that children's participation projects frequently encounter resistance even from people working for children's rights organizations; these adults claim that 'it is a practice that is culturally impossible or overly sensitive' (West, 2007, p.124). Behind these assertions West believes that there is a fear that children's participation has the potential to 'disrupt adults established working patterns' (West, 2007, p.126). He claims that adults choose to work with children only when they agree with them or their campaign objectives, and simply ignore them when they disagree. West also argues that the non-participatory traditions are hard to break as adults draw upon the experiences they had as children. In South East Asia notions of respect depend on status such as age, family background, wealth, educational abilities, today's adults were excluded from decision-making during their childhoods.

Westmore-Suesse and Bain (2011) argue that it can be counter-productive to have children present in strategic meetings, so the Yezingane Network[11] organises consultations with children separately,

[11] A South African civil society network that represents the children's sector in the South African National Aids Council, a forum that brings together key government to guide the drafting and implementation of the National Strategic Plan on HIV.

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and then adults relay these messages in the cooperative governance forums. But, it is the adults who decide when it is strategic to compromise the right to participate in order to fulfil other rights; children are not given the choice.

There is no evidence to support the theory that adult's presentations are more effective than children's. Indeed, children's participation may be more effective: after witnessing a presentation by a child at a public hearing the Chair of the Human Rights commission said a new more effective form of lobbying had been born (personal communication Adv. Tseliso Thipanyane).

Protecting children from harm

Others argue for the use of indirect participation from a protection perspective i.e. that when dealing with vulnerable children, or talking about sensitive issues it is in the child's best interest not be exposed to potentially insensitive questioning (Van Beuren, 1998). The literature contains many different examples of 'indirect participation' where adults present the views of children to decision-makers. Clacherty presented her research on the effects of firearms on children's everyday lives to the parliamentary committee working on the Firearms Control Bill using only the words of the children (Elhers and Frank, 2008). This kind of mandated representation is rare.

Several national workshops have been organised in South Africa to consult children on draft legislation and policy proposals, topics included child justice (Elhers and Frank, 2008), poverty and HIV/AIDS (Giese, Meintjes, and Motsieloa, 2003). Similar projects were undertaken in Mozambique (Save the Children UK, 2007) and Uganda – the Uganda project was unusual in that the report balanced the representation of children and adults views on corporal punishment and violence (Naker, 2005). In Lesotho the IGOs established a Junior Committee to ascertain children's views on violence prior to drafting new child protection legislation. The Lesotho Law Reform Commission briefed the Junior Committee whose members consulted with other children in their own communities, but there was no attempt to involve children in the parliamentary phase (Elhers and Frank, 2008). All of these projects enabled children to comment on legislation, but ultimately: adults selected what to present or put in the reports. Secondly, many MPs do not read reports and submissions. In an evaluation of the Children's Bill processes only one of the MPs on the Portfolio Committee of Social Development claimed to have read all the submissions, others attended hearings or used the Researcher's summary "I mean a summary is clearer than a big pile book or whatever."[12] MPs value public hearings not only for the presentations but the opportunity to ask questions to the presenters "unless you have interacted with the person or the people that does the written submission you may not get the full context the submissions have raised, and that written

[12] Interview with J S Tshivhase, 05 May 2005, Children's Institute records

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submissions alone [do] not provide the platform for engagement which oral submissions do, so I think that on their own they are not adequate." ANC MP quoted in Jamieson and Proudlock, 2009: p. 50). If children are excluded from this dialogue can they truly be said to have a meaningful opportunity to influence the process?

1.4.14 Relationships and continuous dialogue

The organisations in the civil society networks fostered relationships with decision-makers and depending on the complexity of the campaign primary and secondary 'influencers'[13] (Budlender, Proudlock and Jamieson, 2008; Jamieson and Proudlock, 2009). Constant effort is ploughed into maintaining all of these relationships through a variety of mechanisms: meetings, telephone calls, emails, briefing documents. Parents or small CBOs are not engaged continuously in this on-going dialogue, they are drawn in when appropriate to follow-up on their particular issue once the professional campaigners have identified or created an opportunity (Jamieson and Proudlock, 2009). In theory it should be possible to involve children in the on-going dialogue in a similar manner, but this would require these campaign groups to recognise children as a strategic partner.

1.5 Conclusion

Children's entitlement to participate in legislative processes is protected by a set of rights that are enshrined at national level in the South African Constitution and South Africa legislation and at an international level in regional law and universal treaties. Although, it has not dealt with children specifically the Constitutional Court has interpreted the obligation on Parliament to facilitate public participation in legislative processes. The Court ruled that specific groups must have a meaningful opportunity to influence legislation that affects directly them, and ordered Parliament to re-open legislative processes in cases where the Court judged that the participatory processes had been inadequate. In theory these strong legal rights should enable children to participation in legislative processes, but from my own professional experience I have a strong sense that few South African children are realising these rights. However, the state of our knowledge is very unsatisfactory; we do not know how many children are participating in legislative processes.

The literature suggests that the realisation of participation rights in general is heavily dependent on adults and that children face a range of potential barriers but there are few empirical studies and none of them examine the factor that promote or inhibit children's participation in legislative

[13] Key decision-makers are MPs and Ministers, influencers are people that have established relationships with the decision-makers and can influence them: primary influencers are individuals with direct relationships e.g. other MPs, secondary influencers are organisations or individuals with that can exert pressure on the party or the government e.g. IGOs and the media.

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processes in South Africa. To address these lacunae I undertook an empirical study on children's participation in legislative processes in the South African Parliament.

2. Research Methodology

This study attempts to understand the factors that facilitate or inhibit children's participation in legislative processes. As seen in Chapter 1, we have little conclusive knowledge about children's participation in legislative processes. I will attempt to contribute to that knowledge through a case study methodology, which allows for in-depth study of a small number of cases (Leedy and Ormrod, 2005), and should provide insights into the relationship between the key variables (Edwards and Talbot, 1999), and generate hypotheses for future research. The unit of analysis chosen for comparison is a legislative process i.e. the processing of a draft Bill by Parliament. By documenting and then comparing the relationship between key theoretically chosen variables in each case it should be possible to gain greater understanding of their impact on children's participation how they interact with each other. I will examine six cases of Bills that directly affect children's interests.

2.1 Main research questions

1. What is the extent of children's participation in Bills that affect children's interests?

2. What conditions inhibit or promote children's participation in national legislative processes in South Africa?

2.2 Research design

I utilise a most similar systems design. "By carefully matching a small number of cases across a wide range of potential explanatory variables we can exclude a wide range of variables from further analysis" (Anckar, 2008, p.400). I chose cases that are as similar in as many background characteristics as possible: "The reason for choosing systems that are similar is the ambition to keep constant as many extraneous variables as possible" (Anckar, 2008, p.390).

2.3 Rationale and limitations

This study examines how children gain access to Parliament and present their experiences and preferences to MPs. Whiles structural factors such as poverty, inequality and poor education may have an effect on levels of participation (Dalton, 1988; Stasiulus, 2002; Manor, 2004) little can be done to address these problems in the short-term. In contrast, parliamentary processes and adult attitudes could potentially change more rapidly. Thus, I focus primarily on how civil society strategies, access to information and the structure of public hearings account for different levels and types of children's participation. At the same time, using a most similar systems design has limitations. In this type of study there are few cases and many variables – hence it will only be possible to draw limited conclusions and generate hypotheses for future research.

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2.4 Case selection

This study examines children's participation in relevant legislative processes in the South African Parliament between 2004 and 2009. All relevant legislation that was tabled before February 2009 but finalised after May 2009 is excluded. While, many children's rights advocates argue most legislation affects children (Bartlett, 2005; Freeman, 2007; Mezmur and Sloth-Nielsen, 2009). The Constitutional Court has made it clear that the obligation on Parliament is to consult with groups directly affected by the legislation, so Parliament only had an obligation to facilitate the involvement of children when the legislation under consideration would directly affect them. Thus, I limited the analysis to Bills that give effect to children's rights in section 28 (1) of the Constitution.[14] While, other legislation may affect children in a general way there is a clear rationale for Parliament taking special measures to reach out to children as stakeholders in these cases. The duty to protect the rights in these sections falls predominantly to the Departments of Correctional Services; Education, Health, Housing, Justice, Labour, and Social Development. My review of the legislation was therefore restricted to the corresponding parliamentary committees. Every Bill considered by those committees was scrutinised to see if the provisions affected any of the rights in section 28 (1). I selected cases in which I was most likely to observe children's participation. Through this search I determined the following Bills to directly affect children's rights:

1. *Tobacco Products Control Amendment Bills* (considered by the Portfolio Committee on Health)
2. *Films and Publications Amendment Bill* (considered by the Portfolio Committee on Home Affairs)

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[14] Section 28 Children's Rights
(1) Every child has the right -
(a) to a name and a nationality from birth;
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
(c) to basic nutrition, shelter, basic health care services and social services;
(d) to be protected from maltreatment, neglect, abuse or degradation;
(e) to be protected from exploitative labour practices;
(f) not to be required or permitted to perform work or provide services that -
(i) are inappropriate for a person of that child's age; or
(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -
(i) kept separately from detained persons over the age of 18 years; and
(ii) treated in a manner, and kept in conditions, that take account of the child's age;
(h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

3. *Child Justice Bill* (considered by the Portfolio Committee on Justice)
4. *Criminal Law (Sexual Offences) Amendment Bill* (considered by the Portfolio Committee on Justice)
5. *Criminal Law (Sentencing) Amendment Bill* (considered by the Portfolio Committee on Justice)
6. *Prevention of and Treatment for Substance Abuse Bill* (considered by the Portfolio Committee on Social Development)
7. *Children's Bill* (considered by the Portfolio Committee on Social Development)
8. *Children's Amendment Bill* (considered by the Portfolio Committee on Social Development)

In terms of the research design it was not possible to interview the MPs and committee staff. Ideally I would have examined laws passed by only one committee in order to exclude the effects of the potential variables within the parliamentary system, but that would have limited the number of cases to a maximum of three. Therefore, I chose two committees that had considered multiple pieces of legislation. The Portfolio Committee on Social Development and the Portfolio Committee on Justice and Constitutional Development both considered three pieces of legislation affecting children. The cases therefore are:

- *Child Justice Bill*
- *Criminal Law (Sexual Offences and Related Matters) Amendment Bill*
- *Criminal Law (Sentencing) Amendment Bill*
- *Prevention of and Treatment for Substance Abuse Bill*
- *Children's Bill*
- *Children's Amendment Bill*

All these Bills have an impact on children, were drafted taking children's rights into consideration, and were considered during the same parliamentary term (2004 - 2009)[15]. However, they differ in a number of respects.

Content: Three of them relate exclusively to children and children's services i.e. the Child Justice Bill, the Children's Bill and the Children's Amendment Bill. The others have a significant impact on children but other groups are also major stakeholders, e.g. the Sexual Offences Bill has a major impact on women.

[15] Four of the Bills were first introduced in the preceding Parliament (1999 – 2004) but the Bills were reintroduced.

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Committee Openness: In some cases the committee was very open to input from the public in others the committee was not open dismissing public calls to hold hearings.

Type of Consultation: While, there were no formal hearings on the Sexual Offences Bill, written submissions were accepted. Public hearings were held on all of the other Bills. In the case of the Children's Amendment Bill, hearings were held in eight different locations in four rural provinces with the Portfolio Committee on Social Development travelling to each venue to listen to the public. Notice periods for the hearings ranged from a few days to over a month.

Media Coverage: Some of these Bills were extremely controversial and generated intense debate in the media whereas others where scarcely mentioned.

Civil Society Strategy: Civil society formed policy networks to coordinate responses to the Child Justice Bill; the Children's Bill and the Children's Amendment Bill; and the Criminal Law (Sexual Offences and Related Matters) Amendment Bill. For the others civil society involvement was less structured.

Time Elapsed: Parliament dealt with some Bills in less than six months and spent over two years on others.

Provincial Processes: The Children's Amendment Bill and the Substance Abuse Bill affect the provinces; which means the National Council of Provinces was also required to involve provincial legislatures in the legislative process. Some Provincial legislatures held multiple hearings, for example the Eastern Cape held 27 hearings on the Children's Amendment Bill; other provinces, for example the Northern Cape only held one hearing. There are no official records of who participated or what issues people raised. The Children's Bill Working Group has records of their members' provincial submissions and these show high levels of children's participation. Unfortunately, there are no records of submissions made by organisations and individuals that were not part of the Children's Bill Working Group, so it is not possible to measure the total level of children's participation at this level. These hearings may have raised awareness of the legislation, or given children the opportunity to experience making a submission and therefore generated interest in making a submission to the national parliament, it is equally true that children who made submissions at a provincial level may have felt as though they had been heard and therefore did not see the need to repeat their views to another set of politicians. Therefore, it will not be possible to reach definitive conclusions about these cases.

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2.5 Variables

My dependent variable is the extent and type of children's participation in the legislative process across these selected Bills. The literature discussed in Chapter 1, identifies a number of variables that might potentially influence levels of children's participation. These were:

- Structural factors;
- Political environment;
- Access to resources;
- Information/ child friendly information;
- Distance to travel;
- Time to prepare for hearings;
- Children's attitudes;
- Adult attitudes towards children's participation (both MPs and civil society campaign coordinators); and
- Support from civil society.

The literature speculated that civil society networks opportunities for informal participation are affected by:

- The length of the parliamentary deliberations; and
- The number of sessions.

Some of these variables are held constant because of the short time frame i.e. structural factors and the political environment. I could not trace the children who participated in the legislative processes to interview them, nor was it possible to interview their peers who did not participate. Therefore, several of these variables could not be tested in this study. I excluded children's attitudes, language and children's own resources. For other variables that could not be directly observed, I selected proxy measures:

- Physical location of hearings (in lieu of distance to travel);
- Notice period (in lieu of time to prepare);
- Civil society coherence (in lieu of access to resources); and
- Committee openness (in lieu of MPs attitudes).

One issue, which emerged from my review of the Bills, was the differing extent to which they affected children and in some cases other stakeholders. Although, nothing in the literature pointed

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directly to this variable (surprisingly), I wanted to examine whether the involvement of multiple stakeholders impacted on the level of children's participation, so I added a variable:

- Stake in the legislation.

