

***THE PROVISION AND FUNDING OF CHILD WELFARE
SERVICES IN SOUTH AFRICA
SUBMISSION TO FINANCIAL AND FISCAL COMMISSION***

Paula Proudlock of the Children's Institute at the University of Cape town and I have each year for the past six years provided an in-depth "follow the money" analysis of the budgets of the nine provincial Departments of Social Development (DSD). Our analysis assesses to what extent the departments have allocated the necessary resources to implement the services required by the Children's Act. The analysis also assesses – from the evidence available in budget documents – to what extent the provinces have spent these resources. The work has focused on DSD because – as highlighted in the report of the Financial and Fiscal Commission (FFC) – this Department bears the primary responsibility for implementation.

Our experience of undertaking this analysis over the last six years, and the accompanying presentations, discussions and related work that we have been involved in place us in a good position to comment on the FFC report. We have sent through to the FFC our full report for 2012 as well as the summary report. This brief note is intended to highlight some comments we have on the FFC report.

I must preface these comments by noting our pleasure that the FFC has recognised the importance of the issues sufficiently to commission this report and to engage in a public consultation. The comments below must be seen in this light.

The comments are as follows:

Problematic definition of child welfare

It is unhelpful to categorise child grants as a child welfare service. Classifying the grants in this way is confusing as they are not classified by government in this way. The grants do, indeed, contribute to child welfare, but the same could be said of a wide range of other services, including health, education, housing and the like. What adds to the confusion that results from classifying grants as welfare services is that the national sphere of government is responsible for grants, while it is primarily the provincial sphere that is responsible for funding and provision of child welfare services. Yet further confusion results from the fact that the history of government performance and progress in respect of grants has been very different from the history of government performance and progress in respect of child welfare services. The relatively good performance in terms of rollout of grants thus masks the much poorer performance in respect of "real" child welfare services.

Exclusion of HIV and AIDS and family sub-programmes

The FFC report focuses only on the child care and protection and crime prevention and support sub-programmes. It does this on the basis that these sub-programmes focus primarily on children while other sub-programmes do not. Our analysis suggests that this categorisation is inaccurate. DSD's primary responsibility in respect of HIV and AIDS relates to mitigation while the Department of Health has responsibility for health. A core aspect of mitigation relates to services in respect of orphans and vulnerable children (OVC). A substantial part of the HIV and AIDS sub-programme can thus be seen as child-directed. The family sub-programme is, or should be, responsible for a range of prevention and early intervention sub-programmes, which again relate in large part to children's well-being. The crime prevention

and support sub-programme is, we argue, less oriented to children, with its focus primarily on youth (many of whom are no longer children) and adult transgressors.

Inadequate specification of government responsibilities

As partly acknowledged in the FFC report, the Children's Act distinguishes between services that the MEC "must" provide and those that the MEC "may" provide. The term "must provide" implies that the MEC must ensure either that these services are provided directly by the province, or that the province funds others (usually non-profit organisations (NPOs)) to provide them. This is mandatory for provinces.

The FFC report provides a short summary of the NAWONGO case. The report does not, however, acknowledge the full import of this case. In particular, the judge was clear that government has an obligation to fund NPOs if it does not deliver services itself; this is not a choice. The summary of the NAWONGO case in the report is also out of date as there have been subsequent developments. These can be summarised as follows:

In its second judgment (9 June 2011), the Free State High Court kept its structural interdict in place, ordering the Department to make its revised policy compliant with the Constitution, having consulted with the NPOs, within three months. When by September 2012 it still had not done this, NAWONGO applied to re-enrol the matter itself.

The hearing took place on 22 March 2013. The Department admitted that even using its own approach, 13 sets of further amendments to its revised policy were required. It nevertheless asked the court to declare the report compliant, subject to these amendments being effected. It asked that, if the judge did not agree to this, there be another postponement to allow it to consult further. NAWONGO argued that the Department was in clear breach of the order of 9 June 2011, and that its revised report continued to flout the Constitution. This was because the Department still wanted to reserve to itself to itself the power to under-finance even the programmes that it had approved. NAWONGO asked that the court reject this, and grant a punitive costs order against the Department in view of its conduct, and order the MEC and Head of Department to appear before it.

Judgement is expected during April.

The summary indicates the urgency of adequate funding of NPOs that deliver child welfare (and other prioritised) services being addressed. It is not, as sometimes implied in the FFC report, an issue that can wait several years during which child advocates can undertake further "advocacy".

National Treasury has itself partly acknowledged the urgency of the matter by including additional funding for NPOs over the three years of the medium-term expenditure framework (MTEF). However, the additional amount provided is far from sufficient and is too late to reverse the closure of some NPOs and retrenchments by others.

Focus on trends rather than absolute levels

The FFC analysis focuses primarily on trends over the years and across provinces. It does not engage with the question of whether the funds allocated are sufficient. This is a serious gap. As we show in our annual analysis, the allocations are seriously insufficient even when

measured against the lowest measures provided in the government-commissioned costing report of 2005. The FFC report refers to the costing but does not engage with it for comparisons.

The documents submitted by government for the NAWONGO case provide more recent costings of various services. These costings were again commissioned by government, are more recent than the 2005 costings, and were used by government-commissioned KPMG to come up with various scenarios. These more recent costings again show the very serious insufficiency of current allocations in Free State, a province that in many ways does better than most other provinces in our own analysis. The availability of the detailed costings, which were developed in a way that allows for easy updating for inflation and the like, also removes the need for further work on norms and standards before the funding of child welfare services can be rectified. Nevertheless, the FFC report recommends such further work on norms and standards as one of the next steps and does not include any recommendations in respect of immediate allocation of additional funds. In doing so, the FFC report again does not recognise the urgency of the problem, and the fact that a solution can and must be found sooner rather than later.

Suggestion that municipalities take responsibility for child welfare services

The FFC report suggests at several points that municipalities should take responsibility for child welfare services, including engagement with NPOs that deliver such services. This suggestion is problematic. Firstly, there is widespread agreement that local government is the least functional of the three spheres of government. It is therefore not sensible to place another responsibility on it. Secondly, the Children's Act, which governs most child welfare services, is clear that it is provinces – and the MEC in particular – who are responsible. This responsibility cannot be shifted. Thirdly, the financial and other capacities of municipalities differ widely. Shifting the responsibility to this sphere will mean that children in the poorest, mostly rural, areas will be further disadvantaged as their municipalities will be the least able to provide services and/or fund NPOs to do so.

Suggestions that can cause further delays

The FFC report has several recommendations that could entail further delays in addressing the key issue, which is budget/funding. One such recommendation is that there be further audits of NPOs. Another is that a new set of performance indicators be developed. (On this second recommendation, there have already been three rounds of indicator development, each of which implies that provinces develop a new system and lose the ability for monitoring trends in delivery over time.) Such recommendations run the danger of being used as excuses why the funding cannot be addressed in the short term. Meanwhile further NPOs will close and/or retrench key staff, and many children will continue to remain without the services that they need.

I hope that these comments are useful and would be happy to engage in further discussion if the FFC would find that helpful.

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