

Recommendations for Children and the 11th Plan

Emerging out of the Consultation held on 5th July 2006

Organized by Centre for Child and the Law, NLSIU, Bangalore

Participants from Karnataka and Goa

Joint Convenors – Butterflies and Prayas, Supported by HIVOS and Plan India

Introduction

The participants noted with regret that though the consultation had provided for a brief introduction to the 11th Plan Approach paper and the ICPS scheme, a comprehensive discussion on the same was not possible. This was mainly due to the limited access to the website (as regard the Approach Paper) and the non-availability of the ICPS drafts which seemed to have been accessed only by a few participants from various sources.

The participants at the consultation hailed from all over Karnataka with one representative from Goa.

A more detailed report of the consultation is under preparation.

Recommendations

Globalization and Governance

Participants reiterated the urgent need for civil society to lobby for the State to revisit its engagement with the processes of Globalization. Planning has to resist the negative effects of globalization. Policy and planning and law making should engage more constructively in a process of 'internationalization,' linking up and drawing from progressive experiences in the South, especially South Asia. It has to more effectively address the structural root causes that drive families and children into impoverishment rather than promote schemes as reactive measures.

Partnership between the state and civil society should move toward enabling public and community partnership instead of public-private partnership.

The State is moving out of the planning process and giving way to privatization. The relative roles of the State, market and civil society should be clarified, ensuring that the state as primary duty bearer to take the responsibility of funding and catering to the needs of marginalized children and their families. Voluntary organizations can only be supplemental and cannot take on or substitute the role of government in providing these essential services. Terms of engagement between the State and civil society actors should be based on principle of state accountability. They can jointly manage programmes or offer technical expertise and innovative models but the primary responsibility shall be that of the state.

The participants agreed that it would not be appropriate to adopt a voucher scheme for schools, as envisaged in the Approach Paper. This was because such a step would lead to increased privatization of elementary education and abdication of state responsibility. Instead need cum merit based scholarships should be provided.

The Planning Commission should prioritize budgets for the competence building of human resources to respond to the growing welfare needs of families and communities, a negative outcome of the process of Globalization.

Policy as foundation for planning and law making: Planning for children needs to be backed by clear policy that responds to the specific needs of marginalized children and the varying needs of States. There is a multiplicity of laws, Schemes and Government orders, which provide for the setting up of institutional structures for children. For example Child Protection Authorities have been set up under the National Legal Services Authority for the State of Goa. A policy framework specifically on Child Protection Authorities needs to be outlined at the Central and State levels so that there is more co-ordination and clarity as regards powers, jurisdiction, protocols and procedures for the effective protection of children.

Social Audit and Empirical research: The Juvenile Justice (Care and Protection of Children) Act 2000 provides for Social Audit to be undertaken. However, no budgetary allocation has been made for this. This along with the provisions under the Right to Information Act offers a radical framework and opportunity for comprehensive auditing of child protection, which enables participation of all actors, stakeholders and users of the child protection service. The results of such audits will provide a more comprehensive reflection of the realities and will enable more need based planning that effectively protects the rights of children. The 11th Plan should prioritize budgetary allocations to facilitate such audits.

Transparency and Participation: The planning process especially with regard to the process of setting up the various Committees/Working Groups under the Planning Commission, and the drafting of Laws and Schemes should be a transparent exercise. This is a non-negotiable because of the following:

- a) Children and families have a right to Participate in decisions that concern them.
- b) India has a strong democratic tradition and an impressive constitutional vision.
- c) India has ratified the UNCRC. The state's response to the Recommendations of the UN Committee should reflect a genuine commitment to child rights. It cannot be in the form of hastily drafted law and schemes.
- d) The Right to Information Act places a responsibility on the state to ensure transparency.
- e) Planning needs to be bottom up and should take into account Panchayati Raj Institutions, involving them in the process of planning, implementation and monitoring and auditing. This will facilitate and energize local communities to participate in and respond to the challenge of responding to the needs of every little child in every Taluka in India.

- f) The State's ability to effectively respond to the enormous and multifarious challenges relating to protecting the rights of 19% of the world's children who reside in India is clearly inadequate. The child rights movement, including activists and academicians can (and have a responsibility to) make a qualitative contribution drawing from innovative programmes and grounded experience.

Research: Empirical research needs to be undertaken on the implementation of existing law and schemes, specifically on the functioning of the Child Protection Authorities, institutions and services across the country. Rather than tinkering with existing legal frameworks/schemes and supplementing/overriding them in a piece meal fashion, the state needs to commit itself to arriving at Policy clarity on all issues relating to children, families and communities.