2.5.1 Dependent variable – children's participation

Defining children's participation

Studies of children's participation distinguish between different levels or types of participation based on the degree to which children have decision-making powers (Hart, 1992; Shier, 2001). Arnstein (1969) and subsequently Hart (1992) used a ladder to depict a continuum of participation, on the bottom rung children participate unconsciously without knowing why, but as they gain more knowledge and power they progress up the ladder until at the top decision-making is shared equally with adults. In theory it is possible for a member of the public to initiate legislation through their MP, but this has not happened to date. So although it is possible for a child to initiate legislation, in practice children respond to legislation that has been initiated by adults. The public do not have a right to decide law directly; they are only guaranteed a meaningful opportunity to influence elected representatives. Therefore, children's participation in this context must be conceptualised in terms of the opportunity to influence rather than decision-making power.

Is it really possible for children to influence decision-makers? Or does Parliament bring children in to co-opt them, making them feel good without really listening? In fact we do have some evidence of real influence: In 2005, a fifteen-year-old made a submission to Parliament calling on MPs to criminalise forced marriage. Adults assisted her but she collected the evidence used in her submission and the arguments she made were hers alone (Mpikwa, 2005). Because there were no other submissions on the topic, the change in the law can be attributed directly to her intervention (Jamieson et al., 2011). That is an example of real influence not co-option.

I define advocacy as any comments or actions made by a child or group of children about a Bill with the express intent of influencing decision-makers, regardless of whether or not there is a legislative process taking place. There are several ways in which children's views and experiences can influence decision-makers. Firstly, adults act as an intermediary. Elhers and Frank (2008) give examples of researchers citing verbatim quotes of children Parliament. Indeed the campaign coordinators interviewed during this study also argued that it is possible for them to represent the children's views authentically to Parliament, without children having to be present.

> Children can participate through people who provide services to them. I really believe that we should not do away with that as an avenue of participation. (Campaign coordinator)

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There are legitimate concerns for children's psychological well-being behind this approach: Abused children may experience secondary trauma if questioned about disturbing experiences; and children in conflict with the law may experience victimisation if questioned insensitively. Secondly, children may participate in protests. "Protest is a direct-action technique of confronting political elites, instead of participating within a framework defined by elites," (Dalton,1988, p.59).

An important factor is who initiated the advocacy. Although, children did not initiate any of the law-reform processes in the study, some of them did initiate advocacy to influence that decision this I classify as self-advocacy. Where children were mobilised by adults I have classified it as advocacy supported by adults. Participation is a subset of advocacy, and relates to advocacy that creates an opportunity to influence a legislative process. Examples include written submissions, oral presentations at public hearings or private meetings with the MPs. Jamieson (2009) argues that South African MPs are sensitive to public pressure, so protest is also counted, however, it must take place during the parliamentary deliberations on a Bill. Children's participation is participation by anyone under the age of 18.

The following typology will be used to classify the forms of children's participation:

> Participation supported by adults – children are supported by adults to take action to advocate for changes in the law;
>
> Self-initiated participation – children organise and speak for themselves.

Measuring children's participation (dependent variable)

Advocacy and children's participation are divided into four categories: none; low – one to five incidents; medium – six to ten incidents; and high – over ten incidents.

Source of information

I use three data sources to locate submissions on each of the Bills in the study: the records of the Committee Secretary; the Parliamentary Monitoring Group minutes; and campaign group websites. I read all submissions on each Bill to locate those made by children or which provide evidence that children had been consulted in the drafting of the submission and their views incorporated. In some cases the committee researcher prepared a summary of the submissions (Parliament Research Committee. 2002); I used these to identify children's contributions where the full submission was not available.

To establish if children made oral presentations I reviewed video and audio recordings of public hearings related to each Bill, the minutes of these hearings, and all committee deliberations on the Bill. There were no official minutes of the provincial public hearings on the Children's Amendment Bill so I consulted the personal notes of three observers who attended all of the hearings. Finally, I

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searched the S.A. Media database for any newspaper articles reporting protests about any of the Bills.

2.5.2 Independent variables

Stake in the legislation

In order to measure how children are affected relative to other stakeholders. I categorised the Bill according to whether or not the Bills related exclusively to children; children had a major stake in the legislation; or children had a minor stake in the legislation. For evidence I reviewed Bills to determine impact on other sectors of society, and classified the organisations making submissions according to which sector they represent, for example Tshwaranang represents the women's sector, and DEAFSA represents the disability sector.

Media coverage

Parliament does not provide information on the content of Bills during the deliberations – Hansard only covers plenary debates. Departments publish Bills in the *Government Gazette* and on their websites; however, there is no analysis of content (Murray and Njizink, 2002). Only news media provide information to the public about Bills before they reach the committee stage. Once committee deliberations and hearings commence the Parliamentary Monitoring Group posts minutes on its website www.pmg.org.za but few children have access to the internet. Thus I used print media coverage as an indicator of the extent of public information about the Bill, focusing on two specific aspects of media coverage, the extent of coverage and the timing of the coverage.

I define media coverage as the number of print or electronic news media articles that directly refer to the Bill, and articles that discussed topics related to the content of the Bill during the parliamentary deliberations. For example the Children's Amendment Bill became known as the 'smacking Bill' because it contained a ban on corporal punishment; therefore, I counted articles discussing corporal punishment even if there was no mention of the Bill. I analysed the Bills to identify key words. Many of the articles referred to multiple issues, I coded each issue. Cartoons were excluded. I divided coverage into three categories, where high is more than 100 articles; medium is 51 to 100 articles; and low is 50 articles or less.

I used Sabinet Online to access the S.A. Media database, a collection of press cuttings from national and provincial newspapers and websites in South Africa managed by the University of the Free State. Whilst, the collection includes articles in several languages the key words used to describe each article are given only in English and Afrikaans. The search only returned articles in English and Afrikaans; a colleague summarised the Afrikaans articles and helped code them.

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I searched the database for articles relating to each Bill during a period that spanned one year before the public hearings until one year after the passage of the Bill. Media articles published before the public hearing give the public the best opportunity to participate; if the articles appear during the deliberations individuals can still influence the process. Sometimes the committees refuse to accept submissions made after the advertised cut-off date; whilst some committees are more flexible and accept submissions at any time right up until the end of the deliberations. I counted Media articles published after the completion of the parliamentary process because some of the topics that generate public interest only come to light once a Bill is passed. I plotted media coverage over time on graphs, in some cases one topic dominated the coverage, and that has been highlighted in a different colour on the graphs.

Child-friendly materials

Child-friendly materials are information about the Bill adapted or developed specifically for children, using plain language, or cartoons and images to explain the legislative provisions. To measure whether child-friendly materials were available or not available I searched for evidence on websites, children's sector journals and newsletters, in news media articles and I asked campaign coordinators if they had distributed their own materials.

Duration of parliamentary deliberations

The longer the deliberations and the time taken in months by Parliament to consider the legislation the more opportunities there are to meet with members informally. I defined the duration of parliamentary deliberations as the total amount of time from the introduction or tabling of a Bill to the final reading and vote. I found information on the duration of the parliamentary deliberations on Sabinet Bill Tracker, and in the PMG minutes. Then I classified the duration as short, medium or long, where: short is a period of less than six months; medium is six months to one year; and long is over one year.

Notice period

Civil society and individuals need time to prepare responses to legislation and they need to organise transport to hearings, the shorter the notice period the more difficult it is for organisations and individuals to organise to make submissions and presentations. Notice period refers to the amount of time in days between the public advertisement of the hearings and the date of the hearings. I found information on the notice period Sabinet Bill Tracker, in the PMG minutes, in some cases the Committee Secretaries had copies of the original newspapers. I classified notice period into three categories: short, medium and long, where short is 7 days or less; medium is between 8 and 30 days; and long is 30 days or more.

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Physical location of hearings

I found evidence of where Parliament held public hearings in committee reports, personal notes, PMG minutes, campaign websites, updates and newsletters. Parliament held hearings either in the parliamentary complex in Cape Town or community venues. I classified the hearings as in Parliament or community hearings.

Committee openness

I classified the openness of the committee to public participation by examining three separate questions.

1. Did they hold public hearings? (And classified this as yes or no).
2. How many days' notice of public hearings did they give? (And categorised this as less than seven days or seven days or more).
3. Did the committee allow civil society to participate in the deliberations? (And classified this as yes or no).

I used PMG minutes, and interviews with campaign coordinators to find information to answer the questions. From the answers to these questions I then categorised committee openness as very open, open, or not open to civil society input.

Coherence of civil society

Children's sector civil society has learned to organise itself into different structures to maximise its influence over draft legislation. In some cases organisations shared information and worked together, and in other cases organisations were established to run the campaign (Proudlock, 2010); but mostly existing organisations formed networks and coordinated the campaign jointly. Coherence is a subjective measure and will be based on the answers to six questions:

1. Did civil society form a network? (And classified the answer as yes or no).
2. How many organisations were involved in the civil society network? (And used a numerical scale).
3. How was the campaign coordinated? (And categorised the answers as shared information, established an organisation or formed a network).
4. Did the network have dedicated staff? (And classified the answer as yes or no).
5. Did the campaign have independent finances? (And classified the answer as yes or no).
6. Did they use a range of strategies to achieve the campaign goals? (And classified the answer as yes or no).

Based on the answers to the six questions I have classified the campaigns into three types: no coordination; loose coalition; highly coordinated and well-resourced network. I obtained

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information about the campaigns from PMG minutes, campaign websites, and interviews with civil society campaign coordinators.

Attitudes of civil society campaigners

West's (2007) research in South East Asia shows that even people who work with children or campaign for children's rights can hold very traditional views about children's participation. Attitudes might be a barrier to participation if adults believe that children should be 'seen and not heard', are vulnerable and need protection, or lack the capacity to participate meaningfully. During the course of doing my research it became clear that the role of campaign groups was a critical factor in explaining levels of children's participation. Thus, I interviewed the campaign coordinators to establish their attitudes to key issues. While, coordinators' attitudes are not necessarily representative of the network, they control resources and have the greatest influence on the campaign strategy; they determine the civil society networks' approach to children's participation. As this was deemed such a critical factor the findings and analysis are presented in a dedicated chapter.

I collected evidence of civil society campaigners' attitudes through interviews; I developed a purposive sample including at least two people from each campaign group: campaign coordinators, and sub-group coordinators and directors of children's sector organisations involved in the organisation of the campaign, I tried where possible to identify individuals involved in more than one campaign. Requests for interview were sent to ten civil society campaign coordinators, eight consented to participate in the study, and seven interviews were conducted. Interviews were semi-structured, in-depth and conducted telephonically, save one completed by email.[16]

Analysis of the interviews

Step one "pawing"

First, I read through the transcripts and highlighted quotes that seemed important. I gave each quote a code word, and then group the different code words into themes and standardized the terms, and then I coded transcripts according to standardized themes and counted the number of times each theme appeared.

Step two "cutting and sorting"

[16] All respondents were sent a letter explaining what the research is about, the rationale and the methodology being used. They were asked to sign a consent form. Two base questionnaires were used with slight variations to probe for specific information. A copy of the pro-forma letter is in Appendix B; the consent form in Appendix C; and the Questionnaire in Appendix D.

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I gave the text of each transcript a unique colour, and pasted quotes from each transcript into a single document under each of the themes (the quotes were long enough to retain some of the context). Then I clustered the quotes to identify sub-themes.

Step three "summarising"
Finally, I summarised each theme with short quotes to give colour to the summary. After analysing the interviews I classified the individual campaigners' attitudes. The classification is subjective based on the following:

- The value the campaign coordinator placed on children's participation;
- How they saw children's participation relative to adult participation;
- How they prepared the children; and
- Whether they let children speak for themselves.

The core attitude I want to assess is their belief in children's capacity to make a meaningful contribution to the law-reform process: campaigners' views are classified as 'paternalist' if they believe they should be advocating on behalf of children or 'progressive' if they support children's participation.

2.6 Propositions

I expect to find higher levels of participation in cases where children are the only stakeholders, as their opportunities for advocacy should decrease as more stakeholders are affected by the legislation. High levels of media coverage should stimulate interest in the Bill, as should the availability of child-friendly materials. I expect to find that hearings held outside of Parliament are more accessible to children, resulting in higher levels of children's participation.

When committees are more open to input from civil society I expect levels of children's participation to be higher. My assumption is that money is a key determinant in civil society mobilisation, one of the potential barriers to children's participation is a lack of money, and another essential requirement is likely to be technical skills for doing children's participation work. Where the civil society campaign is highly coordinated and has funding organisations should have access to both of these resources. The coordinators of civil society networks promoting the rights should be aware of children's rights including the right to participate. I expected this group to be supportive of children's participation.

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3. Findings

3.1 The Cases

The **Child Justice Bill** creates a system for dealing with children accused of crime based on the rights in Article 40 of the UNCRC and section 28(1)(g) of the Constitution. The Bill creates a separate criminal justice system adapted to the needs of children and attempts to balance the interests of child offenders with the rights of victims. It does this by entrenching the principles of restorative justice, where crime is seen in context. Thus, it recognises that crime has an effect on the victim and society in general, and that the offender should work with the community to repair the harm done. The aim is also to minimise children's contact with the criminal justice system: firstly, through crime prevention and secondly, by diverting cases out of the criminal justice system and into community programmes that allow the child to be held accountable for his or her actions without obtaining a criminal record. Where contact with the criminal justice system is unavoidable, the Bill promotes the effective rehabilitation and re-integration of children to minimise the potential for re-offending.

The Portfolio Committee on Justice held three days of public hearings and devoted 22 sessions to the Bill before the 2004 elections. The Bill stood over but the reconstituted Portfolio Committee did not start to deal with it until the end of 2007. Due to the long delay the committee decided to hold fresh public hearings. The Chair took the unusual step of inviting the Child Justice Alliance to attend meetings and work with the committee on the Bill, and make additional submissions on specific topics when the committee wanted further information.

The Child Justice Alliance wanted children to be heard during the legislative process and to protect children from possible humiliation and harm. It decided to consult with children instead of bringing them to Parliament. It ran workshops on the Bill in schools and with groups of children with experience of the criminal justice system (Elhers, 2002), and in a second round of consultations they spoke to 500 children about children who are used by adults to commit crime (Community Law Centre, 2006). They also commissioned research with children in conflict with the law to document their experiences of the criminal justice system (Koch, and Wood, 2002); however, I do not count this as participation because the children were not asked for their views on the Bill. Despite hundreds of children being involved in consultations there were only three instances where children's concerns were raised in the adult submissions. One of these concerns was the absence of any obligation to tell children what is happening to them when they are arrested, assessed or during

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a preliminary inquiry[17]. Parliament responded to this concern by incorporating the principle of participation in the Bill and inserting a clause requiring probation officers to explain every procedure to children.

