THE DEVELOPMENT OF LEGISLATION IN RELATION TO THE COST OF IMPLEMENTATION

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ABSTRACT

Costing legislation basically means the process of determining the financial implications of developing and implementing legislation. There is widespread recognition of costing legislation as a budgeting and implementation planning tool however its role in promoting the ethos of good governance has not been fully examined in South Africa. Costing legislation has been undertaken without any guidelines, procedures or instructions on the importance of consulting with stakeholders. When guidelines or procedures are not spelt out and where consultation is not made a condition of the costing assignment then the door is left open for uncertainty.

The purpose of this research study is to examine with the advantage of hindsight the two costing projects on the Child Justice Bill and Children's Bill with a view to identifying good practice in terms of good governance standards that could be used to inform future costing projects. The study also seeks to find out whether costing as a process has within it any values which enhance good governance. In order to manage the study only three standards or indicators of good governance were examined and these were participation, accountability and transparency.

The research findings were positive in spite of the fact that no guidelines for involving stakeholders had been suggested to the consultant in the two costing projects used as case studies. The research revealed that costing by its nature has to subscribe to the ethos of good governance in terms of participation, accountability and transparency. Costing utilises public funds thus the reason for requiring accountability and transparency. The research further revealed that whilst the costing projects examined were very consultative and complied with the three standards of good governance within government structures this did not extend to proper consultation with civil society and children.

There are two recommendations that this research makes: consulting guidelines for costing of legislation must be developed and that the three standards examined

must be used as the minimum standards for any costing process. Once guidelines have been developed it will bring increased certainty to all interested stakeholders because it will define more clearly the roles and responsibilities in the costing process.

THE DECLARATION

I, Prometheus S Mabuza, declare that this research is my own unaided work. It is submitted in partial fulfilment of the degree of Masters in Management (in the field of Public and Development Management) in the University of Witwatersrand Johannesburg. It has not been submitted before for any degree or examination for this or any other University.

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Prometheus Swelindawo Mabuza
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‘There can be no keener revelation of a society's soul than the way in which it treats its children’, (Mandela, 1995).

LIST OF ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the African Child
AFReC	Applied Fiscal Research Centre
APRM	African Peer Review Mechanism
AU	African Union
CB	Children’s Bill
CRC	Convention on the rights of the child
CJB	Child Justice Bill
EA	Economic Analysis
GEAR	Growth Economic And Redistribution Strategy
ICCPR	International Covenant on Civil and Political Rights
ICSECR	International Covenant on Social, Economic and Cultural Rights
MTEF	Medium Term Expenditure Framework
NEPAD	The New Partnership for Africa’s Development
OECD	Organisation of Economic Cooperation and Development
PFMA	Public Finance Management Act No. 1 of 1999
RBA	Rights Based Approach
RDP	Reconstruction and Development Programme
RIA	Regulatory Impact Assessment
SALRC	South African Law Reform Commission
UN	United Nations
UNDP	United Nations Development Program

CHAPTER 1– INTRODUCTION

1.1 BACKGROUND

This research study examines the process behind the costing of children's legislation in South Africa and analysed it through the characteristics of good governance and Rights based approach (RBA). Essentially the study explores the interface of costing and good governance with a view to proposing guidelines for future costing processes. Costing in this study is aimed at facilitating budgeting and implementation of legislation. Another concern was to investigate why there were no prescribed guidelines or process for consulting or involving stakeholders and generally conducting each of the costing projects. The core of this research is about implementation of children's rights through costing and holding government accountable (Cornwell and Nyamu- Musembi, 2004; Theis, 2004, Uvin, 2004; Save the children Sweden, 2005; Kapur and Duvvury, 2006).

The costing processes examined in this research study are for the Child Justice Bill (CJB) [B49-2002] and Children's Bill (CB) [B-2003] (the Bills), developed by the South African Law Reform Commission (SALRC) in a consultative process. Both Bills are now an Acts but for the purpose of this study they are referred to as Bills as they are not fully implemented. These Bills elaborate the rights of children and define the obligations of government. These rights and obligations derive notably from the United Nations Convention on the Rights of the Child of 1989 (CRC); African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) and the Constitution of South Africa (Act 108 of 1996).

South Africa signed and ratified both the CRC and the ACRWC in 1995 and 1999 respectively. Government is the primary duty bearer with the responsibility and obligation to ensure children enjoy as well as realise their rights. Both instruments create obligations on the government to observe human rights standards to respect, protect, promote and fulfil children's rights. These rights are further enshrined in Section 28 of the Bill of Rights of the Constitution of South Africa

(Act 108, of 1996). Children have rights, constituting more than one third of the population of South Africa (Children's Institute, 2008). This makes them an important stakeholder group to be taken into consideration in terms of the practice and ethos of good governance in this research.

