AN ANALYSIS OF POLICIES AND LEGISLATION RELATING TO CHILD PARTICIPATION BY CHILDREN IN ALTERNATIVE CARE IN SOUTH AFRICA

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ABSTRACT

Worldwide, children in the care of the state constitute one of the most vulnerable groups in society. They are often not heard, or their views not respected in matters concerning them. This is incongruent with the Declaration of the Rights of the Child (1959) as well as the United Nations Convention on the Rights of the Child (UN, 1989). Guided by a conceptual framework of child participation theory, this article analyses South African legislation and policies to determine how and when child participation is being promoted. Findings indicate that providing information to children on how to participate meaningfully is the key for effective child participation and that practical guidelines should be developed.

Keywords: policy analysis; child participation; child protection; alternative care; South Africa

INTRODUCTION

Many studies across the world have outlined the importance of participation by children in matters concerning them, especially when they are in alternative care. However, some research results indicate an uncertainty among social workers in child welfare with regard to the type of

participation children should be afforded (Bouma, López López, Knorth & Grietens, 2018; Havlicek, Lin & Braun, 2016; Havlicek, Curry & Villalpando, 2018). A study by Toros (2021) on child participation in decision making, involving child welfare workers, indicated that the child participation model that is often utilised in the child protection system, which includes informing, hearing and involving the child, seems often to be regarded as a model or theory, but is not well implemented in practice. Toros (2021) adds that although child participation is deemed important in the child protection system, opportunities for children to express their views and needs are nearly non-existent. Child welfare workers often reported difficulty in engaging with children and having little direct contact with them, particularly with younger children. This led to their assumption that children should be shielded from difficult conversations, indicating a protectionist approach to children's participation in decision-making.

Van Bijleveld, Dedding and Bunders-Aelen (2015) highlight some of the barriers to child participation in the field of child protection services, while dealing with multiple stakeholders. For example, one barrier is the dilemma of deciding what is in the best interest of a child, while simultaneously maintaining his/her safety and encouraging the child to express an opinion; this can present a conundrum for social workers, especially when a child wants to return to an abusive situation. Although social workers are encouraged to consider the age and maturity level of a child when making such critical decisions, minimal guidance is provided by the United Nations Convention on the Rights of the Child (UN, 1989) or policies and legislation documents in South Africa on how to ascertain a child's readiness for such decisions. The children in care also experience adversity when life-altering decisions are made on their behalf by adults with whom they have had little contact, or with whom they may not feel comfortable about sharing their wishes and desires. The child's exposure to the caregivers or social workers is often fleeting and these adults are not always emotionally attuned to the needs or wishes of the child.

Dillon, Greenop and Hills's (2016) qualitative study on participation in child protection reveals that children normally consider themselves as active and intelligent consumers of the welfare services and capable of understanding when their participation is appropriate and when it is not. Dillon *et al.* (2016) indicate that to increase participation, any regulations and guidelines must be accompanied by a greater emphasis on communication and skills development of child protection workers.

In this study, a document analysis was done on current South African policies and legislation that could and should promote participation of children in alternative care. The motivation for this document analysis was to critically analyse how and when participation was promoted in relation to these adopted and endorsed documents in order to determine a possible gap between policy and legislation, on the one hand, and theory and practice, on the other.

This article starts with a discussion on children in alternative care in South Africa, followed by a discussion of the study's selected epistemological framework for child participation. The research methods are discussed in the next section. The section which follows that includes an analysis of

the policy context and the policy text. The penultimate section includes a discussion of the policy analysis. The article ends with conclusions and recommendations.

CONTEXTUALISING CHILDREN IN ALTERNATIVE CARE IN SOUTH AFRICA

In a systematic review done by Strydom, Schiller and Orme (2020) of the current landscape of child protection services in South Africa, they indicated that research in the field of child protection places a strong emphasis on statutory services relying heavily on a child protection typology by using legislation and policy to protect children. This review also outlines the human capital and organisational constraints in rendering child protection services. Obviously, a lack of human capital coupled with organisational constraints makes it difficult for social workers to ensure that children who are in alternative care can actively participate in matters concerning them. In addition, Vis and Fossum (2015) found that organisational culture had a significant impact on social workers' beliefs and priorities in determining what participation opportunities children are accorded.