The **Criminal Law (Sexual Offences and Related Matters) Amendment Bill**, known as the Sexual Offences Bill, defines and categorises sexual offences. It tries to protect children from exploitation by paedophiles by creating ages of consent to sexual activity and detailing prosecution procedures. The Bill also compels anyone with knowledge of a sexual offence committed against a child to report the matter to the police, and establishes the National Sexual Offenders Register. The majority of the provisions of the Act affect both children and adults, for example changes to the definition of rape mean that the law recognises that boys and men can be raped. However, certain sections relate only to children such as the age of consent to intercourse and other sexual acts; equalising the age of consent to heterosexual sex and homosexual sex; the reliability of evidence given by children; the introduction of an offence of sexual grooming; and the protection of child witnesses in court. The published version of the Bill stated that sex between children below the age of sixteen is a crime, two children who willingly have intercourse can be charged and if found guilty their names will be put on the Sexual Offenders Register.

The Bill was first tabled in Parliament in August 2003. The Portfolio Committee on Justice held public hearings with only one business day's notice (National Working Group on Sexual Offences, 2006) and spent just four sessions deliberating the Bill. The Bill was not finalised when Parliament adjourned, but was revived shortly after Parliament resumed. The Department of Justice made extensive revisions to the Bill and it was resubmitted to Cabinet. When Parliament was slow to refer the Bill to committee civil society grew restless and organised a campaign calling for the prioritisation of the Bill and also calling for fresh hearings. Because the committee did not want to revisit issues which had already 'been laid to rest' (Fatima Chohan-Kota), there was no second round of hearings. However, concerned organisations were invited to send in submissions dealing with new issues at any time (National Working Group on Sexual Offences, 2006). There were no submissions from children, and none of the adult submissions quoted children.

During the committee deliberations an amendment was introduced defining "consensual sexual acts not involving penetration" these acts include kissing, when performed without consent they are called "sexual violations". Children under 16 do not have the capacity to consent. The implications

[17] A preliminary inquiry is new procedure. The purpose is to establish whether the child can be diverted out of the criminal justice system, or the case should proceed to trial.

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were not fully discussed in open committee. So the public was not aware of the proposed clauses until after the Bill was passed and summaries were published by civil society.

The media picked up on the 'kissing ban' at a workshop organised by the children's sector in late 2007 (interview with campaign coordinator) and when the first articles appeared (Citizen, 18 December 2007; Daily News, 18 December 2007; Daily Dispatch, 21 December 2007) there was an outcry from children. Within days children mobilised a national campaign (see for example Weekend Post News, 22 December 2007; Cape Argus, 28 December 2007). A group of teenagers created a series of Facebook groups, which attracted over 27,000 subscribers, who protested against the Bill[18]. They also used Facebook and the news media to publicise mass protest events called 'kiss-a-thons'[19]. These protests and campaigns demonstrate a high level of interest in the Bill from children, but the media coverage that sparked the protests took place after the Bill had been passed, so these creative campaigns had no influence on the decision-making process.

The **Children's Bill** originally contained national and provincial services, so the Joint Tagging Committee classified it as a 'mixed Bill'[20]. The Department of Social Development removed all of the provisions relating to provincial services from the Children's Bill and reintroduced them as the Children's Amendment Bill. The Children's Bill was tagged as a section 75 Bill and the Children's Amendment Bill as a section 76 Bill. The two Bills were considered at separate times and followed different procedures.

The purpose of the Children's Bill is to give effect to children's rights to:

- family care, parental care or appropriate alternative care;

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[18] *Everyone against the New Kissing Law* (27,142 members) creator Franki Murray (age 14) http://www.facebook.com/group.php?gid=6775053583 accessed August 2010
People Unite Against the Threat to Freedom. People Against New Act!! (392 members) Creators Franki Murray and Crystal Lee DeRyck (age 14) http://www.facebook.com/group.php?gid=6185009827 accessed August 2010
Kids' right to kiss!!! Stephan Fourie (age 14) quoted in IOL article
Petition against the new sa law stating its illegal for under 16's to kiss (368) creator Daniel Tarr See
http://www.iol.co.za/news/politics/angry-sa-teens-plan-mass-kissing-protest-1.384190#.T89K_p8tgkc
accessed August 2010
Stop the New Kissing Law creator Daniel Colpo (age 14) quoted in Mail and Guardian article
"Kiss in protest! – The SA moral police has gone too far!" accessed August 2010

[19] There were five kiss-a-thons in Gauteng (Centurion, Sandton, Northgate, Menlyn, and Brightwater) and one in Cape Town.

[20] The Constitution describes different parliamentary processes for handling bills according to the nature of the bill. Section 75 provides that legislation of exclusive national competency should be considered firstly by the National Assembly and then by NCOP with MPs voting as individuals rather than following provincial mandates. Section 76 of the constitution grants provincial legislatures the right to participate in the formulation of national legislation that will be implemented by provincial governments, and the Provincial Legislatures have an obligation to facilitate public participation. The Joint Tagging Committee, composed of MPs from both the NA and the NCOP, is responsible for determining which process a bill should follow.

- social services; and
- protection from abuse, neglect, maltreatment and degradation.

The Bill elaborates on the interpretation of the best interests of the child principle, changes the age of majority from 21 to 18, and obliges government to ensure substantive equality and equal access to services for children with disabilities and chronic illnesses. Some of the clauses are very controversial such as the ban on virginity testing and circumcision of children under the age of 16 years; the introduction of parental responsibilities and rights for unmarried fathers; and the changes to the procedures for children to consent to medical treatment, HIV testing and access to contraception.

The 2004 elections interrupted the passage of the Children's Bill, but the Portfolio Committee on Social Development only held three sessions before the break, so they discarded their previous work and started anew. The committee held three days of public hearings, and then invited a group of 15 experts to address MPs in a private workshop, ten of whom were from the civil society network. After the second reading of the Bill the Children's Bill Working Group (the Working Group) issued a press release detailing the amendments; it sparked a heated debate on virginity testing. Due to the intensity of this debate the Select Committee decided to have a second round of public hearings, followed by another expert workshop, where MPs were 'taught how to spot a virgin' (Cape Argus, 8 November 2005). The Bill was in Parliament for two years, the committees held 45 sessions and MPs met with Working Group members on multiple occasions, and the Children's Bill Working Group briefed three of the major political party caucuses.

At the National Assembly hearings three groups of children[21] made submissions, two of these groups also made written submissions[22]. Three of the organisations presented the views of children in their own submissions[23]. Three children's groups presented at the Select Committee hearings in October 2005, Working Group members supported two of them and Eastern Cape Councillors supported the other; one of the children handed in a written submission at the same time (Mpikwa, 2005). Children

[21] The Children's Institute ran a children's participation project called *Dikwankwetla – Children in Action* that gathered together a group of children affected by HIV from four different provinces. These children participated in multiple workshops to understand children's rights, the parliamentary process and the Children's Bill. *Its Your Move* an initiative for trafficked youth run by Molo Songololo ran workshops in collaboration with a group of children with disabilities from DICAG. The DICAG group did not manage to cover all their issues in one weekend, so the organisation held a further workshop dedicated to issues affecting children with disabilities, their views were incorporated into the DICAG submission and the children presented with the Its Your Move group.

[22] Dikwankwetla and Its Your Move. Where children made an oral presentation and a written submission, or their views were included in the adult submission it is counted as one incidence of children's participation.

[23] Save the Children (Sweden); Soul Buddyz and DICAG.

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were not invited to either of the expert workshops held by the Portfolio Committee or the Select Committee. One group of children from DICAG met with Vincent Gore, an ID MP, and asked him to champion the disability clauses. Gore was a member of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Persons with Disability, and as such he attended the Children's Bill deliberations when both the Portfolio Committee and the Select Committee were discussing disability. He supported the revolt by ANC backbenchers when the Deputy Minister instructed Portfolio Committee members to remove the amendment to the provisions ensuring that children's courts were made accessible to children with disabilities. Gore was the only MP from the National Assembly present when the Select Committee passed an amendment to this clause. The Department of Justice introduced the amendment and the Select Committee members passed it without any debate, completely unaware that it contained the controversial disability provisions (Daily News, 15 Dec 2005). Gore immediately mobilised the parliamentary disability caucus, and alerted the ANC members of the Portfolio Committee. The final decision was taken in a closed meeting between the ANC Ministers and MPs, but the meeting is unlikely to have taken place without the intervention of Gore, so in this case secondary lobby arguably contributed to the final Bill and is counted as an incident of participation supported by an adult because the meeting was arranged by DICAG staff and the Children's Bill Working Group coordinator.

The **Children's Amendment Bill** provides for and regulates a range of care and protection services. This includes:

- Partial care (crèches and nursery schools);
- Early childhood development programmes;
- Prevention and early intervention services for vulnerable children;
- Protection services for children who have suffered abuse, neglect, abandonment or exploitation;
- This includes a system to identify, report, refer and support vulnerable children;
- Foster care and child and youth care centres for children in need of alternative state care;
- A support programme for children living in child headed households; and
- Drop in centres for vulnerable children to access basic services and support during the day.

The Children's Amendment Bill was tabled just after the Constitutional Court handed down judgements over-turning legislation in instances where Parliament had failed to fulfil its obligation to facilitate public involvement (*King*, *Doctors for Life* and *Matateile*). The Children's Amendment Bill was referred to the Select Committee on Social Services, the committee at the centre of two of the

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court cases. The Select Committee was anxious to ensure full public participation so they gave the provinces six months to complete the consultation process.

The Select Committee considered the provincial mandates in two short sessions and passed a ban on corporal punishment without even reading out the clause. The ban sparked a media frenzy and public outcry. In response the National Assembly took the unusual step of holding hearings outside of Cape Town in eight different communities in four rural provinces. Then following complaints that these hearings were not open to everyone, they held two days of hearings in Cape Town.

Children's participation at the community hearings was exceptionally high, children who had participated in workshops organised by civil society came to seven out of eight of the community hearings. Children also came of their own accord. In total there were thirty-one presentations by children including participation supported by adults and self-advocacy. Six of the children presented on issues that related to the Children's Bill, i.e. medical consent and access to contraception.

The minimum sentencing legislation passed in 1998 was due for review in April 2007. The Department of Justice wanted to close the loop-holes used by judges to get round the law on minimum sentencing. The purpose of the **Criminal Law (Minimum Sentencing) Amendment Bill** was to regulate discretionary minimum sentences; to give regional courts the power to impose life sentences; and to restrict the courts' ability to impose lesser sentences in rape cases. The Department of Justice argued that minimum sentencing acts as a deterrent to crime and improves the efficiency of the court system. Senior Judges decried the legislation as 'harsh and vengeful' saying it deprived them of flexibility and leads to over-crowding in prisons.

The Bill affected children in three ways: firstly, it proposed that minimum sentences for serious offences should apply to children between the ages of sixteen and eighteen.[24] Secondly, people called for minimum sentencing to apply to offenders found guilty of raping children. One case in particular had caused public outrage. A High Court Judge had ignored the minimum sentencing legislation and sentenced Yusuf Harrison to six years in jail for the rape of three children below the age of nine. Thirdly, Regional Courts hear many of these cases but they did not have the power to impose life sentences, therefore, the cases had to be transferred to the High Court for sentencing, which led to delays and victims were often required to repeat their testimony increasing the chances of secondary trauma in child victims.

[24] The Constitution states that children should only be detained as a measure of last resort and for the shortest appropriate period (section 28(1(i)).

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During the briefing by the Department of Justice and Constitutional Development on 12 June 2007 the Chair of the Portfolio Committee, Fatima Chohan-Kota, called for public hearings six weeks in advance. There is no record of when the national advert appeared in the press, however, Tshwaranang Legal Advocacy Centre (TLAC), OSF-South Africa, and the CSVR complained about the lack of public consultation and time to make submissions. The hearings were held in Cape Town. The Portfolio Committee also monitored public opinion by reviewing media articles. The Portfolio Committee dealt with the Bill in twelve sessions.

The Select Committee spent three sessions on the Bill, one briefing from the department and two in deliberation, they did not consider public opinion and made only minor amendments to the Bill. There is no evidence of any consultation with children at any stage of the drafting process, nor are there any submissions from children. The majority of submissions make references to children, but they do not include any quotes from children or acknowledge any consultation with children. All the arguments in relation to sentencing of children are based on the constitutionality of the provision; and statements about the effects on children of delays and duplication in the criminal justice system are based on the experience of the adults that work with children.

The main preoccupation was with the lack of consistency in the use of the 'get-out clause' and ensuring that judges implement the law especially when sentencing rapists. They did consider the issue of minimum sentences for child offenders at length and decided that they should apply to 16 and 17 year-olds. The Centre for Child Law successfully challenged these provisions in the Constitutional Court provoking high levels of media coverage, but children did not respond.

The **Prevention of and Treatment for Substance Abuse Bill** creates a coordinated strategy and services to reduce the supply and demand for substances such as drugs and alcohol. It includes a range of prevention and early intervention services specifically aimed at children and families such as parenting programmes, peer education, and sports and leisure to provide positive recreational options. It also provides for halfway houses and treatment centres for children and re-integration programmes post-treatment. The Prevention of and Treatment for Substance Abuse Bill allows parents to apply for admission of a child of any age to a treatment centre contradicting children's right to participate in decisions about medical treatment as established by the Children's Act. Given the level of interest shown by children in the medical consent clauses in the Children's Bill, I would have expected to see some children's participation. There were no written or oral submissions from children. Despite the fact that the majority of submissions make references to children and youth, they do not include any quotes from children or acknowledge any consultation with children.

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The Bill was introduced in Parliament in March 2008 as a section 76 Bill. The Portfolio Committee on Social Development published a notice in national newspapers three weeks in advance of the hearings, which took place in Cape Town over two days. The Select Committee on Social Services only considered the provincial mandates and did not hold public hearings. The whole process took only six months including the provincial consultation.

3.2 Children's participation

What is striking about all of these cases is the generally low level of children's participation in legislative processes. Despite the fact that these Bills all affect children and young people there was absolutely no children's participation in three of the cases, in two others it was low to medium and in only one of the six cases was it high. Levels of participation also varied within the cases: for example children made 25 submissions[25] during the community hearings on the Children's Amendment Bill but none at the public hearings in Cape Town (Table 1).

There was important variation in the type of children's participation. Adults supported all the children who made submissions at the public hearings in Parliament, whether it was one of the civil society networks or another interested stakeholder. Adults also arranged the meeting between Vincent Gore and the children from DICAG. I classified these incidents as "participation supported by adults". This is the most common type of participation observed accounting for over 80% of the valid submissions (Table 1). No children were present at the public hearings on the Child Justice Bill, but the recommendations children had made during consultative workshops on the Bill were covered in the adult submissions, this is "participation via an intermediary", there were three incidents during the Child Justice Bill and two during the Children's Bill. This falls under the category of "participation supported by adults".

