



The White Paper on the Family

*"The Family is the natural and fundamental group unit of society and is entitled to protection by society and state".
Universal Declaration of Human Rights, Article 16, 1948*

"Around the Globe, families have always been recognized as the basic unit of society that perform essential functions and serve as a source of stability, continuity and development. Being as different as alike, and the cradle of the generations to come, families are essential to the world's future and their strengths and weaknesses reflect the fabric of the larger society. Family, as the world's oldest human relationship, primary agent of social integration and of behaviour, is adapting constantly to changing socio-economic conditions and the progress of humanity."

Sanya Declaration on the Family, December 2004¹

1. Introduction

During the course of last year the Department of Social Development released the long-awaited White Paper on the Family.² A White Paper is part of the legislative process which begins with the relevant government department drafting a Green Paper, a broad discussion, and a consultation document setting out government's policy position on an issue. It provides the government with an opportunity to test its ideas on important matters among the relevant stakeholders and the public at large, and to integrate inputs and comments from the ensuing public discussion into national strategic planning. These comments and plans are consolidated into a White Paper which presents government policy preferences prior to the introduction of legislation. Its publication serves to test the climate of public opinion regarding a policy issue, and enables the government to gauge its probable impact.³ The results of these public contributions on the policy suggestions are further codified into a Draft Bill which, in turn, is developed into a Bill tabled in Parliament (and which, if approved, becomes an Act). Thereafter, regulations are developed which govern the implementation of the Act on a national, provincial and municipal/local level.

Until now there has been no coherent government policy on the family. When the Green Paper was approved by Cabinet for public comment in September 2011 a spokesperson said that the family was seen as a key imperative and called for "a new vision and approach to social economic policy regarding the 'South African Family'".⁴ We can begin our analysis of this policy development by considering the various different international instruments regarding the family that have informed the development of the Green and White Papers.

2. International Agreements

The United Nations Declaration of Human Rights adopted by the newly formed United Nations in 1948 asserted that the family is the "natural and fundamental group unit of society and is entitled to protection by society and state".⁵

In 1981 the African Charter on Human and People's Rights asserted that "the family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals. The State shall have the duty to assist the family which is the custodian of morals and traditional values

recognized by the community.”⁶

1994 was declared the International Year of the Family. The theme of the year was "Family: resources and responsibilities in a changing world" and its motto was: "Building the Smallest Democracy at the Heart of Society".⁷ It was reiterated that "the family constitutes the basic unit of society and therefore warrants special attention. Hence, the widest possible protection and assistance should be accorded to families so that they may fully assume their responsibilities within the community, pursuant to the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration on Social Progress and Development; and the Convention on the Elimination of All Forms of Discrimination against Women".⁸ It should be emphasized that the rights of women and the realization of the rights of the family are interlinked. The 10th anniversary of the Year of the Family in 2004 saw the convening of two major conferences which evaluated the progress made in the past decade in terms of the Universal Declaration of Human Rights' commitment to promote the rights of the family: the Doha Conference in Qatar and the World Family Summit in Sanya, China which was quoted above.

2004 also saw the launch of the African Union Plan of Action for the Family in Benin, which reiterated the commitment of the African Charter of 1981. Furthermore, the Benin Conference called on all member states to translate the Plan of Action into 'concrete and relevant actions' that seek the 'rehabilitation' of the family unit and to develop legislation and policies that serve this end. The attainment of the Millennium Development Goals (MDGs) and poverty reduction were seen as key. ⁹ "At the dawn of the third millennium, Africa must rethink its development strategies. Africa must improve the quality of life of all the families and their individual members through the strengthening of family-centred components of policies and programmes as part of an integrated and comprehensive approach to sustainable development. In this context, the African family must be treated as the most important beneficiary and active participant in Africa's development process. It is imperative, therefore, that the African family is well positioned to play a crucial role in the implementation of the Millennium Development Goals and the Poverty Reduction Strategy Papers."¹⁰

3. The Family Today

However, in spite of the above the family everywhere remains vulnerable to breakdown. The worldwide recession, the enduring poverty of the developing world, the increase in the number of female headed households, crime, violence, inadequate health and social services, civil and inter-personal conflict, migration¹¹, substance abuse and illness¹² all place the family unit everywhere under immense strain.

Family Mediator John O'Leary¹³ points out that the new millennium dawned on an uncertain and vulnerable world. The first decade of the millennium featured natural disasters which humanity, with all of our technological and scientific advances, could do nothing to prevent. The damage done to our planet by many of these advances is no longer in the realm of science fiction but an increasingly present reality. As for anthropogenic disasters, the Twin Towers no longer dominate the New York skyline; political assassination continues and there seems no end to civil, ethnic and religious conflicts in all corners of the globe; popular revolts have not resulted in political and socio-economic stability; the practice of slavery has re-emerged in the form of human trafficking, and there is piracy on the high seas; the prevalence of HIV/AIDS continues and a cure has yet to be found, while illnesses which had been previously contained such as malaria and TB have re-emerged; the drug trade continues to flourish and new, cheap and highly addictive substances such as 'tik' have sprung up; and globalization has made the world much smaller and increased the competition for scarce resources.