Organisational and human capital constraints are not the only barriers to ensuring child participation. In a study in England Pert, Diaz and Thomas (2017) noted that participation was not always a conscious choice for children and that young people had negative feelings about participation, especially when they reported not understanding the process. They thought they 'had to' participate. The process seemed to perpetuate and oppress already vulnerable children and exacerbate feelings of 'being different'. Pert *et al.* (2017) added that when children had only a basic understanding of the purpose of participating in reviews, they often felt scrutinised and predictably revealed a negative attitude towards the reviews.

Ten Brummelaar, Harder, Kalverboer, Post and Knorth (2018) advocate for more research on the topic of participation in countries with diverse cultural contexts and not only in Western countries. They also argue for the use of a common framework in literature on participation, particularly when it comes to measuring and monitoring participation in alternative care. These gaps and recommendations further motivated the researchers to look at ways in which policy and legislation could possibly support efforts to ensure meaningful participation by children in their own lives.

EPISTEMOLOGICAL FRAMEWORK FOR CHILD PARTICIPATION

Hart's (1992) ladder of participation is the most influential child participation typology in literature (Shier, 2001). It is based on a metaphor he borrowed from Arnstein's (1969) work on adult participation. Although the ladder of children or youth participation was first published in the *Childhood City Newsletter* (1980) of New York's Children's Environments Research Group, it only attracted attention after its inclusion in the UNICEF book publication in 1992. Various authors have developed classifying participatory practices or models for child participation by drawing from Hart's (1992) 'ladder of participation', while noting the strengths and limitations of his typology (cf. Cahill & Dadvand, 2018; Franklin, 1997; Lansdown, 2001; Shier 2001; Treseder, 1997).

The most common critique among authors in search of alternative child participation practices concerns the hierarchical nature of the ladder participation model. Cahill and Dadvand (2018) present the key focus areas of the reworked ladder model of participation by various authors. Treseder (1997) reworked Hart's top five rungs into a non-hierarchical order and identified five degrees of participation; Shier (2001) proposed a five-level model and emphasised the relationship between participation and empowerment, while Wong, Zimmerman and Parker (2010) developed the *Typology of Youth Participation and Empowerment (TYPE)* to present "the degrees of empowerment and positive youth development potential for each participation type" (Cahill & Dadvand, 2018:245). While the TYPE pyramid addresses some of the limitations of previous frameworks by focusing on the levels of empowerment and control experienced by adults or young people, Cahill and Dadvand (2018:245) note the absence of a robust conceptualisation of the concepts of "control" and "empowerment" and furthermore, "do not account for the different types of participation within the one project, or even with one participatory event". Andersson's Pedagogical Political Participation Model (3P-M) (2017) emphasises the contextual and dynamic nature of youth participation, which concurs with Hart's ladder of independent youth activity as ideal (Cahill & Dadvand, 2018).

Hart responded in 2008 to earlier critique of what he intended to achieve with the child participation ladder in a paper, *Stepping back from 'The Ladder': Reflections on a Model of Participatory Work with Children*. His responses are not only helpful in distinguishing between the new participation typologies based on his 1992 work, but they also clarify participation practices that were developed after 2008. According to Hart (2008:19), the participation ladder became a model and tool which "now has a significant body of practice and critical reflection". Furthermore, the value of the model to assist "different professional groups and institutions to rethink how they work with young people" and determine what is "relevant for their context" (Hart, 2008:22-23), makes it a useful framework to analyse policy for children's participation.