There were only four incidents of "self-advocacy" where children participated in hearings without the support of organised civil society; these occurred during the community hearings on the Children's Amendment Bill. I found another incident difficult to classify: In this instance, the child spoke about the disparity in the value of the Child Support Grant and the Foster Child Grant; he claimed that it was unfair that children in foster care get a higher grant than poor children living with their parents or relatives. The submission was well argued but the Children's Amendment Bill regulates foster care not the grants paid to children in foster care. While this is a subtle distinction, the committee could have considered the child's view when deciding who was eligible for foster care so I have included it in the count. Another six children made submissions at these hearings but their submissions related to the Children's Bill.

[25] Children made a total of 31 submissions, 6 were not counted because they related to the Children's Bill.

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Table 1 Children's participation and other advocacy by children

	Child Justice Bill	Sexual Offences Bill	Children's Bill	Children's Amendment Bill	Substance Abuse Bill	Sentencing Bill
Children's participation – Advocacy during decision-making process	*National Assembly hearings:* 3 adult submissions referred to child consultations No children present at hearings	*No public hearings*	*National Assembly hearings:* 3 groups of children presented 2 adult submissions referred to child consultations One group of children had a meeting with an MP *NCOP hearings:* 3 groups of children presented. Two groups supported by CBWG one by Eastern Cape Councillors.	*Community hearings:* 20 submissions by children supported by civil society networks, one school group from Thohoyandou 4 individuals / groups of children* *National Assembly hearings:* none	*National Assembly hearings:* none	*National Assembly hearings:* none
Total Participation	3	0	9	25*	0	0
Classification	Low	None	Medium	High	None	None
Advocacy after the passage of the Bill – not counted as participation		Over 27,000 children joined six Facebook groups created by teenagers, and hundreds took part in six 'kiss-a-thons' after the Bill was passed	6* submissions on the age of consent were made at the Children's Amendment Bill hearings – after the Children's Bill had been passed these children did not claim to be part of a group or organisation			
Total	0	12	6	0	0	0
Classification	None	High	Medium	None	None	None

* Children made a total of 31 submissions at the Children's Amendment Bill community hearings but 6 related to the Children's Bill

Table 2 Number of submissions by Bill and by category of group or individual submitting

	Child Justice Bill			Sexual Offences Bill			Children's Bill			Children's Amendment Bill			Substance Abuse Bill			Sentencing Bill		
	CSN	Oth	C	CSN	Oth	C	CSN	Oth	C	CSN	Oth	C	CSN	Oth	C	CSN	Oth	C
Number of submissions	16	3	0	22	7	0	46	15	6	79**	82	25*	0	19	0	10	6	0
Percentage of total	84%	16%	0%	76%	24%	0%	69%	22%	9%	42%	44%	14%	0%	100%	0%	62%	38%	0%

(CSN = Civil Society Network, Oth = Other adults, C= Children)

* A total of 31 submissions at the Children's Amendment Bill community hearings but 6 related to the Children's Bill

** Most of the civil society network members made the same submission at both the community hearings and the Cape Town hearings.

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My definition of children's participation is based on the right of children to participate in decisions that affect them so only incidents where children had an opportunity to influence the legislative process can be counted. Without interviewing the children it is impossible to know whether they were engaged in a form of protest or whether they were unaware of the difference between a Bill and an Amendment Bill and that their views could not be considered. I classified these as self-advocacy but they are not counted as children's participation. I classified children's protest about the Sexual Offences Bill in the same way. Over 27,000 children joined Facebook groups or took part in a 'kiss-a-thon' to register their opposition to the kissing ban but these protests occurred after Parliament finalised the Bill. Many children were sufficiently motivated to take action and steps to influence the law, but their advocacy occurred after the legislative process was complete (Table 1).

The number of submissions made by children is low relative to the number of submissions made by civil society network members and other adults. Children's participation is generally very low; even where Bills relate exclusively to children's rights and services children accounted for a maximum of 14% of submissions (Table 2).

3.2.1 Adult support

Each incident of advocacy supported by adults resulted in children's views being presented to MPs (Table 3). There was only one case in which children made submissions to MPs without adult support. Most of the self-advocacy happened after Parliament had passed the Bills. It would appear that adult support is a critical factor in children's participation in legislative processes. Adults supported children's participation in three cases. These adults were overwhelmingly from the civil society network coordinating the children's sector campaign. In total there were 37 incidents of children's participation of which 31 (83%) were supported by civil society networks (Table 4).

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Table 3 Advocacy supported by adults versus self-advocacy[26]

	During the relevant legislative process		After the relevant legislative process	
	Advocacy supported by adults	Self-advocacy	Advocacy supported by adults	Self-advocacy
High	CAB			SOB
Medium	CB			CB
Low	CJB	CAB		
None	SOB SUBS SENT	CB CJB SOB SUBS SENT	CAB CB CJB SOB SUBS SENT	CJB SUBS SENT

[26] In the tables the following abbreviations are used: CAB = Children's Amendment Bill, CB = Children's Bill, CJB =Child Justice Bill, SOB = Criminal Law (Sexual Offences and related Matters) Amendment Bill, SENT = Criminal Law (Minimum Sentencing) Amendment Bill, SUBS = Prevention of and Treatment for Substance Abuse Bill

Table 4 Adults supporting children's participation

	Number of children supported by:	
	Civil Society Networks	Other
Children's Amendment Bill	20	1
Children's Bill	8	1
Child Justice Bill	3	0

3.3 Stake in the legislation

Three of the Bills related exclusively to children and children's services, two had a chapter dedicated to children and one had a few clauses dealing with children's issues. I observed children's participation in all of the legislative processes where the Bill related exclusively to children ranging from low to high, but none on those where the content affected other stakeholders (Table 5). In the case of the Sentencing Bill the Child Justice Alliance and the National Working Group on Sexual Offences mobilized their members to respond to the Bill, their submissions accounted for 62 per cent of all submissions made. The members of the National Working Group on Sexual Offences were predominantly from the children's sector, and their submissions accounted for 76 per cent of all submissions made on the Sexual Offences Bill. So adults in the children's sector mobilized even when the children were minor stakeholders, but they only supported children's participation when children were exclusive stakeholders.

Table 5 Relationship between content of the Bill and children's participation

		Proportion of content relating to children		
		Exclusive to children	Major stakeholder	Minor stakeholder
Children's participation	High	CAB		
	Medium	CB		
	Low	CJB		
	None		SOB	SUBS SENT

Children are not necessarily concerned about all issues that affect them. There was, for example, no self-advocacy in the case of the Child Justice Bill, and children did not protest or seek to participate in the debates about the Sexual Offences Bill when the Portfolio Committee was setting the age of sexual consent at 16, defining crimes against children, or discussing how to punish paedophiles (Table 6). These debates were reported extensively in the media, so the lack of participation was not due to a lack of information. Children did however protest when the media reported the kissing ban. It appears that children use their citizenship rights selectively. They do not mobilise simply for the sake of participating, but to have their say when they disagree with decision-makers.

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Table 6 Relationship between content of the Bill and children's self-advocacy

		Proportion of content relating to children		
		Exclusive to children	Major stakeholder	Minor stakeholder
Self-advocacy	High		SOB*	
	Medium	CB*		
	Low	CAB		
	None	CJB		SUBS SENT

* Post process

3.4 Media coverage

The extent of media coverage of the Bills varied greatly, in three of the cases there was high media coverage of the Bills, and in three cases the coverage was low (see Table 7). Figures 1 to 6 show the media coverage of the different Bills.

Table 7 Summary of media coverage

	Number of Articles per Bill					
	CJB	SOB	CB	CAB	SUBS	SENT
Total	37	160	123	130	9	46
Classification	Low	High	High	High	Low	Low

Coverage over time

Coverage was not evenly spread overtime. In three cases coverage peaked after Parliament held the public hearings or even worse after the passage of the actual Bill.

Incorrect reporting

Coverage of the Children's Amendment Bill peaked around the time of the public hearings (Figure 4); however, the most commonly referred to topic in those articles was consent to medical treatment, HIV testing, and abortion none of which were actually covered by the Children's Amendment Bill. This incorrect reporting most probably resulted from the fact that the Children's Act, including some of the consent provisions, came into effect in July 2007. There were numerous articles on the Children's Act that correctly attributed the provisions, but many reporters did not draw the distinction between the Children's Act and the Children's Amendment Bill. Only two correctly pointed out that abortion is covered by the Choice on Termination of Pregnancy Act.

Stories of interest to children

The Media Monitoring Africa project analyses the media on a continuous basis, their series of reports *Children's Views not in the News* (Naidoo, 2009; Singh, 2010) show that the media frequently side-lines children's issues. "These guys, they don't think our issues are important," (Child cited in Daya, et al. 2004, p.13).

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Figure 1 Media coverage of the Sexual Offences Bill

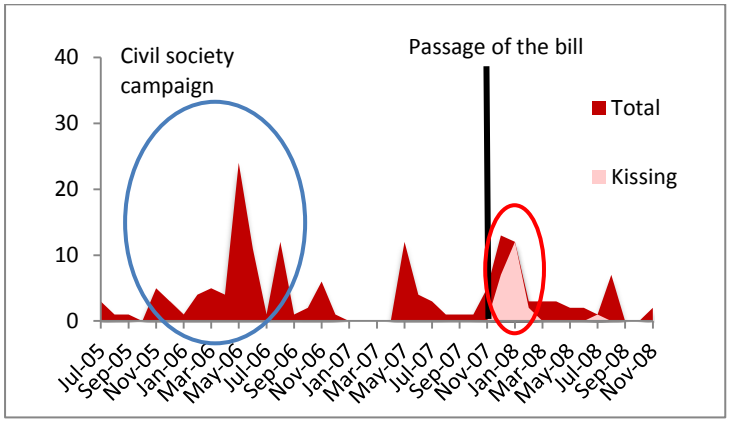

Figure 2 Media coverage of the Child Justice Bill

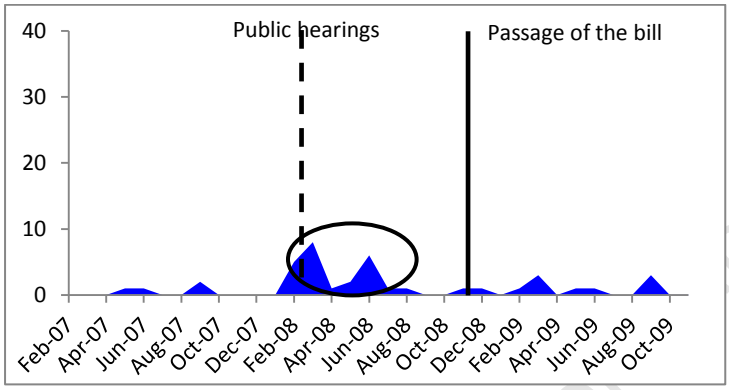

Figure 3 Media coverage of the Children's Bill

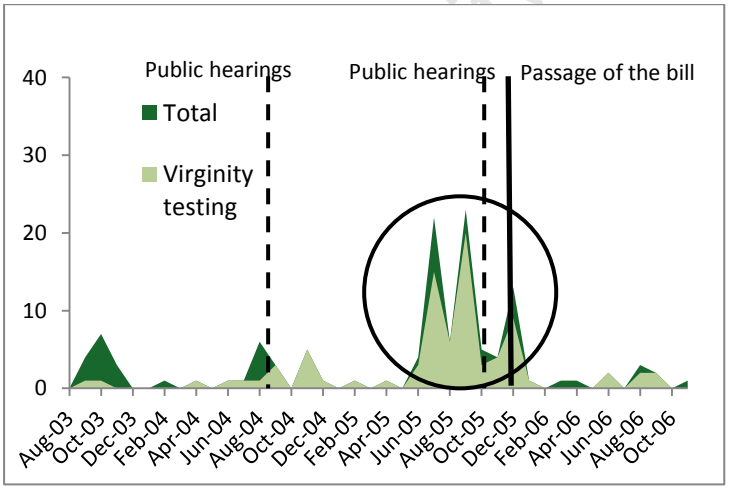

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Figure 4 Media coverage of the Children's Amendment Bill

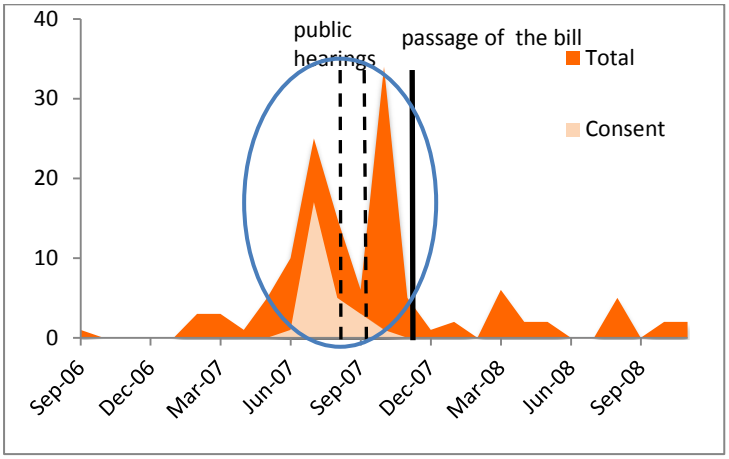


Figure 5 Media coverage of the Substance Abuse Bill

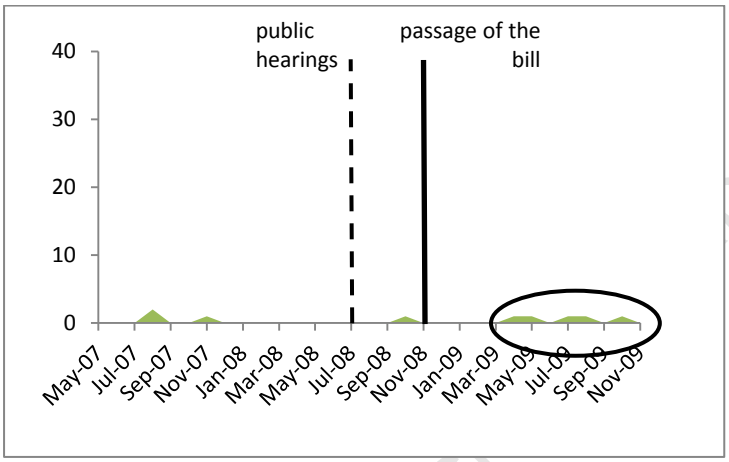
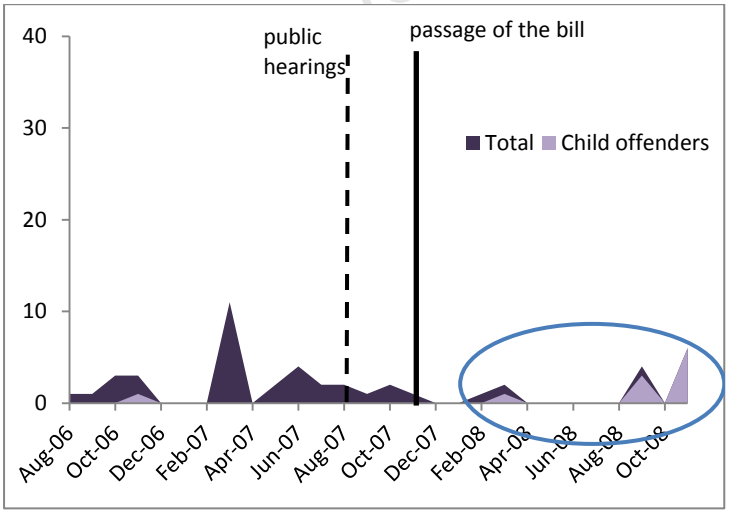


Figure 6 Media coverage of the Sentencing Bill



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In her research on the Child Justice Bill, Ehlers (2002) finds that children were interested in the topics of diversion and criminal capacity; however, their main concerns were police brutality, human rights abuses in detention and the court room environment, issues not covered by the media. The timing of stories of interest to children was not conducive to fostering participation in the legislative process, the media did not mention the kissing ban until after the passage of the Sexual Offences Bill (Figure 1) and whilst coverage of the Sentencing Bill was highest before the public hearings (Figure 6), the media did not mention children until the Centre for Child Law challenged the provisions relating to child offenders in the Constitutional Court. Once again coverage that might have interested children happened after Parliament had completed the legislative process.

