Prevention of Violence Against Children through Legislation in South Africa

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Resources Aimed at the Prevention of Child Abuse and Neglect
Outline

• About RAPCAN
• Prevention framework
• Children’s Amendment Act No. 41 2007
• Child Justice Act. No. 75 of 2008
• Tertiary prevention:
  • Criminal Law (Sexual Offences and Related Matters) Amendment Act. No. 37 of 2007
• Children and Domestic Violence
• Dedicated specialised services
• Way forward
RAPCAN

- Resources Aimed at the Prevention of Child Abuse and Neglect
- Established in 1989 – 20th anniversary
- Broad children’s rights agenda
- Focus: child victimisation and child offending
- Within a prevention framework
- Key services
  - Direct services (local level) court and community based
  - Training and capacity building
  - Resource production and dissemination
  - Advocacy for social change (law and policy focus)
  - At district, provincial, national and regional (SADC) levels
- Committed to evidence based practice
Prevention framework

• Primary prevention (prevention)
  – Broad based programmes addressing risk
  – Parenting programmes, social security, education
• Secondary prevention (early intervention)
  – Targeted where risk factors are evident and early signs are present
  – Diversion programmes, behaviour problems, learning difficulties
• Tertiary prevention (‘statutory’ responses)
  – After victimisation/crime has been committed
  – Counselling, prison, treatment programme
• Current responses emphasise expensive tertiary interventions
• Most responses fail to look ‘upstream’
• Higher returns on investment for primary prevention
Risk and/or Protective Factors

- Victims and offenders share many of the same risk and protective factors
- Gender dimension: Women more likely to be victimised; Men more likely to offend

These include:
- History of sexual violence/abuse
- Risky sexual behaviour
- High levels of stress
- Substance use/abuse
- Controlling patriarchal relationships
- Male sexual entitlement
- Unsupportive families
- Poor parent child attachment/relationships
- Poverty
- Access to quality education
- Weak child protection and criminal justice systems
- High levels of exposure to violence in the home or community
- Disempowered communities
- Social tolerance of violence and sexual violence
Primary and secondary prevention: Relevant legislation

- No comprehensive prevention policy framework – piecemeal approach
- Legislation can address a range of risk factors.
- Prevention of Violence Against Women (VAW) and Violence Against Children (VAC) should be addressed through a range of legislation.
- Children’s Act and Prevention and Treatment of Substance Abuse Act address primary through to tertiary prevention.
- Child justice legislation addresses secondary and tertiary prevention
Prevention in the Children’s Amendment Act

• Prevention and early intervention programmes must be provided for in provinces
• The Act includes:
  – Developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children
  – Promote positive, non violent discipline
  – Promote appropriate interpersonal relationships within the family
  – Provide psychological, rehabilitation and therapeutic programmes
  – Preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
  – Preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs;
  – Diverting children away from the child and youth care system and the criminal justice system
• Availability of programmes is the challenge
Prevention in the Child Justice Act

• Recognises that institutional detention exacerbates and promotes risk factors
• It is in the interests of the community/society to intervene in the cycle of offending
• Young offenders must be held accountable
• Innovation in process
• Promotes restorative justice and provides for possible diversion
• Availability of evidence based treatment programmes for diversion or sentence is limited.
Primary and Secondary Prevention: Relevant legislation

• In addition:
  – Domestic Violence Act
  – Liquor Act
  – Firearms Control Act
  – Social Security Act
  – Prevention and Treatment for Substance Abuse Act
  – Education laws
  – Housing related laws
  – Health related laws

• We can’t prevent violence by only focussing on violence after it occurs
Tertiary Prevention
Criminal Law (Sexual Offences and Related Matters) Amendment Act

• Many positive developments:
  – Recognises the vulnerability of women, children and people with disabilities.
  – Broader definition of rape to recognise seriousness of a range of forms of sexual penetration
  – Wider range of acts are recognised as offences
  – Amends certain discriminatory rules of evidence.
  – Access to PEP provided
Criminal Law (Sexual Offences and Related Matters) Amendment Act

• Fails to improve entrenched harmful court practice
  – Exposure to the accused and public
  – Grueling adversarial processes
  – Adult centered environment

• Improved access to protective measures for children and adults limited

• This has been successfully challenged through the Constitutional Court in relation to children

• Not finalised yet in terms of orders

• Adult survivors needs have not been addressed
Counselling victim/survivors of sexual offences

- Counselling for survivors is not provided in legislation
- Opportunity to break cycles of violation is missed
- Law thus recognises only the legal context not the social or personal context
- Counselling is essential to address needs of victim/survivor
- Counselling acts as tertiary prevention
- Few or no services
- Waiting lists in urban areas for children
Implementation of SO legislation

• National Policy Framework must be developed by Minister of justice and constitutional development in consultation with key cabinet members.
  – For co-ordinated approach
  – To guide implementation, enforcement and administration
  – Enhance service delivery including plan for progressive realisation of services within available resources.

• Changing knowledge and practice in every police station, hospital and court is a challenge

• Parliamentary oversight required on an annual basis (reporting by DoJ annually including info from other departments listed).

• NGO and state monitoring and research is essential
Children and Domestic Violence

- DV pervasive in society
- Research demonstrates significant impact of children
  - Direct physical violence
  - Experiencing violence vicariously has serious psychological and social impact
- DVA recognises children as victims
- Services for DV fail to adequately recognise children’s needs
- Ongoing failure to intervene in cycles of victimisation and offending
- Impacts on all violence in society not only DV
Specialisation for quality services

- Family Violence, Child Protection and Sexual Offence (FCS) units
- Dedicated Health facilities
- Sexual Offence Courts
- Particularly vulnerable victims, complex cases
  - Nature of trauma
  - Nature of social and criminal justice responses
- Extremely low reporting, prosecution and conviction rates
- Require high level skills and expertise
- Elements of specialisation
  - Dedicated resources
  - Staff recruitment processes (not everyone can do this work)
  - Initial and ongoing training
  - Specialised management (understand issues and intervention)
Specialisation for quality services

• Challenges to specialisation, moving towards generalist approach
• Undermines developments in service of the past 15 years
• Specialisation represents development to improve status quo from the past in these cases
• Goes against evidence of what is most effective to address secondary victimisation and poor investigation and prosecution
  – Positive impact on secondary victimisation
  – Positive impact on investigation
  – Positive impact on prosecution and conviction
• Erosion over the past 3 to 5 years
• Require strong political leadership on the issue
• Recent development in terms of policing
• Concerns re the sexual offence courts
Going Forward

• Enhance primary and secondary prevention
• Developing understanding of intersections of different legislation for violence prevention
• (Parliamentary oversight regarding implementation of legislation
• Strengthen mechanisms to implement (awareness, training, accountability)
• Availability of tested and evidence-based programmes at necessary scale
  – Particularly primary and secondary prevention
• Legislation is the foundation
• Ensure budget allocation and capacity to spend
Going forward – Civil Society

• CSOs to record and represent the needs and concerns of our clients
• Support implementation efforts (materials, training etc.)
• Monitor implementation
• Develop and test models for service delivery.
• Promote relevant evidence-based practice
Thank you

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