The metaphor of a ladder with eight ascending levels – presented as the rungs of the ladder – in principle depicts participation on hierarchical levels. These levels will be discussed below based on Hart's original model of 1992, supplemented with his reflections in 2008 and how these reflections correlate with other authors' views on his child participation typology.

Hart (1992) refers to the first three of the eight levels of the children's participation ladder as non-participatory.

- Level 1: Manipulation

Children are manipulated when they do not understand the issues that they engage in or their actions. They could also be misdirected when adults are unaware of their abilities. If they are asked for their opinion, children might not understand the issues and their actions, and would not know how their ideas have been used. When using manipulation adults have complete control which may not always be in the best interest of the child. Furthermore, children have no input in matters and no power to make their own decisions. Not only is the child not informed but is also kept quiet.

- Level 2: Decoration

On this level, children may perform at an event, for example, by singing or dancing or wearing T-shirts promoting a cause, but may have little understanding of the issue. Adults simply use the children to support their own cause in a relatively indirect manner. There is no clear role for the children, who only sit around passively.

- Level 3: Tokenism

Tokenism describes instances where it only appears that children are given a voice, but in fact have little if any say or in how their views are communicated, with little or no opportunity to voice their own opinions. Adults maintain that they act 'in the best interests of children', while they are in fact being manipulative. The children's involvement in activities is not meaningful.

In a typology of participation, the question is whether the above three levels are 'non-participatory' (Hart, 1992) or rather a reflection of 'passive participation'. Non-participation is more aligned with the two rungs proposed by Reddy and Ratna (2002), which Hart endorses in addition to his original ladder typology. The first rung, *active resistance*, is where adults actively work against children's participation, ostensibly not wanting to burden them with participation, or believing that they do not have the ability to participate, or that they can be easily manipulated to advance adult agendas. The *hindrance* rung occurs when opportunities for children are blocked, with adults discouraging them to participate, intentionally or unintentionally undermining their abilities and making them feel inadequate and reluctant to participate (Reddy & Ratna, 2002).

Hart (1992:10) explains that if children are not introduced to an event with an explanation of how they were selected, and which children's perspectives they represent, it is usually evident that "a project is not truly an example of participation". He also maintains that children are not as naïve as usually assumed, and that they could realise that their involvement is fake: an opinion that resonates with Shier's (2001:11) view of "false types of participation". According to Shier (2001: 11), many practitioners have found the specification of 'non-participation' levels as the most useful function of Hart's model as it helps them to recognise and work towards eliminating these types of non-participation in their own practice. The challenge in child participation is thus to make child engagement participatory and not mere tokenism (Hart, 2008).

- Level 4: Assigned but informed

On level four, children are assigned and informed about their participation. The extent that children participate depends on their abilities, which in turn are determined by their level of development, such as being a preschool child or an adolescent. Cultural issues could also affect children's participation and should be taken into account. It is sufficient for children to participate at different times with varying degrees of involvement or responsibility. Important requirements for participation on this level are that the children understand the reasons for their participation; that they know who made the decisions concerning their involvement and why; and that they volunteer to participate in the matters concerning them after these have been explained to them.

- Level 5: Consulted and informed

On this level, an event is developed and run by adults, but children had been informed and understand the process and their views as consultants are respected. Events are redesigned based on children's views and again presented to them to obtain their opinions. In this way children are informed of the desired results and become involved in the process.

- Level 6: Adult-initiated, shared decisions with young people

On level six, events are initiated by adults but are regarded as authentic participation because children share in the decision making. Many community projects are intended to be shared by all and the goal is thus to involve all persons, but focusing on specific groups such as children, older people and those who are excluded because of special needs.

- Level 7: Child-initiated and directed

When children are in supportive environments, even young children can work together in large groups. A supportive environment includes an adult who understands the value of children's initiative and who does not interfere or direct. Child initiatives can find expression in contexts such as play activities or child-initiated community projects.