Civil society influence over the media

In 2003, the Children's Bill Working Group generated substantial media interest when they challenged the Cabinet decision to cut certain clauses from the Children's Bill and called for the Parliament not to rush the Bill (Figure 3). Similarly, the campaign by civil society to slow the passage of the Sexual Offences Bill ranks as one of the most popular stories (Figure 1); the National Working Group's press releases criticised Portfolio Committee for attempting to rush the Bill and called for maximum public participation.

Media coverage provoked additional hearings

Just after the second reading debate the Children's Bill Working Group published a press release that gave a summary of the main changes made by the Portfolio Committee on Social Development. This sparked intense media debate on virginity testing (Figure 3). The public outcry was such that the Select Committee on Social Services decided to hold a second set of hearings.

Table 8 Relationship between media coverage and children's participation

		Media coverage		
		High	Medium	Low
Children's participation	High	CAB		
	Medium	CB		
	Low			CJB
	None	SOB		SUBS SENT

High and medium levels of children's participation coincide with high levels of media coverage, and in three cases low media coverage corresponds with little or no children's participation. One case, however, does not fit the pattern, there were high levels of coverage of the Sexual Offences Bill but no corresponding increase in children's participation, but this case was unusual because there were

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no public hearings i.e. there was no formal opportunity for children to participate in the legislative process. But in general this suggests that there may be a significant relationship between media coverage and children's participation.

It would appear from the data that media coverage is a pre-requisite for self-advocacy. High levels of media coverage on both the kissing ban in the Sexual Offences Bill and the consent provisions in the Children's Bill co-exist with high and medium levels of self-advocacy by children. However, the media reported both of these stories after Parliament had finalised the Bill. This suggests that the media could play a critical role informing children about legislation and generating a platform for them to engage in public debate or even to mobilise protests. It also suggests that children do not receive information in time to participate in the legislative decision-making process.

Table 9 Relationship between media coverage and self-advocacy

		Media coverage		
		High	Medium	Low
Self-advocacy	High	SOB*		
	Medium	CB*		
	Low	CAB		
	None		CJB	SUBS SENT

* Post-process

3.5 Child-friendly materials

Parliament provides a range of child-friendly materials on how it works and on democracy in general, but there are very few child-friendly materials that describe legislation or the content of parliamentary debates. Absolutely no child-friendly materials were available in three cases; and in the other three cases the civil society networks developed child-friendly materials for their own use. In two cases these materials were published on the Internet, but in one case they were not made available to the general public. The data presented in Table 10 suggests that there is a relationship between the accessibility of child friendly materials and children's participation. But the fact that the Child Justice Alliance produced child-friendly materials for the Child Justice Bill campaign but not the Sentencing Bill campaign suggests that this variable is dependent on the attitudes of the civil society network.

Table 10 Relationship between civil society information and children's participation

		Child-friendly information available	
		Yes	No
Children's participation	High	CAB	
	Medium	CB	
	Low	CJB	
	None		SOB SUBS SENT

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To establish if the materials themselves promoted participation, I examined incidents of self-advocacy: Where children were not supported by civil society networks but came to hearings or organized protests of their own accord. This evidence suggests that it is possible to stimulate children's advocacy without child-friendly materials (Table 11).

Table 11 Relationship between child-friendly materials and self-advocacy

		Child-friendly information available	
		Yes	No
Self-advocacy	High		SOB
	Medium	CB	
	Low	CAB	
	None		CJB SUBS SENT

3.6 Notice period for public hearings

Buccus (2004) and Moses (2008) state that short notice periods prevent people from being able to plan to attend and prepare for meetings, if this is true the level of participation should increase as the notice period gets longer. Equally one would expect more opportunities for potential engagement as the duration of the legislative process increases or as a committee spends more sessions working on a Bill. However, the evidence displayed in Table 12 proves, at least for these cases, that there is no such relationship and children are able to attend hearings at very short notice.

If time were an important factor one would expect to see levels of participation rise the longer the duration of the deliberations. But in fact there is no relationship between the duration of the deliberations and the level of children's participation (Table 13). There is no apparent relationship between the number of hearings and the level of children's participation. In general none of the time related variables appear to have any significant affect on the levels of children's participation.

Table 12 Notice period for public hearings[27]

		Notice of public hearings (in days)		
		≤7	8 – 30	31 ≥
Children's participation	High			CAB 1
	Medium	CB 1		
	Low	CB 2 CJB		
	None	CAB 2	SUBS	SENT

[27] There were two sets of hearings on the Children's Bill and the Children's Amendment Bill for the sake of this analysis each hearing was considered separately. There were no public hearings for the Sexual Offences Bill; however, the Select Committee held a second set of hearings on the Children's Bill, both committees gave one week notice of the hearings. The Portfolio Committee on Social Development held two sets of hearings on the Children's Amendment Bill: the community consultations were advertised a month in advance, while the parliamentary hearings were advertised a week in advance.

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Table 13 Duration of the deliberations

		Duration of the deliberations (in months)		
		< 6	6 – 12	12 >
Children's participation	High		CAB	
	Medium			CB
	Low		CJB	
	None	SUBS SENT		SOB

Table 14 Number of committee sessions

		Number of committee sessions		
		< 20	21- 40	40 >
Children's participation	High		CAB	
	Medium			CB
	Low	CJB		
	None	SUBS SENT	SOB	

3.7 Physical location of the public hearings

Committees rarely hold public hearings outside of Parliament as illustrated in Table 15. In five of the six cases Parliament held the hearings in Cape Town.

Table 15 Physical location of the public hearings

		Physical location of hearings*	
		Parliament	Community
Children's participation	High		CAB 1
	Medium	CB 1	
	Low	CB 2 CJB**	
	None	CAB 2 SUBS SENT	

* There were two sets of hearings on the Children's Amendment Bill and the Children's Bill and none on the Sexual Offences Bill.
** No children attended these hearings

For the majority of South Africans the cost of travel to Cape Town is prohibitively expensive. The Children's Bill Working Group members and the OR Tambo municipality paid to transport children to public hearings at Parliament for the Children's Bill. Thus, when hearings are held in multiple locations outside of Cape Town children were able to come without the support of the campaign groups. Tables 16, 17 and 18 show different levels of participation on the Children's Amendment Bill by location of hearing. The comparisons show that the level of children's participation increases when public hearings are held outside of Cape Town and that as Friedman (2004) predicts when hearings are in Parliament organised civil society dominates due to its superior resources.

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Table 16 Submissions on the Children's Amendment Bill to provincial legislatures [28]

No of Submissions by Children's Bill Working Group		
Adults	Organisations	Children *
Unknown	57	13

* This figure includes only children supported by the Children's Bill Working Group the actual total is unknown.

Table 17 Submissions on the Children's Amendment Bill: community hearings

	Adults	Civil society network	Children
Totals	78	40	31

Table 18 Submissions on the Children's Amendment Bill: public hearings in Cape Town

	Adults	Civil society network	Children
Totals	4	39	0

3.8 Committee openness

The two relevant committees had very different working styles during the period under consideration the Portfolio Committee on Social Development dealt with only 5 Bills, whereas the Portfolio Committee on Justice and Constitutional Development dealt with 28 Bills. The Department of Justice and Constitutional Development presented a legislative programme with over 50 Bills. The Portfolio Committee on Social Development was able to focus exclusively on one Bill at a time, for almost a year in the case of the Children's Bill, whilst the Portfolio Committee on Justice and Constitutional Development frequently had to deal with up to three Bills in one session.

During the period under consideration both committees changed Chairs. In the case of Social Development this had little effect on the openness to public participation. However, there was a marked change in the openness of the Justice Committee when Yunis Carrim replaced Fatima Chohan-Kota. Chohan-Kota had refused to allow any direct engagement with the public on the Sexual Offences Bill, whilst Carrim invited civil society representatives to participate in all meetings, comment on the Bill, and advise the committee. Under the stewardship of Carrim the Portfolio Committee on Justice also listened to public debate during the Sentencing Bill deliberations.[29] The data suggests that committee openness is a pre-requisite for high levels children's participation but not a guarantee (Table 19).

[28] Provinces do not have copies of the submissions made on the Children's Amendment Bill; therefore it was not possible to compare submissions made by the general public with the submissions made by the Children's Bill Working Group.

[29] They reviewed three articles that had been published in the *Business Day* referring to research published by OSF a key Child Justice Alliance member http://www.pmg.org.za/minutes/20070611-criminal-law-sentencing-amendment-bill-b15-2007-department-briefing

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Table 19 Openness of the committee to public participation

		Committee openness		
		Very open	Open	Not open
Children's participation	High	CAB		
	Medium		CB	
	Low	CJB		
	None		SUBS SENT	SOB

3.9 Coherence of civil society

Experience of early law-reform on health, social security, and gun control taught leaders in the children's sector to work together to maximise their impact (Kirsten, 2004). Different approaches were adopted by civil society for each legislative process, in four cases civil society established networks with the aim of influencing the process, in one other case two of the established networks combined forces to raise awareness and mobilise their members. In only one case no campaign group was established to coordinate advocacy.

Membership

The type and number of members in each of the civil society networks varied. The Children's Bill Working Group was the largest and had a complex structure. Because the legislation covered a wide range of issues it was split into sub-groups relating to topics in the Bill, and anyone interested in the campaign could join one or more of the sub-groups. Each sub-group had a coordinator who along with members of national organisations or umbrella bodies sat on a national coordinating structure the Working Group, there were approximately 100 members of the Working Group and over two thousand members of the subgroups including CBOs and grass-roots movements such as ACESS. The Child Justice Alliance had 90 members; additionally, people could subscribe as 'friends' and receive information about the Bill. The National Working Group on Sexual Offences had 26 members from academic institutes, and civil society organisations working in the gender and children's sectors.

Leadership

All of the networks had a group of senior members who acted as an executive decision-making body. In the two largest networks one organisation was responsible for the day-to-day management of the campaign, in both cases this was an academic unit, which organised teleconferences and meetings for the steering committee. The National Working Group on Sexual Offences had a looser structure the main members relied on email to coordinate the advocacy, and shared responsibility for organising different activities.

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Resources

All of the major networks had financial backing from philanthropic organisations or development organisations for their primary campaigns. In addition to the main campaign three sub-groups received funding and were able to run semi-autonomous coordinated campaigns (Bower, 2009; Jamieson and Proudlock, 2009; Kruger, 2006). The Child Justice Alliance and National Working Group on Sexual Offences did not receive additional funding for their work on the Sentencing Bill, however, the Open Society Foundation for South Africa organised a conference on minimum sentencing, which provided an opportunity for civil society to debate the issue and share research.

Staff

The two largest networks employed full-time coordinators, administrative staff and legal researchers. The Children's Bill Working Group employed a professional lobbyist; they also paid for expert support from media specialists, drafting experts and economists. Three of the sub-group coordinators were paid part-time. The National Working Group on Sexual Offences did not have paid staff and the members shared responsibility for organising consultations and other campaign activities.

Consultation

All three networks organised national workshops and conferences to bring members together to discuss the Bill and find common positions. The sub-groups of Children's Bill Working Group also ran workshops dedicated to their specialist areas. In preparation for the Children's Amendment Bill the Children's Bill Working Group also ran a series of workshops in the provinces.

Support to members

The Child Justice Alliance commissioned six inter-related research projects to provide the group with evidence to support their advocacy. Whilst the Children's Bill Working Group and National Working Group on Sexual Offences made existing research available. All of the groups gave basic advocacy advice, but the Children's Bill Working Group's lobbyist was in Parliament most of the time sitting in committee meetings until after mid-night in some instances, meeting with MPs and briefing study groups. Both the Children's Bill Working Group and the Child Justice Alliance arranged for legal experts to respond to members' queries and ensure that recommendations were drafted in legal language that could be inserted straight into the legislation. The Child Justice Alliance and the Children's Bill Working Group provided paid for transport and accommodation for members to attend hearings.

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Information

The three major networks and one of the sub-groups had dedicated websites[30]. They all sent updates by email and published a series of factsheets written by members that explained all of the topics in the Bill. The secretariat of the Child Justice Alliance also published a quarterly journal, *Article 40*. Hard copies were distributed to members of the network and electronic copies were posted on the website.

Strategies

Common to all the networks was the strategy of coordinating their submissions among members of the networks to deliberately avoid duplication but repeat critical common messages. They each believed in evidence-based advocacy and used academic research to support their recommendations.

