

4 Child participation in law reform

4.1 Child participation in law reform

Children have a right to participate in matters affecting them – and law reform is no exception. Children can make a unique contribution to the process of reform. However, their involvement must be managed sensitively and responsibly. The vulnerability and dependency that makes children too often the victims of corporal punishment can also heighten the negative effects of exposure to the harsh world of politics and law.

The following sections provide important examples of child participation in law reform, with the lessons learned in each case. The introduction to the sessions, and discussion within them, emphasised the following:

Preparation for participation

It is the responsibility of NGOs to ensure that children who are selected as spokespersons for the campaign share the values of the campaign. It is critical that children communicate their own words and feelings when they speak out for law reform. It is also important that children are given feedback following their participation, and informed of the progress made on the issue after expressing their opinion.

Adults need to be prepared to listen, and respond appropriately, to children's voices – and children must be prepared to cope with less than desirable reactions from adults. It is incredibly frustrating for children to work towards speaking up for what they believe in, only to be considered 'cute' or to encounter resistance to their participation in the form of accusations that they have been 'coached' in what to say.

Many societies are not educated in participation. Adults must be very clear on what to ask and expect from children. Children have to know that the campaign might fail, and that they may not receive feedback from politicians or even be involved in the process beyond a certain point.

Taking account of how children's views are formed

Children are compelling advocates on the issue of prohibiting corporal punishment. But their opinions should be treated sensitively because of the influence of their parents' views in the formation of their own opinions. Governments resisting prohibition will use the views of children who profess to support the use of corporal punishment as an excuse for continuing to breach their rights. Ways must be found to talk clearly to children, and to explain why the ban should happen and what it would mean to them, within the context of raising awareness of their rights as human beings; the right to freedom from violence is an inalienable right.

Ensuring advocacy is rights-based

Children who express their views and experiences about being hit by adults are emphasising their vulnerability, and can elicit a response of pity. Law reform should happen because children have a *right* to full legal protection, not because adults feel sorry for them.

The extent of participation

Ideally, children should participate throughout the process of legal reform, including in conferences and forums. When their physical presence is not possible, other ways should be found of ensuring they are not excluded from what is happening. It can be particularly disheartening when children are enthusiastically included up to a point and then abruptly dropped from the process.

Very young children

Research indicates that those most often exposed to corporal punishment at the hands of parents and carers are, in fact, the youngest and most vulnerable of all – babies and infants. The challenge remains: how can organisations bring out the voices and experiences of these children?

4.2 *Child participation in law reform: Lessons from Venezuela*

Fernando Pereira Verano

Background

Centros Comunitarios de Aprendizaje (CECODAP) believes that children's participation is an integral part of children's rights. Working with adults, other NGOs, children and adolescents is a fundamental aspect of the organisation's agenda.

The campaign to abolish corporal punishment

CECODAP started with discussions about the concept, and effects, of corporal and other cruel and degrading punishment, which were then shared with other social activists and associated organisations. A workshop was organised in the city of Caracas in January 2006, in the context of the World Social Forum, supported by Save the Children Sweden and the Regional Office for Latin America and the Caribbean. The workshop focused on:

- inter-generational participation – children, adolescents and adults participated from the beginning
- discussions about corporal punishment, aimed at determining priority topics of public interest
- the introduction of corporal punishment into the public agenda, not as a private matter. People were intrigued.

The National Meeting of Adolescents in the Social Comptroller took place. Adolescents from different regions of the country participated. They learned that corporal and other cruel and degrading punishment is a form of

violence, and were informed about its implications. They were invited to participate in an incidence campaign.

The overarching framework of the campaign was to make boys, girls and adolescents a priority in the public agenda. CECODAP incorporated corporal punishment as the central topic.

Achievements

- The incidence campaign involved developing an incidence map to show the extent of corporal punishment in Venezuela, and lobbying the National Parliament of the Republic.
- The Adolescent Organised Groups created Linking Commissions in different regions to discuss, agree and organise their participation in the incidence campaign for the abolition of corporal punishment.
- CECODAP, allied organisations, and Linking Commissions of Organised Adolescents from different regions worked together to draft an article recognising the right of children to good treatment. This includes explicit prohibition of corporal punishment. The article was to be included in the Law for the Protection of Children and Adolescents.
- The Chairwoman of the Permanent Committee for the Family, Women and Youth attended the meeting of Organised Adolescents, where she listened to the arguments for law reform. She expressed her commitment to enacting a law to prohibit corporal punishment, and stated that she

was ready to receive proposals.