Children face several service delivery challenges. The extent to which children enjoy and realize their rights can only be determined with the existence of a comprehensive disaggregated data monitoring system for children’s well being (Dawes, Bray & Van der Merwe, 2007). In order for government to make public resources available for service delivery it needs to know the number of children who require them and then to determine the cost of these services. Specifically these rights range from civil, political, socio-economic and cultural rights. Costing of legislation is a mechanism that links the law making process with the allocation and spending of public resources within the public policy process (Gore, 2004). In other words it is not possible to provide goods and services to children unless government has made the necessary budgetary provisions.

The role of costing is to calculate the cost of providing goods and service to enable government to allocate these in terms it’s Medium Term Expenditure Framework (MTEF) and spend according to the budget (www.treasury.gov.za). The significance of costing is that it calculates and prioritizes what allocations have to go to children. What is contained in the budget is ultimately a political decision decided upon by the government on what and how it will utilize public resources for the benefit of children. In a number of reported cases competing claims have been made against the government to provide socio-economic rights pertaining to children (Government of the Republic of South Africa and Others v Grootboom 2000 (11) BCLR 1169 CC); Minister of Health and Others v Treatment Campaign and Others 2002 (5) 721 CC; ACESS v Minister of Social Development Case No.5251/2005 in TPD).

Costing is a financial planning tool and in this study it is used for budgeting and planning implementation of legislation (Jacobs, 2006). Good governance is a controversial concept in terms of its definition and usage. Good governance can be understood or interpreted from a technocratic, administrative and managerial perspective or it can be understood politically as democratic procedures and rules where implementation of international human rights is crucial (Leftwich, 1994). To Jeffries (1993) it is developmental and encompasses democracy yet to others it is nothing more than an aid conditionality imposed on the developing countries by the multilateral agencies (Adejumobi, 2000; Doornbos, 2004). In the context of child rights, good governance is understood to mean duty bearers fully and effectively respecting, protecting, promoting and fulfilling the realisation of children's rights. South Africa is founded on the values of democracy, human rights, good governance and development according the Constitution.

Costing legislation is not unique to South Africa several countries both in the developing and developed world are making use of this tool. However in other countries it is named differently with the scope and ambit wider to the way it is used in South Africa. Some of the common names used are Regulatory Impact Assessment/ Statements (RIA), (RIS) or Economic Analysis (EA). However what is important is to note that is that costing is an aspect of RIA which is much more comprehensive including impact and benefits of legislation (Jacobs, 2006). In 2007 Cabinet approved the use of RIA in South Africa and is establishing a RIA unit within Policy Coordinating Unit in the Presidency. This points to the strategic importance of costing in the planning processes of government. Government hopes that through better strategic planning it will be in a better position to improve the quality of service delivery to its citizens.

1.2 THE PROBLEM STATEMENT

Several pieces of legislation, policies and programmes have undergone costing in South Africa with no prior prescribed guidelines for these processes. Without any clearly defined guidelines and or minimum standards, conducting costing processes may lead to conflicting approaches and create uncertainty as to how each costing process will be conducted for interested stakeholders. There is a need for government to recommend guidelines or minimum standards that apply generally and are agreed upon to make each costing process credible.

1.3 PURPOSE STATEMENT

The purpose of this research is to analyse the process that was followed in costing children's legislation using good governance indicators (participation, accountability and transparency) in order to recommend some guidelines for future costing processes.

1.4 RESEARCH QUESTIONS

The research seeks not only to understand and document the process of costing legislation for the Bills but also to identify good practice in the process by attempting to find answers to the following questions:

1. Have good governance practices, these being, accountability, participation and transparency, been integrated into the costing process?

2. How can these good governance practices inform future costing processes?

1.5 METHODOLOGY

The research was conducted through a qualitative case study research methodology using good governance and RBA as a framework for analysis of the data and research findings (Uvin, 2004). The study compared each of the costing projects regarded here as case studies using the conceptual frameworks to analyse and to identify lessons and good practices. The researcher was the primary instrument for data gathering and data analysis.

Primary data was collected through two semi structured interviews with the consultant commissioned for the costing projects and the second respondent who participated in both costing projects. The second respondent participated in her capacity as a SALRC project committee member of the CJB, as well as the Technical Advisor for the UNDP on the CJB and as member of the consortium that was costing the CB. She was also selected because of her experience in training, litigating, advocacy and knowledge of children rights. The nature and purpose of the interviews was to elicit information on the nature of the tool (costing), the process, their understanding of good governance and its role in the costing process.

The secondary data sources that the research relies on are the costing reports that were prepared for the government in each project. These documents were examined to corroborate and reinforce what was stated in the interviews regarding the costing process and the value of costing in implementation planning and budgeting. Both of these taken together are significant in terms of the process that was followed as being central to good governance. Other data pertains to good governance as an analytical concept with which to examine costing.

Since the study is confined to the activities of the process the data collected was assessed on the basis of the values and principles governing public administration in the Constitution including the validity of the results. When inputs, activities, outputs, and outcomes of the project are measured it is another way of measuring economy, efficiency and effectiveness. The validity of the data collected is also assessed in terms of the indicators of good governance: participation, accountability and transparency. The process is assessed in order to understand the role played by good governance.

