

Oversight and Legislative tools for Parliament to facilitate and monitor the realisation of children's rights

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1) Parliament's obligation to promote, protect, respect and fulfill children's rights

There are three arms of government; the Executive, Legislature and Judiciary. All three arms of government are obliged to take action to promote, protect, respect and fulfill children's rights. This obligation can be found in international law instruments such as the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), and in domestic Constitutions which have Bills of Rights.

While all three arms of government carry this obligation, each arm has a specific role to perform.

2) What are Parliament's unique functions? What does Parliament do that the Executive and Judiciary do not do²?

- 2.1) Consider and pass legislation
- 2.2) Conduct oversight over the implementation of legislation by the Executive
- 2.3) Conduct oversight over the Executive's exercise of authority and policy making
- 2.4) Watchdog committees such as JMC on Children, Youth and Person's with Disability (SA Parliament) or special committees such as the HIV Committee's in some SADC Parliament's have specific oversight roles to play in relation to their topic areas and have the unique ability to take a holistic and inter-departmental approach to the problem
- 2.5) Ratification of International Human Rights Instruments

¹ This document was prepared for AWEPA's project "Scaling up Parliamentary Efforts for Children and AIDS" and used to train MPs from SADC Parliaments.

² The functions listed are generic functions that Parliament's around the world tend to have. However, there may be differences in each country depending on the country's system of governance.

2.6) Provide a platform for important public debates on policy and law reform

3) In performing these functions, what tools does Parliament have?

3.1) In plenary

- National debates on the situation of children/orphans and vulnerable children(OVCs) and government's programmes for children/OVCs
- Questions to Ministers responsible for the implementation of policies, laws and programmes that affect children/OVCs

Questions tend always to be aimed at the lead ministry. However a shift in emphasis to the supporting ministries will ensure that all departments take responsibility for providing a holistic response to the challenges facing children/OVCs. As an example: The MDG³s require member states to reduce their IMR⁴s by two thirds. Many children die from diarrhea which is caused mainly by a lack of access to clean water and to safe sanitation. Questions could be directed at the Department of Water to ascertain what the Department's plan is to prevent these deaths.

In some countries, majority party dominance prevents the majority party MPs from asking critical questions of Executive officials which also belong to the majority party. In situations like these:

- Questions by the majority party can be aimed at focusing attention on new programmes and providing opportunities for the Minister to talk more about the new programmes, This will enable the media and the public to find out about the new programmes and thereby improve access and utilization of the programmes⁵
 - Opposition parties can ask questions that highlight weaknesses and gaps in the existing policies and programmes in order to highlight the need for reform.
- Use all opportunities to put the topic on the agenda, eg National Children's Day Debate, Youth Day Debate, Budget Debate

3.2) In committees

3.2.1) In relation to legislation

(a) Legislation that has not yet been tabled in Parliament

- Request regular briefings by the responsible Department with regards to legislation that is urgent but has not yet been tabled in Parliament.

³ Millenium Development Goals

⁴ Infant Mortality Rates

⁵ Majority party members should feel comfortable to question their own minister's on non-delivery. However, in reality, in countries with a dominant majority party criticism between party members tends to be voiced in caucus behind closed doors and not in public.

This will keep the Department aware that the legislation must be prioritised and will hopefully ensure that it is finalised faster.

(b) Legislation that is already on Parliament's programme for debate and passage

- Request a comprehensive briefing from the Executive drafting team on the rationale behind the new law and a clause by clause explanation
- Ask the Executive to demonstrate the consultative processes that they have followed in relation to drafting the law.
 - Ask specifically about the processes that they followed to consult the affected civil society sector
 - Ask about the process that they followed to consider and incorporate the comments from the sector and their reasons for accepting or rejecting a comment
- Call for written submissions from the public
- Hold public hearings for members of civil society to present their submissions
- Provide financial support to rural based organizations and child participation projects to enable them to make submissions in Parliament
- Call for expert advice from the department, civil society and academics if needed
- For particularly important laws or laws that are complex, appoint a legal drafter and a researcher who is accountable to Parliament to assist MPs to ensure that their views are heard and incorporated by the drafting team. Children's rights funders could be approached to fund such positions.

Because the drafting team is accountable to the Minister (Executive), sometimes this makes it more difficult for Parliament to assert its independence when making laws. Having its own drafter who sits on the drafting team with the executive drafters can strengthen Parliament's role and ensure that the MPs views are heard and incorporated.

(c) Legislation that has been passed by Parliament but not yet fully implemented

- Request an implementation plan and timeframe for implementation from the Department
- Request the Department to report every 6 months on progress in implementing the new law

3.2.2) In relation to policy

(a) Draft policies that are still being finalised by the Executive

- Request regular briefings by Departments with regards to policies that are urgent but that have not yet been finalised.

This will keep the Departments aware that the policy must be prioritised and will hopefully ensure that it is finalised faster.

- Hold public hearings on draft policies. I

This will provide a platform for public input into policy making which will help ensure that the policy is publicised and is useful and relevant for the people that it is aimed at assisting.

(b) Policies that have been approved by the Executive

- Once a new policy has been finalised, ask the Department to come and inform the Committee about the new policy and show their *implementation plan* for putting the policy into action.

This will ensure that the MPs are fully briefed on government's new policy and ensure that the Executive knows the issue of implementation must be prioritised.

3.2.3) In relation to general service delivery/implementation of policy, laws and programmes

- Have annual "open days/public hearings" for civil society and executive officials at national and provincial level to make submissions on gaps and problems being experienced on the ground in relation to children/OVCs.

The information from the submissions can be used to write a situational analysis and to assist Parliament to assess the Executive's progress in implementing priority actions for OVCs. The information will also equip MPs with the information they need to draft questions for plenary and to participate in debates on the topic.

- Ask all Departments to brief HIV Committees/Children's Committee's on their "business plans" for reaching the MDGs that relate to children, eg IMR, and for providing the necessary support to OVCs.

Department's that tend to think that children are not their responsibility should be the focus of these briefings. This exercise works as an awareness raising and educative tool as it helps other Department's to start understanding the role that they can play to help the country reach the child related MDGs and to

provide support to OVCs. It will also enhance co-operation and co-ordination between the Departments.