- An alliance was created between the National Parliament and the Permanent Committee for the Family, Women and Youth. Both parties agreed to plan a social conference to bring about a debate on corporal punishment between citizens and deputies. This was organised by CECODAP, the Linking Commissions of Organised Adolescents and other allied organisations, together with the Parliament Committee.
- Representatives of the organisations allied to CECODAP and the Adolescents of the Linking Commission participated in the social conference, which took place in the National Assembly. Adolescents delivered

the law proposal to the deputies. They acted as spokespersons of the proposal and were interviewed by the media. This enabled the issue to be carried forward, and not stopped by the political polarisation in Venezuela.

- The article prohibiting all corporal punishment was adopted into the proposed reforms of the Law for the Protection of Children and Adolescents, approved by the National Parliament on 23 March 2007. The entire reform of the law, which included a number of articles, was sanctioned by the Parliament on 10 July 2007. The amendments were enacted in December 2007.

Organic Law for the Protection of Children and Adolescents

The new article 32-A, which prohibits all corporal punishment, states:

'All children (boys and girls) and adolescents have the right to have good treatment. This right implies non-violent raising and education based on love, affection, mutual understanding, mutual respect and solidarity.

'The fathers, mothers, representatives, persons in charge, guardians, relatives and educators must use non-violent methods in the raising, formation, education and teaching of good manners to boys, girls and adolescents. In consequence, any kind of physical and humiliating punishment is forbidden. The State, with the active participation of the society, must guarantee policies, programmes and protection measures for the abolition of any form of physical or humiliating punishment imposed on children (boys and girls) and adolescents.

'Physical punishment is understood as the use of force by legal authorities in charge of the raising or education of children (boys and girls) and adolescents, with the intention of causing some pain or corporal discomfort in order to correct, control or change the behaviour of a child, girl or teenager providing that this action does not constitute a punishable act.

After prohibition...

After achieving the legislative change prohibiting corporal punishment, the organisations allied to CECODAP which had participated in the incidence campaign from the beginning, together with newly-allied organisations, created the Alliance for Good Treatment. The National Action Movement for Childhood and Adolescence (MANIA, Movimiento de Acción Nacional de la Niñez y Adolescencia) has adopted corporal and other cruel and degrading punishment of children as its incidence topic for 2008 and 2009.

To meet the challenge of changing attitudes

towards corporal punishment, CECODAP is developing the 'Passport for Good Treatment' Campaign, which aims to:

- create educational guides for educators and schools, to promote good treatment in educational communities
- organise conferences to raise awareness about corporal punishment and the law in associated schools
- design workshops on positive discipline for families
- place corporal punishment on the public agenda, taking into account the elections of mayors and governors scheduled for 2008.

Achievements and Lessons learned

Achievements	Lessons learned
Acknowledgement of children's right to good treatment	Using a common language related to corporal punishment of children allowed connections to be made between political agendas and the need to build new relations based on respect.
Prohibition of corporal punishment	Identifying incidence targets and key activists, and recognising legal reforms in other countries were important.
Participation of boys, girls and teenagers in the creation and discussion of the proposal	Child participation was crucial for legal change. It required careful selection, organisation and monitoring. The strategy in discussions included proposals which were change-oriented and non-threatening. The coherence of the proposal was evident when all party representatives discussed the subject without resistance.
Political will for prohibiting corporal punishment	The principles of equality and non-discrimination were crucial in seeing corporal punishment as politically incorrect. They helped to convey what was wanted in a language understood by a government interested in social change, justice and equity.
Co-ordination between organisations	In building social networks it is essential to include the opinions of boys, girls, adolescents and their families from different regions.
Promoting participation in the development of non-violent childrearing guidelines	Lobbying activities provide opportunities to update understanding of human rights.
Progressive positioning of the topic	It is important to use imaginative ways to create an impact, and to take advantage of different media to express an effective message
Additional lessons:	
<ul style="list-style-type: none">• It is very important to see the idea of corporal punishment as a social, political public issue;• Adolescents have to be trained and prepared for public participation. In research carried out by CECODAP in 2005, children were tolerant of corporal punishment. These views cannot be expressed before Parliament or the Government.	