1.6 SIGNIFICANCE OF STUDY

The significance of the study is to create more knowledge on the relationship between the process of costing legislation as a tool and good governance as a developmental concept. There is no documented research on the interface between the process of costing legislation and good governance that the researcher came across. This study attempts to establish linkages and relationship between costing as a tool and good governance. It is therefore groundbreaking research in the sense that it attempts to examine good governance principles in the process of costing legislation. The fact that this research is being undertaken is of significance because it points to an area of study that remains un-researched.

Second, the study will hopefully lead to an understanding of the significance of costing as a planning tool that leads to efficient and effective implementation of legislation. This is a highly technical discipline and the costing process demystifies the notion that only trained economists can undertake costing.

Another significance of this study is that it recommends to government to put in place guidelines for costing legislation. Whilst there is no disagreement on costing as a tool there are however no prescribed guidelines on the process to be followed when costing legislation. This study is therefore significant as it makes recommendations to government to put in place guidelines as minimum standards for departments to follow when costing legislation or policies. The extent to which departments consult with one another and the nature of the consultation are essential attributes of good governance. Costing of legislation is a legislative prescription (compliance) second, it reinforces and promotes good governance.

Finally the significance of the study is that it attempts to establish linkages between costing and the observance of good governance and to hold government accountable for the implementation of children's rights using both good governance and RBA. Both good governance and RBA base their theoretical foundation on international human rights law and democracy therefore making it possible to examine the extent to which children rights are implemented.

1.7 LIMITATIONS OF THE STUDY

The limitation of this research is that it has been conducted mainly from the perspective of the consultant who designed the costing process. Whilst this limitation is noted it would have been difficult to remedy this as the study was focusing primarily on the process and only the person who designed it could attest to it. Since there was no other person to refer to the decision to do this was consciously made by the researcher. However in an attempt to remedy this one sided perspective the researcher then interviewed the second respondent. Data gathered from both interviews was transcribed and it is acknowledged that the process of transcription may be tainted by personal bias.

The second limitation of the study is that both Bills have not been fully implemented to conclusively say that costing facilitates implementation and its relationship with good governance. The three indicators of participation, accountability and transparency were only used to measure to what extent the process was consultative but do not indicate whether the Bills will ultimately be capable of being implemented.

The third limitation is the fact that secondary data on costing in South Africa emanates mainly from one source which is the Applied Fiscal Research Centre (AFReC) which is attached to the University of Cape Town. What makes this a limitation is that there is no available research work on costing legislation that one can compare with in South Africa. As a result it was not possible to find any research that critiques the model from AFReC or presents an alternative to the AFReC model. It therefore made it difficult to corroborate the theoretical basis of the model emanating from AFReC. However, comparatively speaking, many of the Organisation of Economic Cooperation and Development (OECD) countries including the United States of America, Australia and several developing countries have been using RIA as a planning tool in democratic governance (Jacobs, 2006). The use of costing legislation is therefore not unique to South Africa.

1.8 STRUCTURE OF THE REPORT

The research study has been organised in terms of the following chapters that are a reflection on the research process. The first chapter gives background about costing legislation. The chapter further discusses the research purpose, research questions, significance and limitations of the research study. The second chapter describes the research design as a qualitative case study based on the Bills. It also gives a justification for using the case study methodology and the steps taken to ensure the integrity of the research.

The third chapter is the literature review which is aimed at the identification of the key themes of the research which are dealt with in the nature and course of the study. The main themes relate to good governance, costing, and how these interweave with one another. The fourth chapter presents the case study on the process of costing legislation. The fifth chapter presents and analyses the data that has been gathered using a RBA for analysis. The data consists of the transcripts and documents that relate to the two costing of the two Bills and good governance. Chapter six is the final chapter and presents the main conclusions of the study in summary and recommendations proposed to the government for future costing processes.

1.9 CONCLUSION

This chapter has presented an overview of the research report introducing the thrust of the research in terms of the process followed when costing legislation and its interplay with good governance. It highlights the context within which costing as a tool has increasingly been used to give effect to children's rights. The chapter also introduces the RBA that will be followed in the rest of the study

Most importantly, the chapter tries to delineate the parameters of the study as concerned with getting an in-depth understanding the process used to cost the two

Bills rather than an examination of costing as a tool. The study therefore focuses mainly on the process behind costing.

CHAPTER 2 – RESEARCH METHODOLOGY

2.1 RESEARCH FRAMEWORK

This chapter outlines the theoretical foundation of this research, addresses the research methodology, sources of data, data analysis and interpretation, validity and reliability in an attempt to understand the costing process in the context of good governance.

This research draws concepts from several fields of study that are located in the social sciences such as political science, economics, human rights and law and interweaves these strands together. This has its own challenges in terms of being conscious of the different interpretations each discipline attaches to the shared concepts used in this research. Thus this study's conceptual framework is good governance whilst the discipline under which this study is premised is political science and costing is the subject matter of this study (Henning, van Rensburg and Smit, 2004).