All of these factors, individually and in combination, weigh heavily on the well-being of families in these early decades of the new century.

4. The Green Paper on the Family

The Green Paper was gazetted in October 2011,¹⁴ after which the Department of Social Development embarked on a broad consultative process with the public, conducting public hearings and provincial consultations from February to July 2012.¹⁵ The key question was how government policies could promote family life and strengthen families. The document was

compiled in consultation with other government departments and the policy articulated therein sought “to create a nation of happy families in the hope that this will boost nation-building and create a socially cohesive environment”.¹⁶ The Draft White Paper incorporated the contributions from this process of consultation and tried to address the concerns raised.

5. The White Paper on the Family

The South African family has been shaped by a history of colonisation and dispossession; slavery; migrant labour and the implementation of apartheid policies including the Group Areas Act and the pass laws; and job-reservation and the homeland system. All these contributed to an urban/rural divide which effectively meant that members of a family were not allowed to live together. This pattern of urban/rural migration persists. Furthermore, as the devastation of the HIV/AIDS pandemic has further eroded the family structure, leaving orphans in its wake, poverty endures and many families exist on social grants. Moreover, in spite of the equality afforded women in the Constitution, the system of patriarchy persists irrespective of social class, race, educational achievements and religious affiliation.

Although the National Policy on the Family articulated in the Green and White Papers has been in process for some time now, the protection and promotion of the rights of the family could not have come at a more apposite time. South Africa today is confronted by a veritable explosion of sexual violence against women and children. The legislative protections afforded them by various pieces of legislation including the Sexual Offences Act, the Children’s Act, the Domestic Violence Act and the Older Person’s Act, which are themselves progressive pieces of legislation, have effectively failed to protect women and children. This is due in part to a failure to implement the provisions properly, and partly due to a lack of coherent policy.

Much of the aforementioned legislation is ‘inter-sectoral’ in nature and relies heavily on the co-operation of various government departments, local government, the police force and the courts. Furthermore, the severity of the present crisis is emphasized by the increasingly and appallingly violent nature of these crimes, and by the fact

that they are frequently perpetrated by people who know the victims, and in places where they should be safe – at home, at school and in the communities in which they live. It is clear that something is fundamentally wrong and in urgent need of redress. It is clear, too, that change needs to happen at a fundamental level and that this must begin with the family which is the foundation of society. Sexual violence is so much part of the social-sexual landscape that it is seen almost as normal. The term ‘rape’ has become part of the vocabulary of the young and is used to describe anything vaguely unpleasant or onerous. Ultimately, the prevalence of violence has led to its normalization as acceptable behaviour to be imitated.

Addressing the many challenges confronting families is not an easy task, given the damage and erosion experienced by so many South African Families. There is no typical South African Family. Most families are fluid, in that members move in and out of them, often across an urban/rural divide. The extended family structure has been eroded. The HIV/AIDS pandemic has resulted in child-headed households and grandparent-headed households. Families are broken up due to divorce and subsequent remarriage, resulting in ‘patchwork’ families. There has also been an increase in the number of female-headed households/families and the concomitant feminization of poverty. These ‘adaptive’ family structures need support in order to survive and effectively carry out their role of the socialization and nurturance of children. The socio-economic and material living conditions experienced by many of these families militate against this. Such conditions, and the continuing high rate of unemployment, engender apathy and depression.

Only 30% of South African children live with both their parents. This absence of fathers is due to a number of factors including the continuing practice of migrant labour; the high number of non-marital pregnancies and births; the high rate of domestic violence; divorce and/or abandonment; the HIV/AIDS pandemic; alcohol and drug abuse; and the high number of teenage pregnancies – many of which are the result of abuse. This paternal absence and many of the behaviours associated with it have major implications for the socialization of children, particularly boys.

There is a paucity of positive male role models,

and it can be argued that there is a 'crisis of masculinity'. Thus, we have an urgent need to develop a new understanding and definition of what it means to be 'male', which includes responsibility for the support and care of children and respect for the bodily integrity of women and children.

6. Family Policy

The White Paper sees Family Policy as "any policy that has any direct or indirect influence on the well-being of the Family". This emphasises the 'intersectorial nature' of such policy, which embraces better living conditions, access to primary health care, proper sanitation and better employment opportunities. Proper access to all these services would benefit the family and enhance its capacity to perform its role successfully. This family strengthening is defined as "the deliberate process of giving families the necessary opportunities, relationships, networks, and support to become functional and self-reliant. The strengthening of families is driven by certain core areas, namely: family economic success, family support systems, and thriving and nurturing communities".¹⁷

The White Paper also speaks of Family Preservation Services, being "services to families that focus on family resilience in order to strengthen families, so as to keep families together as far as possible." Family resilience is seen as the ability of families "to withstand and rebound from disruptive life challenges".¹⁸ These challenges would include illness and disability, bereavement, substance abuse and the capacity to discipline children positively.

