

UN Committee on the Rights of Child

Day of Discussion on

**THE PRIVATE SECTOR AS SERVICE PROVIDER
AND ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

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Submission by

Save the Children, Sweden

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Social service provision through civil society organizations (CSOs)

An example from South Africa and some tentative recommendations

Background

In South Africa, social welfare for children in difficult circumstances is to a large extent carried out by civil society organizations. These organizations, many of them so-called child welfare societies, mainly work with service delivery. For example, they provide protection, care, counseling, and conduct investigations for children at risk. They also give support and shelter to victims of abuse and domestic violence; deal with children in conflict with the law, foster care and adoptions; carry out HIV/AIDS programs, etc.

History could be seen as one explanation why civil society organizations (CSOs) still provide the major share of the social welfare in South Africa. During the Apartheid era, the white minority government offered very limited services to the large number of destitute and poor, particularly to the black population. As a response to this, charitable and independent child welfare societies were formed to offer social service to the poor communities, often with support from donors abroad.

Since the fall of Apartheid, the new, democratic South African government, which was elected in 1994, has signed and ratified the major regional and international human rights treaties. The social and economic rights that are granted children in the new South African Constitution, which was adopted in 1996, are influenced by the CRC and the CESC. The Constitution ensures every child (person under the age of 18 years) the right to name and nationality, family care or an appropriate alternative, basic nutrition, shelter, health care and social services. Children should be protected from maltreatment, neglect and abuse and no child should be detained, except as a measure of last resort. According to the Constitution, the state should “take reasonable legislative and other measures, within available resources, to achieve the progressive realization of these rights”. There are different interpretations in the South African society of what this means in practice, in terms of resource allocation and provision of services.

Within the government, the National Department of Social Development is responsible for the delivery of social services for children. The guiding framework for implementing children’s rights is the National Program of Action (NPA), which was elaborated by the government in cooperation with CSOs in 1996. The provinces have developed provincial plans of action. Also local programs of action are supposed to be worked out, but, seemingly, this has not occurred. The Office on the Rights of the Child in the Presidency is responsible for coordinating and monitoring the NPA.

Save the Children Sweden (SCS) has carried out an exploratory overview of the situation regarding social service provision for children in South Africa and different actor’s opinions on its future development. The purpose is to enhance the understanding of the present situation and promote discussions with the government and civil society on the best ways to support the state in the implementation of the CRC. The study was compiled in May 2002. It is based on interviews with state representatives (the National Department of Social

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Development and the National Development Agency) and CSOs, both service delivering child welfare societies and NGOs that are more focused on advocacy, awareness raising and research. Unfortunately, due to time constraints, it was not possible to interview any representatives of provincial or local government offices.

Division of roles and responsibility

Representatives of the National Department of Social Development and the National Development Agency (NDA) say they are satisfied with the current division of roles and responsibility. They think the roles are clear and that guidelines exist that are used to identify the responsibilities of different actors. Most interviewed NGOs have the opposite opinion. They claim there is no clear relationship between the state and civil society in the delivery social services for children and that the roles vary between the provinces. The National Department of Social Development, however, emphasizes that the provincial levels are responsible for the implementation of national policies. Also, the Department believes there is no need for a common division of roles over the country. There are different needs in depending on the area, which in turn calls for different priorities.

CSOs, on the other hand, point out that there is too much competition between different actors with overlaps in some areas and gaps in other. In the KwaZulu-Natal province, for example, some CSOs argue that the state actors have to provide services in certain areas according to provincial agreements, but they do not. Some CSOs also seem to feel threatened by government involvement: “They take our ideas and implement them in their areas”.

Regarding the long-term vision of the relationship between the state and civil society in social service provision for children the study shows that opinions are very different.

According to the National Department of Social Development the primary role of the state is, and should be, the establishment of a legislative framework and policies. The government should “source out services and not take them on”. This position also holds that government actors do not sufficiently meet the grassroots and that the CSOs, who have better contacts with the communities, are in a better position to deliver services. This view is supported by the NDA, who thinks that the state should create the environment and then allow civil society to do the things they are more qualified to do.

Several service-delivering CSOs also think that civil society should provide service delivery, as long as they are given funding. In general, CSOs think that the government, at least at present, lacks the capacity and knowledge to take over the responsibility for service delivery. Another argument that was given by one NGO was that it did not want “a socialist welfare state” and that community-based service is more democratic.

Many of the advocacy-focused organizations have a different view. While they tend to agree that the state at present does not have the capacity, in the future, they would like the government to take more responsibility in providing basic services. Thus CSOs should support and put pressure on the government to deliver the services that are required.

Funding

The study indicates that CSOs in South Africa have a long history of receiving international financial support for their work. After the Apartheid era, however, many donors shifted priorities and started providing support to the government. This led to a financial crisis for many CSOs, which was viewed as a threat to the delivery of basic social services, especially

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in rural areas. Consequently, the government decided to increase its grant support to service delivering organizations through various forms of state funding. Most of these funds are granted through the provincial and local governments. In addition, in 1998, the National Development Agency (NDA) was established to channel funds to CSOs. The NDA supports programs and projects “that will contribute directly to the enhancement of the asset-base of the poor”. Still, many NGOs consider the resources to be too limited and believe that more funding should be available since they are doing the major share of the social service delivery to children. Also, some CSOs complain about bureaucracy and unclear criteria about the grants. For example, one interviewee says that it is “an exercise in creative writing to get funds”. Despite such criticism, the NDA claim there are clear criteria for funding.