2.2 RATIONALE FOR QUALITATIVE RESEARCH METHODOLOGY

The two widely used methodologies of academic research are qualitative or quantitative research. The choice as to which is appropriate for a study is dependent on the purpose of the research (Henning et al, 2004). There are several characteristics that distinguish the two methodologies. The key characteristic of this research is to understand the costing process and to examine how it interfaces with good governance. A qualitative research is the preferred methodology for conducting this research because it seeks to understand the reality behind the process by examining it from the perspective of the consultant. Second, the researcher was the primary instrument of data collection and interpretation. A quantitative research focuses on predicting, verifying using inanimate instruments and therefore it is inappropriate for this present study (Merriam, 1998). It is important to understand the process used for the costing projects and good governance so as to be able to propose guidelines to government. There are other reasons for choosing this methodology.

The main thrust of this study is to analyse processes and qualitative research methodology is suitable for analysing processes (Merriam, 2001). Marshall and Rossman (1995) suggest that qualitative research is designed to (1) understand processes, and (2) describe poorly understood phenomena, thus this supports the use of this methodology (Merriam, 1998:11). The researcher in the course of formulating this research did not come across any other research that analysed costing processes nor was he able to find much research on the relationship of costing legislation with good governance. It was therefore important that the study was conducted through using a qualitative research methodology to explore the relationship between these concepts to inform future processes.

Every person conceives and interprets reality differently therefore a qualitative approach acknowledges that there are multiple interpretations or perspectives of reality (Merriam, 2001). The assumption made here is that each of the participants to the costing projects would have had a different perspective if their views had been obtained on the process. The participants consisted of government officials, consultant, government department or donors of the costing project, civil society organisations (CSO).

The consultant designed the process that was used for costing the Bills. It was therefore critical to understand the process he chose to use. He had not been given any guidelines to conduct the process and given that there were several stakeholders who rightly or wrongly could have claimed to have been excluded or that process had not been fair. A qualitative approach is therefore amenable to an analysis of reality that can be interpreted differently as each process is perceived differently. The reality is that underpinning each costing process was the quest that costing complied with section 195 (1) of the Constitution and the Bills were implementable (Act 108 of 1996; Shall, Barberton and Ajam, 2000; Barberton, 2006; Skelton, 2007). The consultant for this reason plays a pivotal role in ensuring that both these realities were realised for the overall costing process for the Bills.

The researcher occupied a central position in this study as the primary instrument for data collection, analysis and interpretation and the possibility of bias on the part of the researcher cannot be excluded in this research study (Henning et al, 2004). The researcher was employed by an international non governmental organisation fighting for children's rights that subscribes to the values of good governance, democracy, development and human rights. Potential bias on the researcher exists because his interpretation of concepts may have been influenced by the organisation's values on good governance and human rights. The second possibility of bias on the part of the researcher is the fact that by choosing good governance as a conceptual framework he is in fact endorsing good governance as a concept that other scholars may rightly criticize as a misnomer (Shivji, 2003).

Amongst the projects with which the researcher's organisation works is resource allocation for children in the form of child budgets. Costing legislation is an area of work of great importance to the organisation in terms of implementation of legislation. The researcher, consultant and the second respondent know one another in the course of their work on child law reform and to some extent costing legislation. The consultant who is an economist has experience in the field of costing legislation and the researcher has not come across any critique of his costing model. All these factors might have influenced the relationship the researcher had with the consultant and the second respondent or vice versa. The researcher may not have been critical of both respondents interviewed. There is a partnership agreement between the two organisations that the researcher and the second respondent work for. This might have influenced this respondent to be amenable to be interviewed. She might also have had an interest in promoting positively the costing process having been part of the consortium that won the CB tender. The important question is whether this bias could have influenced the validity of data and nothing seems to suggest so from the research.

Another factor that might contribute to the researcher's bias was the decision to use three indicators of good governance instead of all eight indicators. The choice of indicators as well as the interpretation accorded to these indicators will to a large extent be dependent on the philosophical perspective of the researcher. When analysing the data the researcher's own values and understanding of human rights, democracy and good governance might have influenced the indicators interpretation in terms of RBA. The researcher's own perspectives cannot be excluded in how the data was analysed and interpreted. It is for this reason that the process of corroborating the interpretation of the data by peers to see if they arrive at the same conclusions is helpful to guard against the possibility of bias.

Finally, the consultant and second respondent may have had their own biases and their responses might not have reflected this. It is obvious that the consultant might have had an interest in the positive outcome of the costing projects and this bias has to be kept in mind in the research. The data that has been obtained by interview emanates from the two respondents. In other words the researcher has gathered the perspective of the process from the consultant and this bias is acknowledged as providing only one angle alone. It was important for this reason therefore to get the second respondent to corroborate the consultant. Secondly it was mainly to give the research a second perspective of the costing process. It becomes necessary though to explain and justify the use of a case study research method for this study.