While each network participated in the formal process, in three cases networks also resorted to media based strategies to put pressure on Parliament. This can be seen in the spikes in media coverage at the start of the legislative processes, in Figures 1 and 3 (while the Child Justice Alliance ran a similar media campaign in 2005, this does not show in Figure 2 as it is outside the period of analysis). The CSVR, a member of the National Working Group on Sexual Offences organised the "Get on the Bus Campaign", a bus toured the country starting from the Constitutional Court and ending in front of Parliament. With the aim of raising awareness of sexual violence and the Sexual Offences Bill, the tour culminated in a demonstration outside Parliament during which a memorandum was handed to the Chair of the Portfolio Committee on Justice. Although, there were no public hearings, the Chair agreed to accept written submissions after receiving the memorandum.

As a strategy to establish credibility, the Children's Bill Working Group advised all the sub-groups to make two submissions, one by an expert and one by a grass-roots organisation.

Presence at the parliamentary meetings

The Portfolio Committee on Justice invited the Child Justice Alliance to actively participate in the Child Justice Bill deliberations, and the Children's Bill Working Group sent members to every committee meeting on the Children's Bill and Children's Amendment Bill. The Children's Bill Working Group's lobbyist constantly sent feedback to the group, updates were usually sent via email, but when an urgent intervention was required members were contacted by phone and asked to communicate directly with the MPs.

[30] www.childjusticealliance.org.za; http://www.shukumisa.org.za/; www.rapcan.org.za/wgpd/default.asp; http://www.ci.org.za/index.php?option=com_content&view=article&id=546&Itemid=30

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Dominance

These groups dominated the formal opportunities, for example in the case of the Child Justice Bill the network made 84% of the submissions (Table 2). But it was not just the sheer number of submissions. The content was also different. Submissions from network members covered separate issued but repeated common messages, they gave evidence academic research, referred to international and constitutional law, and in most cases the recommended amendments were written in legal language[31]. Of the nineteen submissions on the Substance Abuse Bill most were from treatment centre staff or the experts in the field; just three were from the general public. Twelve of the nineteen submissions made reference to children or youth; most referred to prevention programmes to stop children from abusing substances in the first place, others described residential programmes to support substance abusers and their families. The submissions did not cross-reference each other; there were no common messages, very few formulated amendments to the Bill, and none of the proposed amendments were written in legal language.

The data displayed in Table 20 suggests that children's participation only occurs when civil society dedicates substantial resources to organizing a coordinated campaign. The relationship between civil society campaign coordinators attitudes and children's participation is explored in more depth in the following chapter.

Table 20 Coherence of civil society

		Coherence of civil society		
		Highly coordinated and well-resourced network	Loose coalition	No coordination
Children's participation	High	CAB		
	Medium	CB		
	Low	CJB		
	None		SOB SENT	SUBS

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[31] When amendments were written in legal language the State Law Advisors did not change the text, therefore, nothing was lost in translation. The slightest variation can have a major impact for example changing 'or' to 'and' in section 150(1)(a) of the Children's Act has caused huge controversy. Previously everyone agreed on how to interpret the section, with the new wording Magistrates are divided.

4. Attitudes of civil society campaign coordinators towards children's participation

In the cases studied, organisations affiliated with the children's rights networks contributed over 50 per cent of the submissions made to Parliament on Bills affecting children's rights (Table 2). In the same cases there are very few submissions from children. Although, these organisations promote children's rights clearly they have been less successful at promoting children's participation. This relationship between policy networks and the constituency that they serve needs to be interrogated. Why are these networks very successful at mobilising adults to fight for children's rights, but less successful at mobilising children to be part of their campaigns? Is it that adult groups do not collaborate with children because they underestimate children's capacity and do not take them seriously? When adults facilitate or support the participation of children they risk their own relationships with MPs. If the children are not taken seriously, the adults facilitated the children's participation might also be discredited. Or, do they take them seriously but regard children as competition? Policy networks usually only support individuals or groups that agree with their own positions, do the children the campaign groups are fighting for have a different view of how their interests best served?

To answer these questions I interviewed the campaign coordinators, and sub-group coordinators who ran the law-reform campaigns and two directors of large children's sector organisations that participated in the legislative processes and were on the campaign steering committees. I refer to them collectively as campaign coordinators. I invited ten people to participate in the study, seven responded.

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4.1 Support for the right to participate in legislative processes

All the children's sector campaign coordinators strongly supported children's participation in legislative processes, both in terms of their legal right as well as the value that children can bring to the process.

> *All decisions can and do affect children and the UNCRC does not allow for sometimes you can do it and sometimes you can't.*
>
> *[Children] have views around these kinds of issues that are absolutely critical for us to hear.*
>
> *Children should be the driving force behind the legislation.*

However, campaign coordinators were unanimous that all decisions should be made in the best interests of children, and that a number of factors have to be considered by parliamentary committees when drafting legislation, therefore, Parliament might not follow the child's views in every instance.

You must listen to children with gravitas...listen seriously to them, but that is not the same as doing what they tell you to do.

People need to make decisions looking at what the child's own feelings and views are but also what is in the child's best interests.

The same condition applies to the consideration of adult views by parliamentary committees:

Even if you think you are making a brilliant argument, for other factors or other balancing interests you are not necessarily going to be listened to.

4.2 The value of children's participation in legislative processes

When they spoke about children's participation the campaign coordinators repeated their belief that children have agency and the capacity to engage with legislative processes, and the campaign coordinators displayed a strong commitment to facilitating meaningful participation of children in Parliament.

Over two decades of children's participation research have shown children capable of sound observations on critical issues in their lives, including recommendations for improvement. There is no reason, therefore, to exclude them from participation in legislative processes.

The campaign coordinators spoke about the impact of children's participation on legislative processes, and gave multiple examples of how children's views had contributed to the debate, changed MPs perspectives, or even lead to changes in the law.

Actively involving children and young people in legislative processes will enable services to be tailored more realistically to children's needs and consequently, build stronger communities.

Some of the campaign coordinators spoke of the value to their own organisations:

There was an opportunity to expose DICAG as an organisation, to expose our programmes and what we are doing, and the children themselves would show the value of the services that we are rendering to them.

However, their views were mixed on the impact of participation on the children. Two of the campaign coordinators who had not brought children into Parliament spoke about the potential benefits.

Engaging with children and getting children to participate in decision-making is partly allowing them the opportunity to explore those issues, in a way that their opinions are respected and where they have a clear sense that they are respected, and what they are saying is taken seriously.

But the campaign coordinators who had actually taken children to public hearings offered a different perspective. When it worked well their responses were extremely positive:

Everybody was just thrilled that the children were able to speak up and have that experience of empowerment.

But in some instances the children were not taken seriously, or treated with respect, and there was even the potential for real harm.

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It was very unfair on this person because you could see he almost felt like he was being cross-examined again.

Some of the campaign coordinators had negative experiences of bringing children into open public hearings, where MPs misinterpreted the children, or ignored them. In one incident the media published the testimony of a child who was speaking about rape in her family (Jamieson and Mũkoma, 2010). However, only one respondent was so discouraged that they said they would never bring children to Parliament again. When things go wrong the damage can be widespread; when the MPs and the children fail to find a common language the damage is not just to the individual but to the dialogue. The credibility of the campaign groups is also at stake.

It can backfire horribly because they [the MPs] say well that was a waste of our time.

4.3 Whose responsibility is it?

Children need information about their right to participate and on the laws that apply to them. Children need assistance to interpret legal documents and support to get to Parliament. For most children participation in Parliament is not possible without adult support of some kind. Thus, I asked the campaign coordinators 'who is responsible for facilitating the right to participate?'

Most respondents found the question challenging and added to their answer at different points in the interview. But ultimately all campaign coordinators agreed that it is a 'joint responsibility':

All of the sectors that have some kind of children's constituency have a responsibility to be involving young people in everything that they do.

They also agreed that Parliament and civil society have different but complementary roles. Parliament *"can't just open the doors and say 'come'"* it has a responsibility to go that *"extra mile"*; starting with building-awareness of the right to participate. The notices for public hearings should be explicitly targeted at schools, youth networks and youth media; and Parliament should make it clear that it wants to hear children's views on a particular piece of legislation. Campaign coordinators felt that Parliament has a responsibility to ensure the integrity of the space and make it "child-friendly". Ethical guidelines were seen as critical to guide the behaviour of the MPs and others present, especially journalists, so that children's stories are not exploited. Two respondents talked about the impact of poverty on participation, and called for Parliament to provide travel funds for children from rural communities. Another respondent said that government departments should work together to ensure that all children can participate, transport was an issue for children with disabilities, but she recognised that all children have needs that should be catered for.

Older children can self-mobilise, but they have no access to money or funding. Parliament should have a budget for public participation not just children, but adults in rural communities.

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Finally, children's participation in legislative processes should not be a one-off event, at the very least MPs should respond to the children's submissions:

> *We just don't give children feedback. It is like going into an exam or writing a test and never getting your mark.*

Campaign coordinators feel like civil society is doing all the work: "*We have a one-sided effort to bring children's participation into the arena."* Parliament is not fulfilling its obligations, some respondents perceived this to be an oversight, whilst others were more cynical. There is no legal obligation on civil society to fulfil the right to participate as there is on Parliament, but all the respondents indicated that civil society has a responsibility, either because they work with children and have a relationship with them; or they provide services to them and should be accountable; or because civil society has the skills.

> *If civil society wants to be seen as truly accountable to its constituency then they have an obligation to seek out some form of children's participation.*
>
> *The expertise lies in civil society we have people who are trained in children's participation methodologies.*

4.4 What accounted for variations in levels of children's participation?

Given the high level of support for the right to participate, and consensus that civil society should facilitate children's participation, I was surprised that the levels of participation vary so much in the cases that I examined. Therefore, I asked campaign coordinators and some of the pioneers of children's participation, what had helped or hindered them. The reasons given were complex and varied. Everyone mentioned the need for time and money, some organisations had raised dedicated funds for children's participation, others did not; but all of the organisations had money for mobilisation and some had used that for children's participation. The two campaign groups with the most money and dedicated resources had taken very different approaches to involving children.

Some of the organisations that had not involved children in the earlier campaigns did so later on. When asked to explain this, the respondents indicated that the idea of involving children had not occurred to them in the early days.

> *At that point certainly [my organisation], and me, were not thinking about involving children. That was eight years ago, we did not know how on earth to even start with children's participation.*

Democracy came to South Africa in 1994, so the experience of participation is still new to most adults, as the familiarity with democratic processes deepens, *"a few brave souls"* have been able to share that experience with children. These *"pioneers"* have demonstrated that there is value in children's participation; consequently, campaign coordinators have learnt to be open to children's participation.

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> *Over the last decade there has been a process of people becoming familiar with children's participation and seeing that it works, that children do have something to say. That meant that the whole notion of children's participation has entered the culture, it has become part of what we do. That wasn't there in the 90's. Maybe that links to the history of South Africa, a lot of us were not used to participating in the 90's.*

There was a strong sense that new opportunities are opening up; that South Africa has reached a turning point, where more and more organisations in the sector are involving children in their campaigns.

> *It is beginning to be taken much more seriously we have moved far beyond dusting off children and trotting them out to do a song and dance routine and then ticking a box that children have participated.*

For some organisations children's experience of participation internally made the difference; having structures in place that allow children to discuss issues in their own lives and experience of services, paved the way for participation in law-reform.

> *We now have our youth forums up and running and functioning on an ongoing basis in the regions. So the structure is there and can be tapped into at any point.*
>
> *Long, long before the Children's Bill we had the programmes for youngsters, where we would try to get youngsters to understand disability issues.*

For the organisations that provide services to children, working with them on a daily basis, children's participation is an integral part of the work they do. Most of the respondents believe that special skills are not required to facilitate children's participation in general, and that these skills tend to be taught as part of their professional development. Others expressed a contradictory view.

> *There are those of us who are in the field... for whom participation is something like breathing in and breathing out. You don't really think about it, because it is a given.*
>
> *People believed that what they were doing was appropriate or good, yet in some cases it was embarrassingly bad.*

Everyone agreed that law-reform is something exceptional that requires extra skills and resources.

> *When it comes to unpacking complex documents with children, people feel that there is a need for specific expertise.*

Everyone spoke of the need for someone to translate the legal texts into accessible formats.

> *The challenge is getting them to understand the information, bringing it down to their level.*
>
> *You need an adult who understands the legal gobbled-gook that laws are written in, and has the capacity to understand how to translate them.*

This kind of expertise is generally not found in the NGOs and CBOs that deliver services and it is costly to hire. The translation expertise is needed throughout the process, especially when the children talk with the MPs. They have to be able to understand and communicate clearly. Sometimes

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this is obvious such as when children have a disability or speak another language, but sometimes it is subtler. The campaign coordinators also felt that Parliament should pay for these services.

> *We have a few deaf children they need sign language interpreter, government should pick up the tab for paying for interpreters.*

4.5 Children first?

Campaign coordinators' comments indicate that children's participation and adult participation were seen as distinct, and despite being champions for children's rights it would appear that in practice adult participation gets put ahead of children's participation supporting Hammad's theory (2007) that there is a hierarchy of rights.

> *With the Sexual Offences Bill Working Group it [children's participation] was discussed but the issue was that we couldn't even get hearings for the adults.*
>
> *Never mind children's participation, adult participation was severely compromised through that process.*

When I examined the preparation processes it was clear that the campaign networks treated children differently to the adult members.

4.5.1 Neutral spaces or neutered processes?

Most of the respondents indicated that they try to create 'neutral spaces' when preparing the children, meaning that they do not share their own views with them because they do not want to manipulate the children or influence their thinking:

> *You have to be anti-septic in this situation. You have to allow children the space to have their view… You have to be terribly careful to not set up a whole load of kids to say what you want them to say.*
>
> *It is not about dictating to children, or it should not be about dictating to children.*

In the Children's Bill Working Group when organisations within the network disagreed on a fundamental point the secretariat organised dedicated workshops to give members the opportunity to present their ideas and try to find a common solution. The groups worked through their differences and either found a common solution or agreed to disagree whilst sharing a common approach (Budlender, Proudlock and Jamieson, 2008; Bower, 2009; Jamieson and Proudlock, 2009). The children were never given this opportunity, they were not members of the network; rather, children's participation was something the networks did, or did not do, in addition to the rest of their work.