- Level 8: Child-initiated, shared decisions with adults

On this highest level of participation, children would start a project, but when an adult observes the initiative and suggests ideas for improvement, it is considered by the children. The insight and creativity of adults are thus welcomed in shared decision making. In response to Reddy and Ratna's (2002) suggestion to add two categories on this high level of the ladder, namely *Children initiated and directed* and *jointly initiated and directed by children and adults*, Hart (2008:29) responds that although it could be useful for some programmes to consider more such steps, he explains, "the important distinction in my mind is how the children think of themselves and the adults". He did not intend for the top ladder to convey that children are in charge, but rather that children be regarded as citizens who regard themselves as members of a larger community that includes adults and other children whom they could invite to join them. This view posits a different perspective on the power base in children's participation. Based on an analysis of the most significant objections to children's participation practice, Thomas (2007: 204) concludes "that it does not give real power to children" and "that it fails to include certain groups of children, including those who are already disadvantaged".

Further to participation, Bouma, Grietens, López López, Knorth and Witte (2017) developed a model that focuses on *meaningful participation*, which includes: hearing the child, giving the child the opportunity to influence decision making (involving), as well as informing children. They refer to meaningful participation as the "experience of children being listened to and taken seriously" (Bouma, *et al.,* 2018:281). According to these authors, the first two dimensions of their model

relate to Hart's hierarchical ladder of participation, while informing children, based on article 12 of the UN Convention on the Rights of the Child (1990), was added as a third dimension.

Bouma *et al.* (2017) identified three dimensions for meaningful participation with specific reference to children in alternative care in South Africa, namely informing, hearing and involving. *Informing* relates to how children should be acquainted with their right to participate; the reasons for and the process of the child protection investigation; how they can participate in these matters; the focus of participation as well as the potential impact and consequences to enable them to make an informed decision; information on how a decision was made, and how their input has been taken into account. Thus, giving information to a child in alternative care should be seen as a technique and process that needs to be followed throughout the whole investigative process.

The next dimension of the model devised by Bouma *et al.* (2017) is *hearing.* Children should be encouraged to express their views freely. It also means that the child needs to be included in the decision-making process in a child-friendly environment that promotes dialogue and willingness to include children.

The third dimension is about *involving* children in the decision-making process (Bouma *et al.,* 2017). Involving is about hearing children's opinions and views, and considering them before a decision is made. The decision-making process should thus be discussed with them from the onset. These authors emphasise that in a child protection context, informing, hearing and involving of children should be features of every step throughout the investigation.

RESEARCH METHODS

This study used an interpretive policy analysis, as described by Yanow (2007), in a study of public policies, informed by the ontological and epistemological presuppositions deriving from interpretive philosophies. The study sought answers to issues in practice inspired by interpretive philosophy and the making sense of policies in the child protection arena with a specific focus on child participation. This was guided by an epistemological framework that was developed by fusing the participation theories developed by Hart (2008) and Bouma *et al.* (2017) as outlined above. Data collection started by identifying the relevant documents that relate to child participation and placement in alternative care in a South African context.

All documents that were included refer to children in alternative care, both on a national and international level. International policy documents were ratified by South Africa and were also used in the development of national policies and legislation.

The following documents were identified:

- United Nations Convention on the Rights of the Child, 1990 (UNCRC)
- African Charter on the Rights and Welfare of the Child, 1990 (ACRWC)
- White Paper for Social Welfare (1997) (White Paper)
- Service Delivery Model for Developmental Social Services (2005) (ISDM)

- Children's Act, No. 38 of 2005 (Children's Act)
- Children's Act as amended by Act No 41 of 2007
- Framework for Social Welfare Services, 2013 (FSS)
- Constitution of South Africa, 1996 (Constitution)

POLICY ANALYSIS

The policy analysis we conducted in this study is based on a conceptual framework developed by Taylor, Rizvi, Lingard and Henry (1997). This framework outlines how policies could be analysed in terms of three aspects: context, policy text and consequences. Only the first two concepts, context and policy text were relevant for this study. *Context* refers to the forces and values underpinning the socio-political environment and the origin of the policy. *Policy text* refers to the content of the policy. In this study texts were analysed by searching for specific words that referred to participation, including participation, participate, and view. The researchers investigated the text by interrogating aspects such as opportunities created in the policy for child participation; who was involved in the participation; and how this participation could be implemented. This type of analysis is also supported by Silverman (2006) as containing important features that qualitative researchers need to focus on. *Policy consequences* refers to the implementation and the way the service users interpret the policies.