2.3 CASE STUDY RESEARCH DESIGN

A case study method is 'an intensive holistic description and analysis of a single instance, phenomenon or social unit' (Merriam 1988:21). The subject matter of this study refers to costing of the Bills on children thus each costing process is regarded as a case study for this research. Data for the case studies was collected from multiple sources in the form of face to face interviews, documentary analysis and thorough observation. Triangulation was used and means that the data was gathered and corroborated from different sources (Patton, 1990; Tellis, 1997). The data collected gave the researcher a perspective on the processes used to cost legislation and enabled him to analyse the processes from different angles. By definition a project is time bound and each of these processes comply with the definition of a case study as definable and differentiated in terms of the time, participants and purpose (Merriam, 1998; Henning et al, 2004). The use of case study method is preferred because it is conducive to conducting in-depth analysis of processes and for the fact that there are multiple sources of data collection that can be used (Merriam, 1998:19).

2.4 DATA COLLECTION TOOLS

2.4.1 PRIMARY DATA

Primary data was gathered through semi structured interviews with two respondents who are specialists in their respective fields, the costing expert who as the consultant designed each of the costing processes and a children's rights legal expert who participated in all the costing processes. As an initial step the researcher secured appointments with each of the respondents by informing them of the nature and purpose of the interview. The appointments were requested by email and by telephone and fortunately both respondents indicated that they did not require any clearance to be interviewed. The consultant did not need any permission because he had left the organisation to which he had been attached when he did the costing of the CJB. When he costed the CB he had done so in his personal capacity and was not attached to any organisation. The second respondent had also left all the organisations to which she had been attached to when costing of the CJB was done and was acting in her personal capacity when costing the CB. In any event even if both were still attached to their former organisations there does not seem to have been any reason why these organisations would have refused permission in view of the fact that this information is public knowledge.

There were no issues of confidentiality that arose for the respondents however in certain instances they did not possess the information requested and directed the researcher to who to contact for that information. It is also submitted that it is unlikely that both respondents were prone to voice their former organisational perspectives on the subject matter under discussion. The ease with which the appointments were secured may have been because both respondents knew the researcher and because he worked for a children's rights non governmental organization. Secondly by talking about the costing projects the respondents were also raising awareness about the costing of the Bills on children

A digital voice recorder was used during the interviews with the respondents and this allowed the interview to flow and the researcher was free from having to scribble notes whilst trying to listen at the same time. The recorder allowed the researcher to listen back to the recorded interviews if there was need to do this and could allow quoting data verbatim or identifying other issues that he might have missed. The digital voice recorder was important because the researcher was able to transcribe the interviews.

After conducting the interviews the researcher first transcribed the interview transcripts (Vitual and Jansen, 1997). It was important to do the transcribing personally as this would allow the researcher in the course of transcribing to reacquaint himself with the data. The process of transcribing made it possible to organise the data into categories, themes and patterns to identify recurring themes, broad patterns, linkages and relationships on the indicators of good governance (Leedy and Omrod, 2005).

The researcher conducted semi structured interviews with both respondents who gave very detailed descriptions of the process and their perspectives regarding their interpretation of the process (Henning et al, 2004). During the interview the researcher's aim was to cover specific themes on the three indicators of good governance and this method is effective with busy executives or technical experts (Roux, 2001). It was not a structured interview, the interview was more of a conversation where the respondent narrated how the process had unfolded. However the researcher had prepared questions based on the themes he wanted to canvass to guide and remind him of the issues that required a response and these themes related to the three indicators of good governance. Interviewing in this form allowed the respondents to make their observations and conclusions about each process and respondent.

Respondents were given the scope and freedom to comment on the process with the benefit of hindsight. However the challenge with retrospective interviewing is that it may have allowed the respondents to rationalise the process. This form of interview was the most appropriate because it provided rich descriptions on the process as well as the understanding and interpretation of each respondent of the concepts and process. The researcher only interjected where he needed to get clarity on a particular issue or to pose a specific question on a subject matter.

The researcher conducted two interviews with the consultant who chose to be interviewed at his place of employment. An initial interview was conducted for the purpose of getting a general idea of how the process was conducted and to get his general interpretation of good governance. This interview provided the researcher with an overview of each of the process. However it was still necessary to secure another appointment to further engage him to clarify and comment on other issues. The second respondent was also interviewed at her place of work and was basically subjected to the same interview to get her to describe each of the process to reveal her understanding or interpretation of the process. The data from the three interviews provided the study with a rich description of the processes that were followed to cost the two Bills.

Another source of primary data was minutes of the meetings and workshop reports for each costing process. The minutes and workshop reports are regarded as primary data because they are merely a record of what took place in each meeting or workshop. It is debatable whether minutes or workshop reports contain opinions of the person writing them and would not necessarily be neutral to be regarded as primary data.

2.4.2 SECONDARY DATA

When conceiving this research the researcher had to consider secondary data regarding the conceptual framework, discipline and subject matter of this research. The researcher first examined secondary data from other researchers regarding research problems that have similar issues related to this research study and this assisted in framing and locating the research in a particular theoretical frame as well as in formulating the research questions (Brynard and Hanekom, 1997).

