The contribution of children’s rights to the reconstruction of society: Some implications of the constitutionalisation of children’s rights in South Africa

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1. Introduction

"Laws, national and international, are after all, words on paper. They may codify attitudes, but the real results depend on how they are implemented, what is done to follow up and to reach the ideals".1

South Africa included a fairly extensive clause enshrining children’s rights in the interim constitution that came into effect with the advent of democratic government on 27 April 1994, and, on 16 June 1995, the government ratified the United Nations Convention on the Rights of the Child, 1989. This was the first international human rights document to be ratified by the new government. It is, possibly, significant that the children’s rights treaty was ratified before other international treaties identified by the government for early ratification: the torture convention, the Convention on the Elimination of All Forms of Racial Discrimination, to cite just two2 that the government had indicated that it intended to ratify. Together, these documents introduced

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a broad framework underpinning a new legal order for children. Both the ambit of the constitutional rights for children, and the early ratification of the Convention, signalled that the implementation of children’s rights would assume a prominent role in the reconstruction of South African society.

The charge has been levelled with regard to the implementation of children’s rights in international law that “the transformation into law of substantive demands for the promotion of children’s welfare and autonomy lets Governments off the hook by allowing them to couch their responses to the Convention in formalistic terms, void of any substantive improvement in children’s lives” and that “legal remedies for children may provoke little more than formalistic responses from governments, which have little impact upon (their) suffering and powerlessness”. In consequence, the translation of “dignified statements and ‘manifesto rights’ “ into real gains for children is liable to flounder, as political expediency, inertia, indifference and competition for scarce resources crowd out children’s claims. Sceptics would argue, therefore, that acknowledging children’s legal rights generates false hopes.

Implicit is the contention that for South Africa, recognising children’s rights at the constitutional level, too, may be mere paper reform, rhetorical rather than real.

The main goal of this paper is to review the trends in the implementation of children’s rights in South Africa since the advent of the interim constitution in April 1994. It will be argued that initially, implementation of children’s rights was a key goal of the Government of National Unity. Substantial and measurable gains for children were achieved within a short period of time. More recently, however, evidence of real and quantifiable transformation in the area of children’s rights appears to have dwindled, for a range of reasons. And although the rhetoric supporting children’s rights continued to suggest that the implementation of children’s rights is a priority issue, this is true to a diminishing extent in practice.

In order to illuminate the ascendance and suggested decline of children’s rights, the first part of this paper will review the constitution-making process regarding children’s rights, and detail the gains that have been achieved for children in the new legal order. Reasons will be advanced for the high profile that the implementation of children’s rights has enjoyed. The second part will explain more recent developments in law and practice. Finally, suggestions

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3 Although the author refers to the Convention, the argument would probably not differ if the source of law was a constitution.


5 Ibid. at 386.

6 M. King, ibid.

7 See M. King, ibid. as an example.