ANALYSIS OF THE CONTEXT OF THE POLICY DOCUMENTS

The UNCRC is a legally binding international agreement with the main aim of setting out the civil, political, social and cultural rights of every child regardless of race, religion or abilities (Save the Children South Africa, 2018). The main principles are non-discrimination, the best interest of the child, the right to survival and development, and the views of the child.

The African Charter is a regional human rights treaty adopted by the African Union in 1990, which came into force in 1999. It sets out rights and defines principles for determining the status of children. The principles of the Charter are embedded in an acceptance of the child's unique and privileged position in society, and that specifically African children need protection and special care. It states that the child should grow up in a family environment (African Union, 1990).

The Constitution of South Africa can be described as a masterpiece of post-conflict constitutional engineering in the post-apartheid era. It was designed to assist with South Africa's transition to democratic rule, which started with the release of Nelson Mandela from jail in February 1990. The Constitution transformed the political landscape, ending decades of oppressive white minority rule (RSA, 1996). The Constitution makes provision for recognising the human rights of all people, including children, as set out in Section 28(2).

The purpose of the White Paper for Social Welfare was to establish a policy framework to guide the introduction of new policies and legislation aimed at transforming the South African welfare sector after apartheid (RSA, 1997). The Integrated Service Delivery Model (ISDM) of 2006 was developed to implement the developmental social welfare approach (DSD, 2006). The ISDM

outlines the levels of service delivery as preventative, early intervention, statutory and reintegration. A developmental approach demands an interrelated, intersectoral and integrated service delivery framework which includes the involvement of many sectors and government departments. To be successful, it should be underpinned by the attitudes and values embodied in the developmental approach, with a strong emphasis on service delivery focused on prevention.

The development of the Framework for Social Service Delivery (DSD, 2013) was an extension of the ISDM and presented an opportunity to enhance the nature, scope, extent and level of integrated social welfare services that social service practitioners should be delivering.

The Children's Act No. 38 of 2005 as amended by Act No. 41 of 2007 was developed to give effect to certain rights of children as contained in the Constitution and to set out principles relating to the care and protection of all children in South Africa (RSA, 2006; 2007). As for children in alternative care, the Act defines parental responsibilities and rights, and makes further provisions regarding children's courts. The object of the Act is to promote family preservation which is in line with the African Charter, where the focus is on keeping the child within the family environment. The Constitutional rights of the children such as to family care, parental care or appropriate alternative care when removed from the family environment were also to be upheld. The right to social services as well as protection from maltreatment, neglect, abuse or degradation, and maintaining the best interests of the child, is of paramount importance in all matters relating to children. The Act also sets out South Africa's obligations concerning the wellbeing of children in terms of international instruments binding on the Republic of South Africa.

ANALYSIS OF POLICY TEXTS

The UNCRC contains four articles identifying the nature of child participation (African Union, 1990). Article 23 indicates that participation of children with mental and physical disabilities should be encouraged in communities. Article 31(1) and 31(2) indicate the rights of the child to participate in cultural life and the arts, and they should be provided with equal opportunities for such participation. Article 12(1) encapsulates that the views of the child need to be considered in relation to the child's age and maturity. Article 9(2) holds that children should be given the opportunity to participate in all statutory interventions that relate to them.