The purpose of obtaining secondary data for this research report was to gather and augment gaps on the issues under discussion as well as to corroborate or support the understanding on good governance and costing emanating from the primary data. Data has been collected from books, journals and research reports on costing legislation and good governance. Other important secondary data came from the terms of reference for the costing projects. The importance of this source of data is that it gave a picture of the expectations of the commissioning department or institution for the costing process: “Multiple sources of information are sought and used because no single source of information can be trusted to provide a comprehensive perspective” (Patton, 1990:244).

Academic research studies on the subject of costing legislation in SA were limited to only one source since the researcher was unable to locate other research work on the subject in SA. There is a dearth of research studies directly in point on the subject of costing legislation interface/interplay with good governance which is the justification for undertaking this research. This research is important because it attempts to create knowledge on the linkages between costing and good governance to be used for implementation planning and budgeting. There is little known of the role of good governance in costing legislation even internationally work that has been done only relates to RIA which is broader than costing the focus of this research (Garg and Kabra, 2004).

2.5 DATA ANALYSIS AND INTERPRETATION

> 'By using a combination of observation, interviewing and document analysis the field worker is able to use differing data sources to validate and crosscheck findings' (Patton, 1990:244).

Data analysis and interpretation is an integral part of any research and it has to be properly managed otherwise the data may become unmanageable (Henning et al, 2004). The researcher is the primary instrument for data analysis and interpretation. The research utilised a RBA as a method of analysis. RBA is a lens, a way of looking at the world, of defining struggles and partaking in them it integrates the norms, standards and principles of the international human rights system (Uvin, 2004:166; Theis, 2004, Robinson, 2001). This tool promotes justice and equality by tackling power issues that lie at the root of poverty and exploitation (Theis, 2004). The research study recognises that this is an ideological approach in the sense that the promoters of this approach and the approach itself are based on certain normative values.

The reason for stating that the rights based approaches is ideological approach is because of the fact that it is founded on moral, legal values. Therefore when the researcher was analysing and interpreting the data it was on the basis of these values. This approach therefore seeks to carve its own space out of this neo liberal environment to be able to identify the root causes of the problem that results in right holders experiencing violations and holding duty bearers accountable. It is on this ideological perspective that right holders have to be put in position where they are able to demand their rights and hold government responsible. Thus data analysis and interpretation in this research study is premised on the perspective that the process of costing legislation had to recognise children and civil society as right holders and to hold government accountable.

There are five common elements running through the various conceptions of a RBA. First the RBA is based on a framework of rights and obligations; second, rights are inalienable, interdependent, indivisible and interrelated; a RBA is based on accountability and transparency; RBA depends on a high degree of participation and finally a RBA pays attention to issues of discrimination, equality, equity and vulnerability (Kapur and Duvvury, 2006). In spite of having identified these common elements on RBA there are a plurality of these approaches with different starting points different implications for development practice (Cornwall & Nyamu-Musembi, 2004).

Although RBA 'is a lens, a way of looking at the world' it is based on a normative framework based on international human rights law. It promotes certain ideological values depending on 'who is speaking about rights and where they are speaking' (Slim, 2002).

When organising the data the researcher analysed each of the costing processes and focused mainly on the three indicators of good governance in each process. The aim of the researcher was to identify the incidence of each of indicator in the costing process, how it was understood and interpreted as it occurred. According to Zikmund (2003: 491) interpretation is the process of making inferences and drawing conclusions concerning the meaning and implications of a research investigation. In other words the incidence of participation as an indicator of good governance had to be examined in each process for its existence and understanding. The interpretation of participation was also examined with regard to all the processes to see whether there was a uniform understanding of how participation had enhanced the notion of good governance in the process of costing legislation.

In conclusion all the common themes, patterns, linkages and relationships that the researcher was able to isolate constituted the core data to analyse for the research report. In each costing process the three indicators of good governance are the main focus of analysis and interpretation.

2.6 VALIDITY AND RELIABILITY

To ensure the credibility of the study the research made use of triangulation, member checks and peer review which are the three strategies commonly used in qualitative research (Merriam, 1998). Data was obtained from three different sources: namely through interviews, document analysis and observation of the inter-sectoral committee on the Children's Bill responsible for costing the CB. In corroborating the data the researcher looked for recurring issues arising from the interviews cross referencing this with secondary data obtained from documentary material of the processes. The consultant was requested to comment on the research findings in order to enhance the validity of the report. Unfortunately no feedback was received from the consultant. Finally, the research findings were reviewed by a colleague knowledgeable on good governance issues to critique the research report. These research findings were subjected to checks, questions, discussions and shared as a process review (Henning et al, 2004).