Information collection and management: The need to support and ensure that requisite data is collected and this data shared in a manner that enables evidence backed proposals for policy, law and programmatic intervention was mooted. This needs to be a priority as regards budgetary allocation in the 11th Plan.

Process goals

Policy formulation, planning and law making need to be undertaken in a manner such that the process is systematic, participatory, and time bound.

All state/civil society actors who intend to/are engaging in processes of law making or formulation of schemes should draw from the rich collective processes in Goa (Goa Children's Act) as well as Karnataka (Karnataka Rules). Both these efforts have resulted in integrating the child rights perspective and principles into law, while simultaneously propelling civil society collective action and participation in the promotion and protection of child rights in the State.

Evaluation and Monitoring: Sufficient allocations should be set aside for evaluation and monitoring as an integral part of any scheme or programme for children.

Child Impact Assessment should be a mandatory requirement before the adoption/notification of any policy or law on any issue. This is in line with the campaign to mainstream child rights as a cross cutting issue.

Information Dissemination: In an era of Right to Information, provision should be made to empower people through allocation of budget specifically for information dissemination on laws and schemes in the 15 languages recognized as State languages in the Constitution, including Braille versions for the visually challenged.

Need to be timebound

Budgetary allocation

The evaluation / outcome of Schemes is not being done. Professional systems for Evaluation and Monitoring of schemes and law should be budgeted for and prioritized in this Plan.

The role and responsibility of MPs and MLAs in child protection needs to be specified. A percentage of funds under MPLADS should be earmarked for marginalized children.

The government has to allocate 6% of the GDP for education as recommended by the Kothari Commission.

The state should ensure that the appointments, procedures and powers of the Children's Commissions fulfill the objectives and vision for such bodies. They should be supported in their role of reviewing laws and schemes for children. The Planning Commission should earmark funds to facilitate these bodies to function effectively while also specially supporting research activities.

There is an increasing tendency to generate funds from fines rather than have clear budgetary allocations based on prioritized needs. The quantum of funds allocated often depends on the violations. This is a dangerous trend as in some sense this contributes to promoting illegal activities for commercial gain, which in turn facilitates state abdication from welfare.

Child Marriage Prevention Officers are provided for in Karnataka but there is no specific budgetary allocation.

Schemes should also provide for salaries as well as security for the functionaries. For example the ICDS should be strengthened so that the staff are paid appropriate salaries in order to ensure quality service and sustainability.

The UN Committee on the Rights of the Child has recommended to most of the state parties the need to set up 'sensitive, impartial and independent grievance addressal systems' for children especially for those in institutional settings. The Plans and schemes should make provisions to enable the setting up of such institutional structures. To begin with the Plan should provide for Child line services to be provided for all statutory and non-statutory institutions housing children. (Such provision exists in the Karnataka Juvenile Justice Rules 2002, but no budgetary allocations have been made.)

The funding for Childlines was discussed and there was some debate as to whether the funding should come directly from the Center or through the concerned State Department. The participants felt that it should come through the State Department but not at the cost of increasing red tape/delays.

The Juvenile Service Bureau Scheme in Karnataka is operating currently on a zero budget. Schemes such as these need to be supported through funding from the Central Government in order that prevention and identification of children and families at risk is undertaken.

The Integrated Child Development Scheme

As regards the ICP Scheme, there was unanimity on the issue that the Ministry of Woman and Child Development has demonstrated its commitment to children through the efforts put into arriving at this draft. This needs to be commended.

However, the consensus was that the ICPS should not be adopted in such haste. A decision was taken to reject the Draft ICPS Scheme. (5th Draft dated 20th June).

Some major limitations of the scheme are that it is not backed by policy or empirical research, it is extremely top heavy and is not an 'integrated' scheme at all. It reflects only the mandate and jurisdiction of the concerned Department, without taking into consideration critical issues of children related to health, education, etc. which comes under other Departments in the Ministry.

Instead, funds should be provided in the 11th Plan specifically to facilitate a participatory, decentralized and empirical research based process for developing a comprehensive National Policy for *all* children with a special focus on the marginalized. This should be a time bound activity, which should then become the foundation for law and programmatic intervention. The 11th Plan should provide for this draft policy to be placed for public debate during the 11th Plan period itself. After the policy is adopted, it could then become the foundation for a comprehensive legal framework for children in India. (The recent South African Law Commission experience of arriving at policy and law for children was given as an example where participatory processes including participation of children were facilitated and a consensus drawn. Costing was undertaken and then only the Final Drafts submitted).