The UNCRC presents a broad cluster of civil rights as outlined in Articles 5, 9, 13, 15, 17 and 29 that can be conceptualised as 'participation' as these are "rights to take civic action". This is an important enabling requirement for children to participate in public decisions and processes (Save the Children South Africa, 2018). Article 5 requires of parents/guardians to give direction to children, while respecting their evolving capacities to participate; Article 9 stipulates that children have a right to indicate their views when separated from parents, while Article 13 emphasises children's freedom of expression and access to information. Article 15 expresses their freedom of association, subject to prevailing laws. Article 17 covers their right to information that will benefit them, that is, in their own language and appropriate to their level of understanding, and Article 29 enshrines the right to education that promotes respect for others in a free society.

Hart (2008:5) observes that children's rights to have their views considered "in all matters that concern them" is "often wrongly understood to mean that children should have the last word". He adds that the UNCRC acknowledges that children should also understand and respect the rights of others (see Article 29). It is important for human rights to be understood in the local culture before engaging in promoting the universal rights as advocated by the UNCRC. He makes a valid point that it is not surprising that Africa responded to the UNCRC by developing their own children's rights charter, which emphasises children's rights but also their responsibilities (Hart, 2008). Article 31 requires acknowledgement of the responsibility that every child should have towards his or her family and society, the state, communities, and the international community, subject to age and ability (African Union, 1990).

The African Charter (African Union, 1990) is aligned with the UNCRC (UN, 1989) in its emphasis that children with disabilities should be provided with the opportunity to participate actively in community life. Article 14(2)(i) refers extensively to the participation of NGOs, local communities and beneficiary populations to be included in the planning and management of service health programmes. It is implied that children should also be included in planning of health services directed at beneficiaries. Articles 12(1) and 12(2) in the African Charter are in alignment with article 12(1) of the UNCRC as stipulating the right of children to freely express their views and the subsequent right for those views to be given due weight according to the child's age and maturity. Article 4(1) stipulates that the opportunity should be given for the child to be heard, either directly or through an impartial representative in judicial or administrative proceedings, and should be given due regard by the relevant authority. Article 7 emphasises the opportunity for freedom of expression according to the child's capabilities in matters that concern them and freedom to disseminate opinions subject to prescribed laws.

At a regional level, the obligations of member states of the African Union to safeguard child participation are outlined in Articles 4, 7 and 13 of the African Charter on the Rights and Welfare of the Child (ACRWC) (African Union, 1990). Article 4 stipulates that all actions considering children should always be taken in the best interests of the child. Furthermore, it states that a child who is capable of communicating his/her own views will, in all judicial or administrative proceedings that affect the child, be given the opportunity to either directly, or indirectly through a representative, to express his/her views. Article 7 provides for the freedom of expression for a child who is capable of communicating his/her own views, and Article 13 requires that the state ensure the dignity and promote self-reliance of children with disability, and facilitate their active participation in society. These rights are important conditions for children's participation, without which they cannot have a voice (Save the Children South Africa, 2018). By expressing their views and actively engaging in decision making at different levels, children are recognised as active agents in exercising their rights and know that they are taken seriously (Lansdown, 2001).

In the Constitution of the Republic of South Africa (1996) participation is not indicated as a right of a child nor are their views or child participation mentioned. There is, however, a strong focus in section 28(2) of the Constitution on ensuring that the best interests of the child are paramount

in all matters concerning them. In terms of participation, the Constitution mostly does not focus on children and matters relating to them, but in section 195 the importance of the inclusion of the views of all people (including children) should be encouraged in policy making.