4.6 What happens when children and adults disagree?

The campaign coordinators were clear that once the process started, all of the children's views had to be aired:

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> *If those voices do not sound like ours we have an equal responsibility to make sure that those voices are heard.*

However, *"sometimes it all goes horribly wrong, and you get children saying they want to be sent to prison"* (Child Justice Activist, personal communication). When the children oppose the views of the adults, the adults have an opportunity to present counter arguments:

> *What we say as an adult organisation is that we don't agree with that, but it doesn't mean to say that it isn't a valid point of view. That is absolutely critical else wise we lose the very foundation that we are standing on, we might as well go back to no participation at all.*

This suggests that there is an imbalance in the opportunity to influence the MPs: the adults had repeated contact with MPs whilst the children had only one opportunity to make their case. Adult campaigners reiterated their preferred messages for example when the MPs were discussing child-headed households a member of the Children's Bill Working Group reminded them of the presentation by a child in Mpumalanga, they recalled his story and added "abandoned" to the definition inline with his experience[32]. On the other hand they conveniently ignored those messages with which they disagreed. Not surprisingly, the children's support for the death penalty was never mentioned during the Child Justice Bill deliberations.

4.6.1 Controlling the space

Civil society campaign coordinators want Parliament to treat children with respect and ensure that there are opportunities for children to participate on an equal basis with adults.

> *It worries me that if we motivate for something different, we will end up with something paternalistic, not so serious looking at children's issues.*

Yet, is civil society also guilty of adopting a paternalistic approach to children's participation? In some cases the children were supported to interact directly with the decision-makers, in other cases the participation was restricted to research workshops. In all cases the adults controlled access to Parliament: Children could decide not to present if the adults offered them an opportunity, but they could not present if the adults did not offer. At the very least children had an opportunity to influence the adults. Some of the adults viewed this separation as a necessary protection measure to prevent the child from harm.

Some organisations submitted the children's participation research reports to Parliament, but in reality few MPs read submissions or research reports, they received most of their information from oral presentations and the summary of submissions (Jamieson and Proudlock, 2009). Not everything that the children spoke about was presented or incorporated into the oral submissions, as the adults

[32] http://www.pmg.org.za/report/20071009-childrens-amendment-bill-national-prosecuting-authority-input-deliber

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campaigned for what they believed to be in the best interests of children, after taking children's views into consideration. Members of one network were told to use what was appropriate and supported their positions; therefore, they left out what was not relevant to them or did not support their own submissions.

> *Look at the research and look at what is applicable to your area of research and if you can use it you use it...if you are going to make submissions, please have a look at the research and incorporate things as far as possible that would either help you or prove a point in a particular direction.*

There is no evidence that the relationship worked in the other direction, i.e. that children were presented with the adults positions and asked to comment. Effectively the voices that echoed the adults' voices did receive more exposure, in part because it made the submissions more '*credible*'. Adults build strategic alliances or partnerships with other adults, but not with children. They do not involve children in the running of the campaigns at any level – on the steering committees, driver groups or even as members. As children are not equal partners and adults control how the children's views are shared with decision-makers.

The campaign groups maintain a constant dialogue and exchange of information with government officials who are part of the drafting teams. They discuss key issues before the first draft of the legislation is written, and usually as the process unfolds those relationships deepen, even if at times differences of opinion emerge or grow. Children are not involved in these informal processes that not only give civil society organisations the opportunity to refine and develop their arguments, but also to devise strategies for the parliamentary phase of law-making.

A clear relationship can be seen as higher levels of paternalism lead to lower levels of participation. In contrast progressive views promote children's participation (Table 21).

Table 21 Relationship between campaign coordinators views and children's participation

		Campaign Coordinators Views	
		Paternalistic	Progressive
Children's participation	High		CAB
	Medium		CB
	Low	CJB	
	None	SOB SENT	

(No civil society campaign was involved with the Substance Abuse Bill so there are only five cases)

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5. Conclusions and recommendations

5.1 Introduction

Participation is one of the foundations of democracy. And in South Africa, political rights (except the right to vote and hold office) extend to everyone regardless of age. The specific right to participate in legislative processes is enshrined in the Constitution together with the best interest of the child and the principle of equality, known internationally as non-discrimination (Hodgkin and Newell, 2002, p.17). For these rights to be realized children must have an opportunity to influence legislative processes. Children's Parliaments and Youth Parliaments rarely deal with actual legislation or feed into legislative processes (Abrahams, 2008). To influence legislation affecting them, children must participate in mainstream participatory processes such as public hearings.

The aim of my study was to determine the extent of children's participation in legislative processes that affect them and examine the factors that facilitate or inhibit children's participation. I formulated propositions based on a review of the literature and my own professional experience of working with different groups of children on law-reform campaigns. To test these propositions I conducted an empirical study of six cases. I used two methodologies to gather data: (1) documentary analysis from parliamentary records, campaign group websites and media databases; and (2) interviews with civil society campaign coordinators.

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5.2 Summary of the key findings

The data gathered from these cases supports a number of tentative generalizations about children's participation in legislative processes.

5.2.1 Extent of children's participation

Levels of children's participation in legislative processes are generally very low. Across a set of laws that give effect to the children's rights in section 28 of the Constitution there was absolutely no participation in three cases, and low levels of participation in another. If children's democratic rights are to be fulfilled in the future, it is important to understand what facilitated their participation in the cases where children's participation was observed and what prevented their participation in those cases where participation was low or non-existent.

5.2.2 Key factors facilitating children's participation

There are also a number of key findings about the key factors that appear to explain why participation varies across cases.

5.2.2.1 The role of civil society

In the cases I examined civil society networks dominated the formal processes and they supported over 83 per cent of the incidents of children's participation, strongly suggesting that support from

civil society is the biggest enabler of children's participation. The study also shows that absolutely no child participated in public hearings in Parliament without the support of a civil society network. These groups played a vital role in supporting children from making the legislation accessible, to building the necessary skills to analyse and respond to the legislation. They also provided resources and care so that children could get to the hearings. However, there were also four incidents of self-initiated participation and 16 incidents of self-advocacy, which suggests that under the right conditions children can organise themselves and participate in legislative processes without the support of adults.

5.2.2.2 Attitudes of civil society campaigners

Not surprisingly, the children's sector campaign coordinators supported the idea of children's participation. They agreed that Parliament and civil society have a joint responsibility for supporting children's participation in legislative processes. Parliament should inform children about parliamentary processes and provide a child-friendly space. And their role as civil society is to prepare children to engage with the legislation. Each campaign group adopted different approaches to children's participation. Indeed, there was a direct relationship between the attitudes of the campaign coordinators and the levels of participation. Where coordinators displayed paternalistic attitudes levels of children's participation were lower than where coordinators held progressive views. The results of the study also suggest is that as coordinator' experience participation themselves; they are more likely to support children to participate in legislative processes in the future.

5.2.2.3 Civil society coherence

As campaign coordinators complain that children's participation requires lots of time and money, I expected to find that children's sector networks would be more likely to facilitate children's participation if they were well resourced. Children's sector networks did not always dedicate available resources to children's participation. In my cases, they only supported children's participation when they were highly coordinated and well resourced. Whilst it is true that some networks raised dedicated funds for children's participation, it would appear from the coordinators' comments as if most of these networks only consider children's participation if there are sufficient extra resources once the adults are provided for.

5.2.2.4 Physical location

I found that the location of hearings is a factor in allowing children to participate in legislative processes. Relatively few children participated in hearings held in Cape Town and adults and civil society campaign networks supported those children. The only instances of self-initiated participation were during the community hearings on the Children's Amendment Bill. The campaign

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coordinators said that because the cost was low they were able to take more children to the community hearings and the provincial hearings on the Children's Amendment Bill.

5.2.2.5 Media coverage

In my cases news media coverage appeared to play an important role in generating interest in legislation. In three cases, high levels of news media coverage coincided with high levels of self-advocacy. In these three cases the resulting advocacy occurred very quickly. Yet, in two cases that advocacy had no effect on the legislative process because the coverage happened after Parliament passed the Bills. For example, Parliament passed the Sexual Offences Bill in November 2007, and the media stories about the 'kissing ban' appeared a month later, there was an immediate outcry from children but it was too late to influence the legislation.

Unfortunately, this research shows that Murray and Nijzink's (2002) claim that media reports are often inaccurate remains true. Furthermore, the news media is not responsive to children's interests (Naidoo, 2009; Singh, 2010). Comparing the expressed interests of children in the Child Justice Bill (Ehlers, 2002) with actual coverage shows that the news media are sometimes 'out-of-touch' with children's concerns.

5.2.2.6 Social media

In South Africa there is a rich history of children's advocacy through protest and I saw that this tradition revived in the protests against the Sexual Offences Bill. As Dalton says "unconventional political action is an outlet for groups that lack access to politics through conventional participation channels" (Dalton, 1988, p.60). Because, Parliament had concluded its debates on the Bill, protest was the only option available. Yet, Dalton also argues that protest is a strategy that the young prefer. That over 27,000 children joined or commented on Facebook groups suggests that this might be a way of consulting with children about future legislative processes.

5.2.2.7 Child friendly materials

My research suggests that information is critical to children's participation, but it does not necessarily have to be presented in child-friendly formats as the literature assumes. Both the Child Justice Alliance and the Children's Bill Working Group produced child-friendly information products. The children in the campaign group's children's participation initiatives used this information to great effect; they were well informed about the content of the legislation and the legislative process. Nevertheless, children who relied on other sources of information, though less well informed, still made valid arguments about the content of the Bills.

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5.2.2.8 Committee openness

Contrary to my original proposition the openness of the committee to public participation did not directly affect levels of children's participation. The Portfolio Committee on Social Development was consistently open to consultation and yet the levels of children's participation varied widely. The Portfolio Committee on Justice was very open to public participation when considering the Child Justice Bill, but the Child Justice Alliance kept children out of the hearings for their own protection. On the other hand where the Portfolio Committee was least open to public participation, during the deliberations on the Sexual Offences Bill, members of civil society indicated that they made adult participation a priority. Although committee openness is a pre-requisite to participation, in most instance the children's rights networks acted as a gate-keeper controlling children's access to the hearings.

5.2.2.9 Stake in legislation

It appears that civil society networks only support children's advocacy when the legislation relates exclusively to children, i.e. when it is arguably indefensible not to include them. Campaign coordinators justified this selectivity arguing that children's participation requires large amounts of time and effort on their part. However, stake in the legislation is not an indicator of children's interest, using it as such, means that children are not getting the support they need to participate in legislative processes that interest them.

Children are not interested in all legislation. When I examined the cases of self-advocacy I found that children did not mobilise on all issues that affect them, this was not related to the size of their stake in the legislation. There was no self-advocacy in the case of the Child Justice Bill, which relates exclusively to children, whilst levels of self-advocacy were highest in the case of the Sexual Offence Bill, which affects children and other stakeholders. However, children did not protest or seek to participate in the debates about the Sexual Offences Bill when the Portfolio Committee was setting the age of consent to sex at 16, defining crimes against children, or discussing how to punish paedophiles. These debates were reported extensively in the media, so the lack of advocacy was not due to a lack of information. Children protested when the news media reported the kissing ban. This suggests that children use their citizenship rights selectively; they do not spontaneously mobilise for the sake of participating, but do so to have their say when MPs make choices that they do not like.

The kissing ban in Sexual Offences Bill generated the most interest from children yet the National Working Group on Sexual Offences had taken no steps to facilitate children's participation in the legislative process. This is clear evidence that adults are unable to accurately predict what issues interest children in every case.

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5.2.2.10 Notice period for hearings

Counter to arguments in the literature this study provides evidence to suggest that children are able to attend hearings at very short notice. Instances of children's participation were visible even when there was only one business day notice of public hearings. In contrast I observed no participation after the longest notice period of six weeks.

While there were high levels of participation in the Children's Amendment Bill after a long notice period, most of the children who participated in the community hearings on the Children's Amendment Bill were supported by the civil society network and were ready even before the hearings were called, so the notice period made little difference to them. Indeed, the Facebook campaign denouncing the kissing ban in the Sexual Offences Bill was started within days of the first media report and the first 'kiss-a-thons' followed shortly thereafter, suggesting that children can mobilise quickly when provided with accurate information and therefore that the length of notice period is not a key determinant of participation.

5.2.2.11 Duration of the deliberations and number of committee sessions

Longer deliberations and more frequent committee sessions provide increased opportunities for informal engagement with decision-makers, and also for protest. Across my cases it was extremely rare for children to participate in informal opportunities, and there was only one such incident during deliberations. Indeed, these two variables had little impact on levels of children's participation.

5.3 Conclusion

Public participation in parliamentary public hearings is maximised when civil society networks provide support to individuals and organisations (Sadie, 1998; Calland, 2006; Jamieson and Proudlock, 2009; Proudlock, 2010). This is true for children just as it is for adults. Children's rights networks supported 83 per cent of children's participation in legislative processes, in the six cases I examined, but that support is not consistent and there was no children's participation in three of the legislative processes that directly affect children. The reasons given by campaign coordinators for including or excluding children are complex and varied. Campaigners frequently cite resources such as money and time as a barrier, but in practice other factors also seem to be at play. In fact, campaigners attitudes were a bigger predictor of levels of children's participation than resources.

Whereas, the general population may regard children as having limited decision-making capacity (Chirwa, 2002; African Child Policy Forum, 2009; Sloth-Nielsen et al., 2009), all of the campaigners interviewed show high levels of support for children's right to participate, and value children's opinions. However, some of the campaign coordinators adopt a paternalistic approach to children's

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participation either because they want to protect the children from harm or because they value their own experience over children's views.

Adults must always put children's best interests first to do so requires balancing children's protection and participation rights (Jamieson and Mũkoma, 2010). Some campaigners have concerns about children's capacity to withstand cross-examination by untrained adults and they fear that the experience could be harmful to children. Whilst, protecting children from secondary trauma when discussing sensitive issues such as sexual abuse is a valid reason for not promoting direct participation; alternative measures should be put in place to ensure that their views are presented to, and considered by, parliamentary committees. In court proceedings intermediaries or cameras are used, so that children can be interviewed remotely to protect their identities. In the cases, at least, the children's views were lost or diluted when they did not participate directly. At the very least children should be supported to prepare their own separate submissions, these submissions could be presented by an adult as was done during the Fire Arms Control Amendment Bill (Elhers and Frank, 2008).

Campaigners also identified their own lack of experience and confidence as barriers. Many of the children's rights campaigners were excluded from parliamentary democracy under apartheid, so they had no personal experience of legislative processes. Additionally, they lacked awareness about children's participation and knowledge of how to facilitate it. The campaigners said that as they gain more experience their attitudes towards children's participation are becoming more positive, and more of them are developing the confidence and skills to include children in the kind of complex conversations required by legislative processes.