2.7 METHOD OF ANALYSIS

The method of analysis used in this research study is a rights based approach. It is a normative analytical method that is based on international human rights instruments and increasingly used by most development actors to hold governments accountable. This approach is therefore not an end in itself but a lens through which the researcher uses to analyse the process of costing and good governance. The major reason for choosing this approach is because it was easier and appropriate to compare the indicators of good governance that are used in this study (http://www.internationalbudget.org/). It is to the advantage of this study to compare same concepts using different analytical tools in the form of good governance and rights based approaches. The main objective of using these methods of analysis was to answer the research questions.

The dominant political ideology in the present epoch is premised on western neo-liberal democracy that espouses market orientated economies and it is this epoch which has given rise to rights based approaches and costing of legislation (Save the Children Sweden, 2005). Thus the approach together with its promoters who have articulated this concept are mainly the multilateral and lending agencies, bilateral agencies and donors who come from the north (Pettit and Wheeler, 2005). Rights based approaches are therefore ideological approaches because the values and principles on which they are based reflect a particular dominant epoch in the development of society. This method of analysis adds value to the study through the use of the indicators as part of good governance, rights based and political concepts.

The researcher worked for an international non-governmental organisation and his main area of work was development in the area of child law reform and implementation. In order for legislation to be implemented there is need for proper resource allocation which entails issues of good governance. Participation of children or civil society, accountability and transparency of duty bearers to children are highly regarded in the organisation for which the researcher's works. The choice of using these three concepts as indicators for the process behind the costing project may have been influenced by the organisational values and mission. It is for this reason that the researcher when conducting this study may have been biased towards collecting data that reinforces a technocratic interpretation of good governance.

In conclusion, self interest, relationship with respondents and influence of organisational values and mission all raise questions as to the objectivity of the researcher to the study in view of the fact that he is the primary instrument gathering and analysing the data. In order to address the potential for personal bias the researcher requested various peers to critique the research which they did to see if they would have come to different conclusions on the study. One of the challenges in a case study design according to Merriam (1998:20) is the personal bias of the researcher.

2.8 LIMITATIONS OF THE RESEARCH

The limitation of this research is that it has been conducted almost entirely from one perspective of the consultant. The decision to do this was consciously made by the researcher since the research was looking at the process behind the costing projects. It was necessary that the person who had designed the process would be the source of the primary data. However to alleviate this one sided perspective the researcher then included the second respondent to the study to get her perspectives and input. Both respondents were interviewed and the data that was gathered was transcribed although it is acknowledged that the process of transcription can be tainted by personal biases.

Another apparent limitation of this study is the restricted sense in which good governance has been applied in the study. Normally good governance involves three stakeholders being the State, private sector and civil society. This study however has focused on good governance within and amongst the government departments that provide service delivery to children. The process that the study looked at was directed at how these respective government departments within and amongst themselves practiced good governance principles. It is for this reason that good governance within and amongst the government departments has been restrictively construed because it generally did not focus on the other two traditional stakeholders in good governance.

The final limitation of the study is that comparative costing in this study has been sourced from AFReC and not many international studies on the subject were relied upon. The challenge this study faced was the fact that international studies on costing were not directly aligned to the focus of this research and its usefulness was not relevant to this study. Some of the costing studies that are alluded to refer to costing within the criminal justice system in terms of the costs and benefits of crime and justice. The object of this research was to understand costing and good governance. Comparative studies whilst alluding to good governance do not expressly look into the good governance aspect of costing.

CHAPTER 3- LITERATURE REVIEW

3.1 INTRODUCTION

This chapter reviews available literature on the subject matter of costing, good governance and on RBA as a conceptual framework analysis. The purpose of the study aimed to understand both the process and costing as a subject matter bearing in mind that the process was done without any prescribed guidelines. The second aspect of the literature review is aimed at understanding good governance and using it as an analytical tool for the process used in costing the legislation. The third aspect of the review examined the RBA to analyse the data and findings of this study. The objective was to identify pertinent issues for the research and to answer the research questions.

3.2 THE SOCIAL, ECONOMIC AND POLITICAL CONTEXT

The purpose of this section is to put into context the socio-economic and political environment in which costing and the practice of good governance came to be used with the advent of democracy South Africa. South Africa embraces democratisation and globalisation as the two powerful forces that have been impacting on the world in the past two decades influencing governance systems and structures (Weiss, 2000; Oluwu, 2002). The turbulence of the global financial markets such as currency crashes and threat of capital flight were a great threat to the development agenda of the new democracy during 1996, 1998 and in 2009 (Bond, 2001). The Growth Economic and Redistribution Strategy (GEAR) was introduced as a macro economic mechanism to drive the development agenda of the new government despite strong opposition from the ruling party's alliance members. As a development mechanism GEAR 'proposed an accelerated program of privatization, deregulation and fiscal restraint' by the government (Habib & Padayachee, 2000:13). It is in this context that costing gained prominence together with good governance.

The advent of GEAR precipitated reforms and shifts in budgetary and financial management systems that aimed at promoting fiscal austerity (Adelzadeh & Padayechee, 1994). Some of these reforms were the adoption of the Medium Term Expenditure Framework (MTEF) in 1998 to facilitate budgeting over a longer period and the Public Finance Management (PFMA) Act No. 1 of 1999 to bring about accountability and transparency in government. South Africa has committed itself as a developmental state to democracy, human rights and sustainable development observing the good governance and is a participating member of the UN and AU.