The preamble of the White Paper for Social Welfare (1997) already notes the significance of participation in that all South Africans were called upon to participate in the development of an equitable people-centred democratic social welfare system. Paragraph 11 of the White Paper stipulates that appropriate and effective mechanisms should be created to promote participation of citizens in decision making about social welfare programmes, and that children who are unable to represent themselves should be represented by interest groups. Paragraph 26 states that the development of legislation has to involve community participation at all levels through comprehensive communication and empowerment strategies. In Chapter 8, paragraph 3, the focus is on social integration and social welfare programmes that should protect all human rights and equality as well as the participation of all people, especially the disadvantaged and vulnerable population groups. Again, Chapter 8 paragraph 10 emphasizes that all citizens should have the opportunity to actively participate in promoting their own wellbeing. Paragraph 1 of Chapter 8 deal with families and children, the youth and the aged, indicating that the responsibility is placed on families to ensure that children participate in family and social life. Guidelines and strategies are contained in paragraph 44 with the focus on the provision of participation of all family members in activities to promote their wellbeing through appropriate programmes. Paragraph 36(e) indicates that young people should be afforded the opportunity to participate in the economy for them to be productive and self-sufficient.

The introductory section of the ISDM (Department of Social Development, 2006) notes that all people should be afforded the opportunity to participate in social development and change. In terms of values and principles, the focus of the document is on all citizens' rights to participate in their own development and decision making. Participation is emphasised as a key principle in this document (Department of Social Development, 2006:16), which states that "people should be fully engaged in their own process of learning growth and change, starting from where they are and moving at their own pace".

The Framework for Social Service delivery is a more recently developed policy document by the Department of Social Development. Participation is defined and discussed as integral to the principles of the social developmental approach; no further reference was made specifically to child participation, but rather to all interested parties in society (Department of Social Development, 2013).

Several sections of the Children's Act No. 32 of 2005 (RSA, 2006) refer to participation. Section 10 of the Children's Act is in line with the UNCRC and the African Charter's article 12. It is emphasised that children should be afforded the opportunity to participate in any matter concerning themselves and have the right to participate in an appropriate way. All views as expressed by the child should be given due consideration, depending on age, maturity and stage of development.

Section 11 also aligns with the UNCRC, article 23 and African Charter, article 13, which emphasises that children with disabilities or chronic illnesses should be afforded the opportunity to participate in social, cultural and religious activities.

A number of sections, such as in Section 46(h), indicate 'where and how' children could participate in different matters, where the Children's Act stipulates participation in professional assessments in matters concerning the child. The Act also stipulates in section 49 that the court should determine the ability of the child to participate in lay forum hearings. Section 61(a) determines that the presiding officer must allow children to express their views and preferences in a matter, taking into account their age, maturity and stage of development. The following section, 61(b), requires the reasons to be recorded should a child be unable to participate or be unwilling to express a view or preference in a matter. Section 69 makes provision for the child to participate and attend pre-hearing conferences, as allowed by the court.

Section 144 indicates that prevention and early intervention programmes must involve and promote the participation of families, parents, caregivers and children in identifying and seeking solutions to their problems. The court can also order the participation of a child in prescribed family preservation programmes, as indicated in section 148(l)(b). Section 208(6) mentions that children should participate in the management board of the Child and Youth Care Centres (CYCCs) where they are placed. Section 31 concurs with both the UNCRC and the African Charter in indicating that due consideration must be given to a child's views and wishes. However, a person having parental responsibilities and rights in respect of a child must bear in mind the child's age, maturity and stage of development, when taking any decisions. Section 159 specifically relates to children placed in alternative care; it stipulates that for the duration and extension of a court order the child's views must also be attended to.

DISCUSSION

The context analysis of the child protection policies and legislation for South Africa reveals a strong alignment between international, regional and national documents. The intent of all these documents is to enhance and protect the rights and wellbeing of children. Bearing in mind the social, economic, and political context in Africa and specifically South Africa, it is important to have policy and legislative processes in place to ensure child protection and wellbeing.

The text analysis of the content of the documents reveals that participation mostly focuses on involving children and attending to their views. The fundamental right of children to participate in all matters that concern them is enshrined in Article 12 of the UNCRC (UN, 1989). The UNCRC recognises that children are not just passive recipients, who are entitled to adult protective care, but rather that they are citizens with rights. As such they are allowed to be involved in decision making that affects them, based on their developing capacities and showing responsibility for their decisions in accordance with their level of competency. Although this shows the importance of involving children in decision making as well as allowing them to participate and express their

views (Bouma *et al.,* 2018), children are generally not given enough information to promote meaningful participation.