It refers to the 'dysfunctional' or 'multi-problem' family and defines it as one "in which conflict, misbehaviour, neglect, or abuse occur continually or regularly".¹⁹ However, these terms are negative and judgemental and do not adequately take into account all the challenges a family may experience, the lack of emotional and psychological resources it may have, and the socio-economic circumstances in which it exists.

7. Social Capital, Cohesion and Protection

The White Paper sees the provision of social capital, the building of social cohesion, and the

availability of social protection as key to the realization of the rights of the family. Social capital is defined as those "resources embedded within a person's social network that influence decisions and outcomes by shaping a personal identity while delineating opportunities and obstacles within a person's social world". The provision and identification of such resources and the process of connecting individuals and families to social and community resources is enabling and empowering. Social cohesion involves the process "of building shared values and communities of interpretation, reducing disparities in wealth and income, and generally enabling people to have a sense that they are engaged in a common enterprise, facing shared challenges, and that they are members of the same community". In spite of our deeply fractured present, we have, as a country, experienced moments of social cohesion. The inauguration of Nelson Mandela as the first President of the post-apartheid South Africa, and the soccer World Cup leap to mind. Finally, social protection is defined as those "policies and programmes that protect people against risk and vulnerability, mitigate the impact of shocks, and support people from chronic incapacities to secure basic livelihoods". This points to the urgent need to address the increasing gap between those who have and those that do not, as well as better disaster management, more employment opportunities and improved service delivery.

8. The Life-cycle Approach

The life-cycle approach outlined in the White Paper allows for a comprehensive analysis of life events, family crises, processes and challenges relating to age, gender, and roles and responsibilities of each family member. It will further help to promote an understanding of an ideal and desirable progression through life's stages. This approach will also guide the provision of services and resources that are appropriate for specific developmental stages and ages of family members – that is, provide appropriate services from the cradle to the grave.

9. Conclusion

The events of recent weeks reflect that we are a deeply troubled society and that social

relationships are fractured almost to the point of despair. We have a progressive Constitution and Bill of Rights in terms of which much good legislation and policy has been developed, including the 2005 Children’s Act and the guiding principle of ‘In the best interests of the child’. Unfortunately, it has proved difficult to translate these rights and protections into the everyday lived experience of so many women and children. As John O’Leary points out, while the legislative tools have improved, the level of inter-personal

conflict has increased. Hopefully, the White Paper on the Family will contribute to some degree in making a positive difference in the way families live out their relationships and are helped in dealing with their problems.

**Lois Law
Researcher**

¹ World Family Summit in Sanya, China on 6th – 9th December 2004

² The Catholic Parliamentary Liaison Office hosted a Seminar on the White Paper on the Family on 25th February 2013. Marjon Busstra of the Office for International Diplomacy, Africa Region presented on the ‘20th Anniversary of the International Year of the Family (2014)’; Lois Law of the CPLO ‘Vulnerable Sectors Project’, presented on ‘The Background to the White Paper on the Family’ and John O’Leary, Attorney and Family Mediator, presented on the ‘Implications of the White Paper for Family Mediations’. This paper reflects much of these presentations and the discussion which took place at the Seminar.

³ Draft Paper on the Family, September 2012

⁴ News 24, 22nd September 2011

⁵ Article 14 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly 1948

⁶ Article 18: 1&2 of The African Charter of Human and Peoples Rights 1981, proclaimed by the United Nations General Assembly, in its resolution 44/82 of 9th December 1989

⁷ Presentation by Marjon Busstra at the CPLO Seminar on the White Paper on the Family, 25th February 2013

⁸ UN Social Policy Division

⁹ Busstra, *op cit*

¹⁰ African Union Programme of Action for the Family, 2004

¹¹ Migration may be due to many causes including armed conflict, climate, human trafficking, lack of food, water and employment opportunities, natural disasters and xenophobia

¹² These include malaria, multi-drug resistant TB and HIV/AIDS

¹³ Presentation at the Seminar on the White Paper on the Family, 25th February 2013

¹⁴ Gazette No. 3492 of 2011

¹⁵ “These consultative sessions were attended by amongst others, faith based organizations, service providers and officials from various government departments, civil society organisations, and community based organizations, research institutes and institutions of higher learning”. Reply by the Minister of Social Development to a written question by MP Cheryllyn Dudley requesting clarity on the extent of public participation on the Green Paper, 14th September 2012. The Family Desk of the SACBC participated in this process.

¹⁶ Key recommendations include: “Encouraging strong marriages and a culture of two-parent households; getting more black families to adopt, rather than foster, children, as most foster children end up without a family once they reach 18; introducing parenting classes for first-time parents; and teaching children the importance of family values at school”. National Family Policy, Green Paper 2011.

¹⁷ White Paper on the Family, September 2012

¹⁸ White Paper on the Family, September 2012

¹⁹ Definitions Section of the White Paper on the Family, September 2012

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