4.3 *Child participation in law reform: Lessons from Kenya*

Tina B. Ojuka

Background

Kenya is in East Africa and is surrounded by Tanzania, Uganda, Sudan, Ethiopia and Somalia. Save the Children Sweden has programmes in Kenya, Ethiopia and Sudan. Kenya has a population of 34.5 million, with 54% being children.²⁰

Kenya ratified the UNCRC in 1990 and the African Charter on the Rights and Welfare of the Child (ACRWC) in 2006. It does not have a total ban on corporal punishment, but has made progress towards it. The Criminal Law Amendment Act (2003) prohibits corporal punishment in the judicial system. Under the Education Act, as amended through legal notice no. 56 (2001), and corporal punishment is prohibited in schools. The Draft Constitution of Kenya prohibits corporal punishment of children in schools and other institutions.

Involving children and young people in the Constitution of Kenya Review Process

The Constitution Review Process in Kenya has been under way since 1997. It is a highly political process, with many vested interests, and the public felt their interests were not being considered. In 2001, the Constitution Review Commission Kenya (CKRC) was established to collect public opinions. Civil society organisations working with children responded by forming a 'Children's Caucus' to ensure child participation in the review process.

Selection of children

Children aged between 12 and 17 years were selected from children's rights clubs, schools and the wider community. There was an equal number of girls and boys, and disabled children were included.

Sensitisation of children

Children were sensitised on children's rights, and particularly on the provisions of the UNCRC and the ACRWC. They were informed about the importance of the Constitution as the supreme law of the land, the provisions of the existing Kenyan Constitution and its gaps (significantly, that it did not provide for children), and how those gaps could be filled. Child-friendly materials were developed and disseminated. Children's understanding of the issues was tested through debate.

Children's submissions on proposals to the new Constitution

Children participated in the review of the Constitution in a number of ways:

- They presented their views to the CKRC on the need for their inclusion in the review process.
- Provincial children's forums were held where they created their own memoranda on issues to be included in the Constitution. These were submitted to community leaders, members of parliament and the CKRC.

- Children's views were publicised on TV and radio through talk shows. The shows were mainly aired on the national broadcasting station with the widest geographical coverage.
- A national essay competition on 'What the Constitution should say about children' allowed children from across the country to express their views.
- A National Children's Forum consolidated the exchange of information and produced a joint national submission by children from all provinces. Reader-friendly submissions were given to all parliamentarians.

However, children were unable to participate in the final national constitutional conference, where proposals were endorsed, because by law only persons over 18 years could participate.

Achievements

- Ninety-five per cent of all the recommendations made by children were incorporated in the draft Constitution, including those on corporal punishment (see box).
- The capacities of children and children's rights organisations were enhanced through knowledge about Constitutional matters.
- Interest in children's rights was generated among the general public and among legislators.
- Children participated in the UNCRC state reporting process, which highlighted the need to harmonise all legislation on children with the Convention.

Draft Constitution

Article 45:

'Every person has the right to freedom and security of the person, which includes the right: (c) to be free from all forms of violence from either public or private sources; (e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.'

The enactment of the draft constitution of Kenya is a current priority in parliament. The provisions on corporal punishment need to be strengthened.

Lessons learned

1. Law reform is not too complex for children to participate in. They can make valuable contributions if sensitised well.
2. Children need forums of their own in order to effectively participate.
3. Although children were given more responsibility, adults make the final decisions.
4. Incorporation of children's views is often frustrated by adults who do not understand child rights.
5. Child participation can be impeded by negative perceptions, e.g. that children have been coached in their views, or that participation is donor-driven or tokenistic.
6. Children do not always comply with adults' expectations about how they should participate.
7. The constitutional stalemate due to the political climate has created a set-back in the strides that had already been made.

20. Kenya National Bureau of Statistics

4.4 *Child participation in law reform: Lessons from South Africa*

Daksha Kassan

Background

South Africa has had a series of child participatory processes since 1992, before it ratified the UNCRC, including consultation with children during law reform. These initiatives have been on an ad hoc basis, primarily launched by civil society organisations, rather than as part of a coherent plan to implement children's right to participation.

Children's participation in law reform relating to the Child Justice Bill and the Children Act is particularly important. In both cases, a children's participation/consultation study was commissioned by the South African Law Reform Commission (SALRC), the body responsible for the renewal and improvement of laws in South Africa. In both cases, following consultation during the early stages of preparing the Draft Bill for parliament, further consultation was instigated by civil society to ensure that children's involvement continued.