The scheme fails to provide for a genuine and effective multi -disciplinary and multi-sectoral approach to the issues of *child development and* protection. The strategy clearly indicates that the existing JJ institutions will be strengthened. The whole scheme of child protection needs to be re-envisioned.

The Governance of Schemes is a matter on concern. The rationale of scrapping some schemes in the guise of unutilized money and adopting such an 'integrated' scheme is unacceptable.

Schemes need to be enabling in that it recognizes and responds to varying/special needs/context of each State. (For example, Goa has a declining population and therefore schemes, which promote family planning, cannot be utilized in the state. This denying it the possibility of using such funding for other related and results in non-utilization.)

District and state level action plans need to be developed and guidelines be given to states, thereby decentralizing the planning process itself. For the above, data, collection and research be carried and need assessment be done. Instead of adopting the scheme in its current form, the 11th Plan could disburse at least 50 % of the funding to each of the States who could then facilitate such a decentralized planning process responding to the special needs and contexts within each state.

Staff appointed under schemes should get benefits. This will contribute to greater sustainability and retention and attract competent persons for these important services.

The ICPS has identified a number of gaps in policy, law and schemes. It has attempted to respond to these gaps purely through the scheme itself. This is not acceptable.

Sectors

The participants listed sectors of children that required greater attention. These are listed below. (Not in accordance to priorities)

Children with physical and mental impairments

Children below six years of age. Priority should be given to improve and enhance crèches. The Shishu Griha scheme should be evaluated by CARA

Children and families living on the streets and urban slums facing threats of demolitions
Homeless families

Children of migrant workers and construction workers

Children who are witness to crime

Child victims

Single parent families

Children within institutional care

Protection of the girl child, especially rape and incest victims

Severely challenged children.

The rights of children residing in Shelter Homes and Juvenile Justice statutory institutions to quality education has to be protected. In addition, vocational education and training should be provided to enable children to be equipped with life and livelihood skills.

Scholarship schemes for needy students should be provided.

The rights framework and issues dealing with specific programmes/schemes/sectors

Core services essential for the survival, protection, development and participation of children should be incorporated into the legal framework so that they are justiciable and not left to programmatic intervention under schemes. Examples from the Draft ICPS scheme were quoted to substantiate this point.

Law reform

Law reform should not be undertaken in a piecemeal fashion. One strategy would be to review existing law so that laws that contradict each other are harmonized, retaining provisions that are most progressive and in the best interest of children and families. Another strategy would be to simultaneously work towards arriving at a comprehensive policy for all children in the country. This could then be the basis for converting core issues that need to be made justiciable into law, identifying area for programmatic intervention by the state and also clearly listing areas where the state should not intervene.

The Child Marriage Act needs to be amended in order that it effectively addresses this critical issue. Rules in many states are yet to be notified.

Implementation of existing law

Child marriage Act should be amended centrally and rules at the state level need to be reformulated and adopted in a time bound manner. Funds need to be allocated for the implementation of this law.

The implementation of the Minimum Wages Act should be made time bound with clear indicators and outputs. This will address some of the root causes that drive families and children into impoverishment.

One participant suggested that another statutory institution should be proposed with powers equal to that of the Election Commission, which should be the Nodal agency to monitor the implementation of law. This point was not debated adequately and required more clarity vis a vis the role of the Children's Commission.

Adoption: Confidentiality in the affidavit of relinquishment should be respected. The multiple authorities being visualized in the Scheme in addition to existing authorities needs to be rationalized in order that parents are encouraged and supported to adopt children rather than shy away from it because of such sharing of sensitive information.

Juvenile Justice (Care and Protection of Children) Act 2000

Rolling membership of CWC/JJB: The participants agreed that in situations where the term of these competent authorities comes to an end, at least one or two members of the current competent authority should stay on to guide and orient the next one that is appointed.

Staff child ratio and decentralization of competent authorities: CWCs, and JJBs should be appointed depending on an appropriate staff child ratio. CWCs should also be set up at the taluk level. A mobile CWC and JJB was also mooted. As regards the appointment of counselors, probation officers and other functionaries, a thorough job analysis needs to be undertaken based on the experience of these early years of the implementation of the Act. This should be the basis of future appointments based on clear job descriptions and role clarity.

Qualification: The qualification criteria for members seeking appointment to the competent authorities in all the State Rules needs to be studied so as to ensure that appropriate competence is brought into the judicial decision making procedures for children under the Act.