The African Charter was developed as a unique specific regional document to focus on the rights and welfare of the child in Africa. All socio-economic and culture-specific texts outlining the importance of involving children in participation will ensure that their views are heard. The Charter adds that if the views of children cannot be heard directly, their views should be made known through an impartial representative in accordance with judicial and administrative procedures and should be validated by the authorities. Children are often not informed about the reasons and context of their participation and are thus not aware that their 'participation' experience can entail – according to the first three levels of Hart's (1992) participation ladder – manipulation, decoration or tokenism.

In Section 28(2) of the Constitution of South Africa (RSA, 1996) where the focus is specifically on the rights of the South African child, participation is not explicitly stated as a right. The focus is mainly on the best interests of the child, implying that all decisions should be made in the light of this. However, by excluding participation as a right, the best interest of the child is in jeopardy.

The law requires that anyone taking a decision that affects a child or group of children has to ensure that the best interest of the child is the key – or one of the key considerations. A child's best interests are influenced by many factors, including a child's experience, opinions and wishes. Therefore, it is essential that the decision-maker consult the child in determining the child's best interests. That does not mean that adults must follow children's wishes, but that they must listen to children, consider what they say, value their opinions and give feedback on what they have decided, and why (Jamieson, 2016).

The White Paper for Social Welfare (RSA, 1997) extends the principles outlined by the UNCRC and the African Charter to allow participation of children where it concerns them. It states that in matters where children are unable to represent themselves, they should be represented by appropriate interest groups. Although there is a lack of reference to child participation, in the White Paper, there is a strong emphasis on encouraging all citizens to participate actively in promoting children's wellbeing. This can have policy consequences (Taylor *et al.,* 1997) as service users could underrate the importance of child participation in special matters.

The ISDM and the Framework for Social Service Delivery as implementation policies for the delivery of child protection services are silent on the importance of providing information to children on how they can participate in statutory processes and investigations. The responsibility to participate is given to all citizens to engage at their own pace, but the policies do not always emphasise the importance of child participation.

The Children's Act makes provision for children to participate in certain matters as well as allowing their views to be heard. They are also given the option that if they do not, or cannot, participate in matters relevant to them, representatives can be appointed to participate on their

behalf. What is pertinent to the Children's Act is the involvement of the child and ensuring that they are heard. However, Bouma *et al.* (2017) point to the lack of information on how they should participate, the possibilities and consequences of the participation process, the focus and aim of the participation and the potential impact of participation by the child, the content of the decisions being taken, and how the perspectives of the child are to be given weight in the decision-making process. Although it is not expected that the Children's Act should indicate in detail how participation should take place, the lack of focus on providing information to the child to guide him/her in meaningful participation in informed decision making is a concern. This results in constant manipulation of children. Adults, often unintentionally, manipulate or mislead children during participation processes by not providing them with relevant information, and thus hamper meaningful participation.

CONCLUSION

Child participation is regarded as a fundamental right of a child in the UNCRC and within the context of all the documents that were analysed in this study. But it is evident in these documents that participation has to be meaningful (Bouma *et al.,* 2017). In the text analysis of the policy documents, meaningful participation mostly refers to involving children and their views, while regularly informing the child on the reasons and process of their participation. Information about what meaningful participation entails is key to stimulating discussion and ensuring informed decision making on important life issues for and by children in alternative care. The dimension of giving information throughout the investigation and placement of children in alternative care points to the need to develop guidelines to ensure meaningful participation.

RECOMMENDATIONS

It is recommended that guidelines be developed to enhance meaningful participation by all stakeholders involved in child protection services.

More research is required to determine the ways in which service users interpret policies, with specific reference to consequences of the implementation of these policies. This would be a step towards establishing platforms engaging researchers, agencies and, not least, government departments to create enabling environments for children in care.

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