The SALRC Law Reform Process

1. Once an investigation on a particular issue is included in SALRC's programme, a project committee is appointed to lead the investigation and undertake necessary consultations.
2. An Issue Paper is published to initiate and stimulate debate, announcing the investigation and why it is needed, and the options available.
3. Following analysis of submission on the

issue paper, a Discussion Paper is published, which includes a summary of preliminary proposals and a proposed Draft Bill. This allows a second chance for public comment. Workshops and seminars are also held to obtain comment and stimulate debate.

4. Once comments are analysed, a Report containing the SALRC's final recommendations and the Draft Bill is handed over to the relevant government department for consideration and tabling in parliament.

Child Consultations on the Child Justice Bill

The first child consultation (SALRC)

The first child consultation on the Child Justice Bill took place in 1999, when the Bill was still in the form of a Discussion Paper. The SALRC commissioned the National Institute for Crime and Rehabilitation of Offenders (NICRO), an organisation working with children in conflict with the law, to consult with children on the Bill.

Who participated

A study was undertaken at institutions in two provinces. Participants were mainly children who had had some contact with the juvenile justice system. They were recruited by staff at the institution, on the basis that they were able to read and write and were willing to participate, but not in relation to the crimes alleged/committed or to the children's home

language. School children who had never had prior contact with the criminal justice system were also involved.

What happened

Children were formed into groups of 10 according to the various stages of the criminal justice system they had reached (pre-trial, serving a sentence, etc.). They participated in a series of interactive workshops in which the details of the Bill were debated. During the workshops:

- children were asked to comment on key themes of the Draft Bill
- they took part in role-play and small group discussions, gave individual written feedback and completed worksheets
- there was less formality and more role-play and story telling for children under 12
- feedback from participants was largely verbal and anecdotal, and responses were recorded by the facilitator
- children's responses were collected and compiled by NICRO for submission to the SALRC.

The SALRC made extensive and explicit use of the children's contributions in its report for government. What the children said was also reflected in the draft Bill published by the project committee.

The second child consultation (civil society)

The second consultation took place after the Draft Child Justice Bill 2000 had been presented by SALRC to the government but before it was submitted to parliament. It was again carried out by NICRO, but this time commissioned by the Child Justice Alliance, a civil society network formed to build on the success of the first consultation to ensure that children's participation continued as the Bill

went to parliament. In addition to giving their views on the Bill, children were asked about their experiences of the criminal justice system and how they thought the Bill would improve the situation.

Who participated

Again, participants included children at differing stages of the criminal justice system, and included those who had not been in conflict with the law. They were selected from institutions and schools in four provinces, and were recruited by staff members. Participation was voluntary. The age range was 12 to 21 years.

What happened

A series of workshops was organised. Trained NICRO facilitators used worksheets as guides for obtaining information through role-play and individual and group discussion.

When all the information was collected, NICRO compiled a report for the Child Justice Alliance. The children's views were then included in the written submissions made by civil society to parliament.

Child consultation on the Children's Act

The first consultation (SALRC)

As part of the comprehensive review of the Child Care Act, the SALRC consulted children on what they thought should be included in the proposed new law. The consultation took place in the early stages of law reform, after publication of the Issue Paper.

The consultation process was designed by members of the SALRC Project Committee for the Review of the Child Care Act, in consultation with representatives of relevant government departments, NGOs and an international technical advisor from Save the Children UK. This differed from the consultation

process relating to the Child Justice Bill, which had been designed by NICRO, the service provider.

Who participated

Children were drawn from seven provinces and ranged in age between 4 and 18 years. Children participated who had experienced various forms of care, including foster care, residential care, secure care, after-school care. The groups included children who were disabled, who had suffered abuse and neglect, who lived on the street, and who were from a school of religion.

What happened

Focus groups were facilitated by persons affiliated to each participating institution, and held in the respective institutions. This allowed a wider range of children to be involved, and enabled them to participate in a familiar setting with familiar adults. The facilitators undertook training prior to the consultation.

Each consultation comprised four sections:

1. a group session where the children were introduced to children's rights, the law and the role of the government
2. an interview of each child by another child to explore opinions in greater depth
3. discussion of a range of questions identified by the SALRC
4. a follow-up group session to give feedback to the children.

A reporter was present at all workshops to record children's opinions. The responses were compiled into a report for the SALRC, who used them in drafting the discussion paper and the proposed Draft Children's Bill. But although children had identified abuse and neglect by their parents as the main thing they needed protection from, there was no explicit reference to corporal punishment.