The National Department of Social Development states that the government should not take full responsibility for funding of social services and that donor funding is important as well. Some NGOs acknowledge that receiving state funding places them in a difficult position. Although civil society is vibrant and active in advocating for changes, several service delivering NGOs find it difficult to criticize the government since they are dependent on the funds. Although the state is only paying for a small part of their work it is often critical for the survival of the organization. It is claimed that, at some occasions, the state has cut funding to NGOs after being criticized by them. Consequently, some NGOs would prefer to work on a contractual basis. With contracts, based on clear consensus and partnership, it would be easier for the NGOs to maintain their independence, they think. Other CSOs go as far as refusing state funding and saying that “then we might as well become the state”.

Accountability

Without a registration CSOs cannot get economic support from the state. All the organizations included in the SCS study are registered, yet several of them state that there exist many unregistered CSOs delivering services for children in South Africa.

The National Department of Social Development has adopted minimum standards for service delivery to children and foster care. According to the Department the standards were developed in cooperation with the provinces and national CSOs. The NDA has also established certain criteria that projects need to address in order to fulfill the overall eligibility criterion for funding: “to eradicate poverty and its causes”.

Regarding evaluations of social services, only the national, state financed CSOs are accountable to the National Department of Social Development. All government departments as well as local and provincial authorities should conduct an annual Development Quality Assessment (DQA) of the CSOs that receive funding from them. These DQAs are intended to replace the physical inspections of NGOs that were conducted during the apartheid regime. The DQAs have not yet been implemented. The main reason for this, according the National Department of Social Development, is lack of personnel resources.

All interviewed CSOs who receive state finance know that the government is supposed to evaluate their work. The extent to which this is actually carried out differs greatly between different CSOs and different provinces. The National Department of Social Development acknowledges that it does not have the resources to make regular visits to NGOs. Some CSOs are satisfied with the way the provincial government fulfils its monitoring role, makes inspections and asks for work plans and quarterly reports. Others are very critical and even doubt that their reports are read.

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Some of the advocacy-focused organizations are also critical. One of them states: “/.../ while there are large numbers of civil society role players active in the field of service delivery to vulnerable children with various needs, the quality of these services is often inconsistent and does not necessarily reflect the CRC”.

Recommendations

More information is needed before definite conclusions can be drawn from the overview of social service provision by CSOs in South Africa. Still, Save the Children Sweden would like to highlight some interesting points that are raised in the study. These, together with experiences from SCS child rights work in other regions, fit well with the questions that the Committee on the Rights of the Child wants to highlight on the day of general discussion on the private sector as service provider and its role in implementing child rights:

Criteria for partnership management: The same national minimum standards should apply for all private service providers. It is neither in accordance with the principle of best interests of the child (CRC, Art 3) nor the principle of non-discrimination (CRC, Art. 2) that standards only apply for registered or state financed organizations, or that there is some other limitation. In order to make sure equitable provision and accessibility of services, governments have an obligation to set standards and monitor compliance of all service providers. Also, in order for this to apply nationwide, the existence of systematic approaches and national structures are fundamental. It is often given that governments take on a lead role to institutionalize and coordinate such systems and structures, while CSOs may carry out activities within the established frameworks. However, it is paramount that CSOs are listened to and can participate proactively in the initiation and running of national systems for the implementation of children’s rights together with relevant government partners.

Ensuring accountability to beneficiaries: When non-state actors are involved in service provision it is more difficult to define accountability. Only governments – or their decentralized entities – are parties to the CRC, thus, ultimately accountable for compliance with the convention. If a CSO decides to close down, for example, a counseling center or an HIV/AIDS program due to change in priorities or funding constraints, it cannot be held accountable in the same way as governments. Although CSOs have an active role to play in ensuring that the rights of children in their care are secured, they are not primary duty-bearers against which rights can be asserted.

Many civil society representatives and even government officials often claim that CSOs are better equipped to work directly with the grassroots, due to their non-partisan position, non-bureaucratic management and high levels of commitment. However, one should probably avoid such generalizations considering the different characteristics of CSOs and the above-mentioned problem of accountability. While popularly elected governments can delegate the implementation of some of its practical programs, it cannot delegate accountability nor automatically count on the CSOs being more accepted among the potential beneficiaries.

As regards to accountability child rights organizations can have different functions and roles. While some organizations engage mainly in state financed service delivery, others will continue to see their role as watchdogs, free to advocate for positive change as well as to reveal and criticize eventual government inefficiencies and mistakes. It is possibly in the latter

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area of work where the main comparative advantage for CSOs presently lies. Such advocacy-oriented organizations might also opt to avoid government grants to maintain full independence. However, the need to differentiate between the two categories of CSOs will be reduced if governments focus on controlling the compliance of minimum standards but refrain from controlling the critical voices of CSOs. Consequently, service delivery organizations should be seen as equal partners in the implementation of children's rights and not as entrepreneurs of government programs.

Governance: As said, in order for governments to maintain national social priorities when dealing with private service providers, they need to put in place rigorous standards for NGOs and other private sector actors as well as strong mechanisms for monitoring compliance with these standards. To develop standards and guidelines, follow up and deal with cases of non-compliance, governments will need to invest considerable resources, both in terms of money and qualified staff. The fact that personal or economic resources are lacking is not an acceptable excuse for failing to monitor quality of services for children and their conformity with the CRC.

Furthermore, governments that want to act in accordance with the provisions of the CRC have to make sure that the involvement of private service providers does not lead to extreme disparities between e.g. urban and rural areas or different provinces. Governments also have to be prepared to take measures in case disparities or gaps in the service provision are discovered. Consequently, if the reason for involving private actors has been to reduce government expenditure, the saving might turn out to be considerably smaller than expected, or even non-existent.