But is not always lack of confidence that acts as a barrier, O'Toole and Gale (2008) claim that participatory politics is highly 'elitist' and children are dismissed because they are not recognised as experts. My results suggest that most campaigners' value their own expertise over children's direct experience, they value children's participation but they do not see their contributions as equal. As a result when resources or opportunities for influence are scarce, adult participation is prioritised. Some of the campaigners share Westmore-Suesse and Bain's view (2011) that it can be counter-productive to have children present in strategic meetings, but there is no evidence to support the claim that adult's presentations are more effective than children's. In several instances children's participation led to changes in the law, and other observers suggest that children's testimonies are more convincing than adults' (personal communication Adv. Tseliso Thipanyane).

West (2007) found that adults in South East Asia choose to work with children only when they agree on their campaign objectives, and ignored them when they disagree. Whilst South African children's

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rights networks have their own advocacy agendas, and in some cases the adults reduced children's participation to choosing quotes that support their proposed amendments, in other instances the children's rights networks gave children the opportunity to present their own opinions, then they used their superior influence and lobbying strength to contradict what the children had said.

To avoid the risk of putting words in children's mouths (Bjornestad, 2010), the campaign coordinators create "neutral spaces" where children are free to develop their opinions independently. The kind of intergenerational dialogue envisaged by Cahill and Hart (2007) is absent in the South African campaigns, children have no opportunity to comment on the adults' submissions, and there is no attempt to jointly find solutions to the most important challenges facing children. To date there have been no opportunities for children's participation within children's rights networks' decision-making structures. But it is possible to give children space and to work in partnership. For instance, the *NGO Advisory Panel on the Global Study on Violence Against Children* included representatives of all ages, and children had their own space but they also attended the general meetings, conferences and dialogue with the adults (Pinheiro, 2006).

South African children have not had the same opportunities to influence legislative processes as adults, with networks of children's rights organisations controlling access to legislative processes. Arguably, children have been second-class citizens in campaigns to promote the fulfilment of their own rights because most children's rights campaigners do not view children as strategic allies, and some even see them as a liability. However, a few campaigners have helped children to speak for themselves and interact directly with MPs; this experience is leading the rest to rethink children's capacity for engagement as active citizens. So the potential for partnership exists.

In other countries establishing dedicated structures for example the Bolivian Children and Adolescents' National Parliament has been critical to giving children influence over national decisions (Austin, 2010); however, in these cases at least, having structures in place that allow children to discuss issues in their own lives and experience of services, for example the local disability forum, paved the way for participation in mainstream legislative processes.

Lolichen (2006) claims that the empowerment of marginalised groups depends upon information, resources and mandate. However, these cases suggest that if children have accurate information and hearings are held close to their homes children can participate in legislative processes, even without the support of civil society networks. Unfortunately, at present there are few accurate sources of information on legislation available to children, and most hearings are held in Cape Town.

Civil society information is accurate but available to a small number of children, whilst, the news media potentially reaches more children it is often inaccurate. The data shows a clear correlation

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between children's participation/ self-advocacy and media coverage of certain key issues, however, the data is not sufficient to establish causality. Without interviewing the children who participated in the campaigns or who made submissions it is impossible to determine definitively that they were responding to the media articles. However, two factors indicate that this is likely:

1. Children who participated independently of the civil society networks made submissions on the same topics covered in the media stories. At the Children's Amendment Bill hearings children spoke about consent to medical treatment and termination of pregnancy. The media had incorrectly reported that these topics were dealt with in the legislation and the children made the same mistake.
2. The Facebook campaigns against the kissing ban directly quote the media.

The news media seldom cover stories that speak to children's concerns, and reports about legislation often follow the public hearings or parliamentary deliberations. The CROC advises States that children should be "informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child" (CROC, 2009: para 25). Thus, in the case of legislative processes the responsibility to provide information lies with Parliament, the committees should ensure that information is available before they schedule public hearings, this cannot be left to the news media alone.

Holding provincial or community hearings increases opportunities for children and adults who are not affiliated to civil society networks. During community hearings there are more submissions from the general public, and the civil society networks do not dominate the space, as they do in Parliament (Friedman, 2004). This issue merits further investigation, as there are a number of possible contributing factors: The most obvious assumption that the cost of travel is prohibitive (Moses, 2008), but if this were true I would have expected children from the Western Cape to attend hearings in Cape Town, which was not the case. Another possible explanatory factor is that community hearings are not as strictly controlled, anyone can turn up on the day, whereas for public hearings in Cape Town participation is by invite only, individuals and organisations are usually expected to submit a written request to make an oral presentation. However, there was no evidence in my cases that Parliament rejected any requests by children's to testify. Children may be censuring themselves in line with Young's (1997) argument that people have an internalised sense of when one has a right to speak. We know that children struggle to express themselves in unfamiliar environments (Bray, 2010), participation levels maybe higher during community hearings because local venues are familiar spaces that children find more welcoming.

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My study was limited to the factors that promote or inhibit children's participation in legislative processes, it examined how children gain access to parliamentary hearings, i.e. it was restricted to the procedural elements of the right to participate. Further study is necessary to determine if the right of children to be heard and have their views taken into consideration is being fulfilled, and whether or not those views are shaping policy decisions. A number of key questions remain unanswered: Are the MPs listening? Do children have any influence?

5.4 Recommendations

Children, like adults, are selective about when they exercise their democratic rights, so it should be possible for children to participate in any legislative process. However, Parliament should take extra measures when dealing with legislation that relates to children's rights. A critical factor is the release of accurate and timely information about the Bill and the parliamentary deliberations. An independent organisation such as the Public Education Office in Parliament, a Chapter 9 Institution or a civil society organisation that has no direct stake in the legislation should develop and circulate the information to ensure that all children whatever their potential response have access to it.

I conclude by making the following recommendations for Parliament:

- Adopt a children's participation policy;
- Raise awareness of the duty to facilitate participation of children and to give consideration to their input among staff and MPs;
- Train committee staff on ethical children's participation methodologies;
- Provide information that explains the content of legislation simply in a variety of languages;
- Invite children to participate in the notices of public hearings;
- Use social media to publicise the content of legislation and debates and advertise public hearings;
- Hold hearings in two sets of public hearings i.e. in the National Assembly and the National Council of Provinces several months apart;
- Hold hearings in the provinces on matters that have a high impact on children; and
- Provide feedback for children who participated informing them how the Parliament responded to their suggestions and what the final legislation contains.

In turn if they are interested in increasing children's participation civil society campaign groups should:

- Recognise children as potential strategic allies in the struggle to realise children's rights;
- Include elements of children's participation at every stage of the campaign planning;

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- Partner with an organisation that has the skills to facilitate children's participation;
- Make child-friendly materials public; and
- Share information about the legislative processes with children's media and organisations of children.

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Appendix A Bills Reviewed

Child Justice Bill [B49-2002]

Child Justice Bill [B49B-2002]

Child Justice Bill [B49C-2002]

Children's Bill [B70-2003(Reintroduced)]

Children's Bill [B70B-2003(Reintroduced)]

Children's Bill [B70C-2003(Reintroduced)]

Children's Bill [B70D-2003(Reintroduced)]

Children's Amendment Bill [B19-2006]

Children's Amendment Bill [B19B-2006]

Children's Amendment Bill [B19C-2006]

Children's Amendment Bill [B19D-2006]

Children's Amendment Bill [B19E-2006]

Children's Amendment Bill [B19F-2006]

Criminal Law (Sexual Offences) Amendment Bill [B50-2003]

Criminal Law (Sexual Offences and Related Matters) Amendment Bill [B50B-2003]

Criminal Law (Sexual Offences and Related Matters) Amendment Bill [B50C-2003]

Criminal Law (Sexual Offences and Related Matters) Amendment Bill [B50D-2003]

Criminal Law (Sentencing) Amendment Bill [B15-2007]

Criminal Law (Sentencing) Amendment Bill [B15A-2007]

Criminal Law (Sentencing) Amendment Bill [B15B-2007]

Prevention of and Treatment for Substance Abuse Bill [B12-2008]

Prevention of and Treatment for Substance Abuse Bill [B12B-2008]

Prevention of and Treatment for Substance Abuse Bill [B12C-2008]

Prevention of and Treatment for Substance Abuse Bill [B12D-2008]

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Appendix B Letter of introduction to respondents

Dear ...

Research on Children's participation in Legislative Processes – Request for Interview

I would like to interview you as part of my research on children's participation in legislative processes. You were a key member of many of the civil society networks and I would appreciate your honest reflections on the campaigns you were involved in, especially in your capacity as one of the coordinators of the Working Group on Positive Discipline. This research aims to identify the factors that enable children to participate meaningfully in legislative processes, your knowledge on the organisation of the hearings and views on the children's participation would be extremely helpful in understanding this topic.

Why is this research important?

Close examination of children's participation in legislative processes will identity barriers to participation and factors that create an enabling environment. Recommendations flowing from the study could help to improve levels of participation and the effectiveness of the participation of children.

The methodology being used for the research includes interviews with a sample of key civil society stakeholders who coordinated the civil society campaigns.

- The interview will be a maximum of 45 minutes long.
- If you are in Cape Town, the interview will be conducted in person.
- If you are outside Cape Town, the interview will be conducted over the telephone.
- The interviews will be recorded and transcribed to ensure accuracy and avoid misrepresentation.
- As a further precaution, I will seek your permission if I wish to quote you in either the thesis or the working paper.
- If you wish to remain completely anonymous please indicate this and I will ensure that your name does not appear on the interview schedule.

I would appreciate your honest reflections (good and bad) on your experiences of the children's participation. The information is going to be used for two purposes for my thesis and to write a working paper for the Children's Institute. The thesis is being supervised by Prof. Robert Mattes of the University of Cape Town, and all interview questions will be checked by him to ensure that I am working within the universities code of ethics.

The working paper will be published with the aim of supporting civil society organisations in the children's sector to facilitate the participation of children in

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legislative processes when appropriate. It will also include recommendations for Parliament.

I would greatly appreciate it if you could take 45 minutes in your busy schedule to contribute to the research. If you are willing to participate please complete the enclosed consent form and return it to me by fax or email. Once I have received the consent from I will contact you to arrange a suitable time.

Kind regards

Lucy Jamieson
Senior Advocacy Co-ordinator
Children's Institute, UCT
Cell: 083 458 9075
Fax: 021 689 8330
Email: lucy.jamieson@uct.ac.za

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Appendix C Consent Form

Consent Form

Title of the Proposal: Children Political Rights: Participation in Legislative Processes in the South African Parliament
Researcher details: Lucy Jamieson
Department: Children's Institute
Telephone: 083 458 9075
Email: lucy.jamieson@uct.ac.za

Name of participant:
Nature of the research:

Participant's involvement:
What's involved: one recorded interview of 45 minutes to an hour.
Risks: none expected
Benefits: report will be shared with participants. Lessons and recommendations should improve their ability to understand what children need to participate in legislative processes in South Africa.

☐ I agree to participate in this research project.
☐ I have read this consent form and the information it contains and had the opportunity to ask questions about them.
☐ I agree to my responses being used for education and research on condition my privacy is respected, subject to the following:
☐ I understand that my personal details may be included in the research / will be used in aggregate form only, so that I will not be personally identifiable (*delete as applicable.*)
☐ I understand that I am under no obligation to take part in this project.
☐ I understand I have the right to withdraw from this project at any stage.

Signature of Participant: _____

Name of Participant: _____

Signature of researcher: _____

Name of Researcher: _____

Date: _____

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Appendix D Questionnaire

Interview with children's participation facilitators

NAME, POSITION AND ROLE OF THE RESPONDENT

SECTION 1 – Background

Objectives of the research: to examine the 'adult-side' factors (contextual, individual, organisational) that promote or inhibit children's participation in legislative processes

Permission to record: recording for personal use only

Anonymity limits: every attempt used to minimise the possibility of identification – copy of transcript and

Case studies: Child Justice Bill, Sexual Offences Bill, Children's Bill, Children's Amendment Bill, Prevention of and Treatment for Substance Abuse Bill; and Minimum Sentencing Bill

Background check: what was your involvement in law-reform?

SECTION 2 – Knowledge of Children's Rights

1. Why do you think children's participation in legislative processes is important?

   ART 12/ ART 3 of the UNCRC accords the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child

2. Who bears the responsibility of facilitating children's participation? (the Executive, Parliament, civil society (general) civil society (children's participation experts).

3. Different models of participation have been used in South Africa, in some cases research has been done with children whilst the legislation is being drafted by the SALRC or the Executive, at other times children have been involved directly in hearings. In some cases they have given their own space in other cases they have participated in with adults. What do you think is the best model for facilitating children's participation?

   a. Timing of engagement – pre versus during parliamentary hearings?

   b. With adults or separate?

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4. View on the steps taken by Parliament to accommodate children? Are they sufficient to create a safe space where children could express themselves freely?

SECTION 3 – CIVIL SOCIETY NETWORK

5. Why did you decide to involve children in the Children's Amendment Bill?

6. How did you facilitate children's participation?

    a. What were the challenges/ barriers to facilitating children's participation?

    b. What helped you to facilitate children's participation?

    c. What resources were required? What did you have internally and what did you need from external sources.

7. What, if any, was the value to the street-children sub-group?

8. Integration of children's view in adult submissions – did you consider the children's views when writing the NASC submission? Why?

9. Did you considered working in partnership with the children, to achieve the same goals or did you see the children's participation as a separate obligation?

10. Did the children ask for the same things as the adults? Did they have competing interests? If so how did you manage the tension about ensuring that the MPs made decisions in the children's best interests?

11. If you had to do it all over again how would you do it?

SECTION 4 – Other campaigns

12. Is there anything you would like to add about children's participation in law-reform from your own experience? Any other examples that are worthy of investigation

THANKS

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Appendix E Interview Respondents

NAME	ORGANISATION	NETWORK POSITIONS
Merle Allsopp	National Association of Child and Youth Care Workers	Member of Children's Bill Working Group and the Justice Alliance
Sandra Ambrose	Disabled Children's Action Group	Coordinator Disability Task Team
Carol Bower	RAPCAN	Children's Bill Working Group Steering Committee; National Working Group on Sexual Offences Executive, Coordinator of Corporal Punishment Sub-group of the Children's Bill Working Group, later the Working Group on Positive Discipline
Dr Jacqui Gallinetti	Community Law Centre	Coordinator of the Child Justice Alliance
Prof Jill Kruger	National Alliance for Street Children	Coordinator of the Street Children Sub-group of the Children's Bill Working Group
Joan van Niekerk	Childline	Children's Bill Working Group Steering Committee; National Working Group on Sexual Offences Executive; and member of the Child Justice Alliance
Paula Proudlock	Children's Institute	Coordinator of the Children's Bill Working Group

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