Further child participation (civil society) – the Children's Bill Working Group

With the release of the Draft Children's Bill by the SALRC, the Children's Institute, an NGO, initiated a project to explore children's participation in the legislative process as the Bill was being debated by government and parliament. The aim was to facilitate child participation in the debates and decision-making that would inform the final provisions in the Bill. The specific objectives were to:

- understand the challenges faced by children
- inform the children about the provisions of the Children's Bill
- equip the children with skills to become advocates in their own lives
- implement an advocacy strategy to enable the children's views to be heard in the deliberations around the Children's Bill.

Who participated

Twelve children aged between 12 and 16 years were selected from partner organisations working with children in four provinces. They were selected through detailed procedures that took into account ethical issues such as consent from the children and their guardians, anonymity, confidentiality, and the responsibilities and support available for the children from the Children's Institute. They formed the Children's Bill Working Group – Dikwankwetla.

What happened

The project ran over a period of four years. The children attended a number of workshops where they learned about the provisions of the Bill, so that they could tell members of parliament and other duty bearers what they liked and did not like about the Bill. They also participated in workshops which aimed to develop their legislative literacy, and to support

them to articulate their opinions on the proposed Bill and to become advocates on it.

As a result of this project, the children continuously engaged with their communities and decision-makers, made presentations in different forums, appeared on radio shows, and made submissions to parliament. They particularly spoke about the need to increase awareness of child abuse and neglect, and to protect children from it. They gave the example of children being beaten with broomsticks for not finishing all their jobs, stating that this was not right. They recommended that abused children have access to counselling and that perpetrators be removed and jailed. These children were seen as championing children's rights.

Other child participation

Other organisations also enabled children to make their opinions and voices heard in parliament. For example, Molo Songololo, a children's organisation focusing on child participation, brought a group of children to provincial parliamentary hearings and made a huge impact on parliamentarians. The views of children obtained through child participation studies, not necessarily directly linked to the law reform process, were also included in written submissions made by civil society organisations.

Lessons learned

Law reform consultation processes

1. Serious attention should be given to the language(s) used in the consultation. Requiring children to engage in English, when this is not their preferred language, has implications for translation and the gathering and reporting of children's real views.
2. The ability of facilitators to distil the information gathered, interpret the questions, and ask those questions in a child-friendly way impacts on the quality of the consultation.
3. Training of facilitators and briefing them on the aims and objectives of the consultation before embarking on it is extremely important.
4. In focus group discussions, it is necessary to have at least two facilitators – one to facilitate the group discussion, and one to record the information.
5. It is vital that once the information is collected, facilitators correctly interpret what the children say and do not put words in their mouths.
6. Participation of children should be voluntary. Article 12 of the UNCRC says that children should be able to freely express their views.
7. The choice of service provider carrying out the consultation is important. For example, using a provider with existing relationships relevant to the consultation (e.g. with relevant organisations, institutions, children) can facilitate access.

Children's oral submissions in Parliament

1. NGOs facilitating children's oral submissions to parliament need to make informed decisions before asking them to do so. They need to consider the consequences for children, and take responsibility for providing a supportive environment in which children can participate appropriately and with dignity. For example, in 2003 when children were brought to parliament to speak on their experiences, the chair of the committee was not very child friendly. This proved to be a daunting experience for the children, who were cross-questioned. One child even felt that he was in court. Today, some of the parliamentary committees are more receptive to children.

2. Decision-makers and parliamentarians must be told that children are an important group to consult when legislation concerning them is being developed. They must be educated about child participation, and understand that children can make invaluable contributions to decisions about aspects of life that affect them.
3. Parliamentarians have questioned the validity of children's views, suggesting they might have been coached. NGOs need to guard against putting words in the mouths of children. Children who are advocating the prohibition of corporal punishment need to be convinced of it for themselves, and not merely following adults' instructions.
4. Development of child-friendly documents is invaluable when facilitating children's participation during the legislative processes.

Children engaging in their communities

1. Children face resistance from adults who cannot accept the idea of children having influence or who simply do not agree with the notion of children's rights.
2. NGOs should carefully consider the consequences of putting children in the position of advocates, and the possibility that children would promote messages that might be unfamiliar to their community. These have the potential to alienate children from their communities and cultures. Facilitators must ensure that this does not happen and that children are supported throughout.