Selection: The procedures for selection and appointment needs to be studied and monitored so as to ensure that competent and committed persons are appointed to these critical positions. All appointments for any authority/functionary should be based on clearly outlined criterion and measurable competencies preferably determined through a formal examination, supervised by an appropriate Judicial Authority.

Remuneration to Social Work members appointed to the Competent Authorities:

Some discussion took place on the issue of remuneration of the CWC members. Some participants proposed that the small honorarium and travel allowance facilitated experienced, retired professional to engage in a fulfilling role. It also ensured that people do not get attracted to this position for the wrong motives of financial gain. Others felt that the CWC members needed to be paid a more substantial remuneration to ensure that they do not consider this a 'part time' responsibility which gives them power and status but enables even younger professionals/experienced persons to take on this role with commitment and in a sustainable manner.

Diversion: Some members advocated for diversion of children who have committed petty offences. However dissent was expressed on this point, as the law needs to be amended to include special provisions for Diversion such as classification of offences and clear structuring of discretion for Police. Further, the SJPU has not been conceptualized as a multi-disciplinary child protection authority and it has been conceived of only at the level of the District and not the Police station. This could place children at the mercy of the discretion of Police.

Joint Management: The Home Committees for state-civil society partnership in the management of statutory homes under the Juvenile Justice (Care and Protection of Children) Act 2000 provided for in the Government of Karnataka's order should be replicated across the country and supported through appropriate budgetary allocations.

Administration

Organization of Departments: Separate departments need to be set up for Children and Women and each of these should be Nodal Departments. Further, children's rights and needs should be mainstreamed in all Departments, Policy decisions and schemes as cross cutting issues.

Non-implementation: Strictures/Penalties for non-implementation of laws by States needs to be strengthened. (This is also an area for law reform.)

Training, Selection and Appointment of actors in the delivery of services to children: Quality services need to be provided to children through experienced/professional persons with a clearly defined job description, role and appropriate salary. The capacity building and training of actors responding to the needs of children should be organized, consolidated and synergized, preferably as Training and Development Cells within the concerned Departments as has been initiated in DWCD Karnataka. Appropriate and relevant training methodologies should be used, including conducting needs assessments, measurement of competencies as outputs and providing for ongoing on the job capacity building through a scientifically designed curriculum.

The country is in need of Capacity Building programmes and Institutions that produce a competent cadre of trained child rights actors. This should be based on needs assessment for all functionaries/authorities provided for in laws and schemes for children and families in India.

Models

The house debated and recommended evidence based proposals as regards three critical statutory institutions for children, which have shown extremely positive results in Karnataka. All these models have been developed with extensive contribution from civil society including NGOs, individuals, community, academic institutions, human rights organizations and donor organizations with some limited participation of children as well. The state has largely played a rather limited role in supporting these institutional structures despite their statutory nature mainly due to lack of adequate financial/human resources. These critical institutions need to be strengthened with increased allocations and multiplied/upscaled at the national level¹. These were

- a) School Development and Monitoring Committees (a statutory institution under the Panchayati Raj Act in Karnataka). Proposal made by CCL, NLSIU
- b) Child Welfare Committee (a statutory authority under the Juvenile Justice (Care and Protection of Children) Act 2000. Proposal made by the CWC (Bangalore Urban).
- c) Special Juvenile Police Units set up under the JJ Act. Proposal made by ECHO, Bangalore.

The participants agreed that the ‘collective processes’ of developing these models in partnership with the State and other civil society actors and stakeholders was as important as the ‘products’. These should form an important part of the models proposed, and should be prepared and disseminated as an outcome of this consultation.

Commitments made at the consultation

The Joint Director, DWCD, GoK agreed to initiate processes to make the expenditures on schemes more transparent and accessible to the public and also to strengthen existing efforts at disseminating information about the various schemes.

The Joint Director, DWCD, GoK shared the decision of the Government to move towards professionalizing the selection of Social Work Members to the Competent Authorities, drawing from the lessons learnt in the previous selections.

As proposed during the consultation, CCL-NLSIU committed to send in the final recommendations that emerge out of this consultation to the following:

1. To be included in recommendations adopted during the National Consultation in Delhi on the 7th July 2006, convened by Prayas-Butterflies.
2. To the IACR network who have been deliberating on the 11th Plan and the Integrated Child Protection Scheme.
3. The Planning Commission
4. The Ministry of Woman and Child Development, GOI
5. The Department of Women and Child Development
6. The concerned Department in the Government of Goa
7. Any other institution/organization that needs to get these recommendations in order to positively impact the Planning process for children.

¹ Attachments with revised detailed budgetary proposals being prepared and will be submitted to Prayas and Butterflies in the next few days.