3.3 THE COSTING IMPERATIVE

In order to analyse costing as a subject matter, the researcher generated some questions to understand and identify relevant issues for this study. The first question to determine was establishing the legal authority for costing in South Africa. The PFMA is the principal Act that seeks to promote accountability and transparency in financial management within government (Clark, 2004). The Act makes it mandatory in Section 35 that any national legislation with financial implications for provinces

> '… must in a memorandum that must be introduced in Parliament with that legislation, give a projection of the financial implications of that function, power or obligation to the province' (S. 35 Act No. 1 of 1999).

The Cabinet Secretariat compiled a guide for drafting a Cabinet memorandum to facilitate compliance with S.35 of PFMA which paragraph 4.7 under financial implications state:

(1) the effect which the revenue and expenditure flowing from the recommendations will have on the State in the current financial year;

(2) costs carried forward to the next financial year; and

(3) proposed funding of the expenditure in (1) and (2) (Office of President, 1999)

Both the PFMA and the Cabinet guide provide the authority for costing legislation. The PFMA in S.35 is also important in relation to its role in holding public service official accountable. Government official must be efficient, effective and practice economy as they dispense deal public funds in terms of the PFMA. They are held accountable for the funds that they manage on behalf of government and can be charged for wasteful expenditure. At the core of the PFMA is to ensure that there is proper financial management. It is submitted that Article 4 on general measures of implementation of the CRC provides further authority for costing. General Comment No. 5 of 2003 by the UN Committee on the Rights of the Child calls upon governments to make children visible in the budget with the allocations they make to implement children's rights. In conclusion it is submitted that costing in South Africa should not be limited to legislation having a financial implication to provinces but must include all legislation.

What is costing? Costing is a financial planning tool recognised in both economics and accounting. Economics is concerned with the allocation of scarce resources in society. In general, costs are defined as the value of the resources used to produce or provide a good or service (Levin and Edmond, 2001). 'To an economist, the cost of a good or service is the maximum value of the opportunities foregone in obtaining that good or service' (Harrington, Morgenstern & Nelson, 2000) 'Costing is the process of estimating costs for items in a program. The result of costing is a budget for the program' (nd) retrieved on 25 March 2007. A budget from a child rights perspective can be defined as a process through which public expenditure is made in compliance with the state obligations to enforce and protect children's rights (Teshome & Alemu, 2006).

A budget is a document that, once approved by the legislature, authorises the government to raise revenues, incur debts and effect expenditures in order to achieve certain goals … the budget determines the origin and application of public financial resources (Elson and Norton 2002). Clark defines costing legislation as determining the financial implications or cost of developing and implementing legislation (Clark, 2004). Legislation is law that has been laid down by an organ of the state which has the power to do so, these laws usually are embodied in writing and are known as statutes or Acts (Klein and Viljoen, 2002). The common thread in these definitions is the quantification in economic or monetary terms of the value of services or goods that have to be delivered.

What is the reason for costing? In other words why do we cost? Since economics is concerned with scarce resources, development is concerned with the distribution of resources and the access to services, costing is relevant for both disciplines (Theis, 2004). The priorities of government can be determined from its budget because this will indicate where the revenue of the government will be expended. The reason why costing is important in the case of these Bills is because it shows how government is prioritizing the implementation of children's rights. It also helps to show whether or not government is actually meeting its obligations to provide service for children. Finally costing is important as it allows government to plan and see where gaps exist in resources. According to Levin & Edmond (2001) costing analyses provide useful information about actual resource needs or inputs required to provide a service. Furthermore, costing analyses can provide in-depth information on the efficiency and effectiveness of the use of these resources, as well as estimate the value of additional efforts needed, often in terms of staff labor and inputs.

Costing has been borrowed and successfully used in several disciplines according to Cohen, (2000) and in this research study it is understood as a budgeting as well as to determine the cost of implementing legislation in South Africa. One of the areas which has used costing is in the criminal justice sector where studies have been undertaken to cost crime. The cost could relate to cost incurred in anticipation of crime such as insurance and security as well as the cost arising as a consequence of crime such as property stolen, health service costs and the cost in response to crime such as police investigation, prosecution of cases in courts and prison for offenders (Mayhew, 2003; Bowman and Stevens, 2004). Costing crime is used as an example to illustrate that it is applicable for both tangible and intangible costs in such areas as the environment and health programmes.

When and who should do costing? Shall et al (2000), in a study reviewed several countries and government departments in South Africa on when or who should do costing. The study identified three approaches to costing legislation the first being the special agency approach where a specific agency is authorized to conduct costing exercises for government. The second was the departmental approach where the department introducing the legislation is responsible for costing. The third is the prescribed methodology approach which is similar to the second approach but different in that there is a prescribed format on how to do the costing. In South Africa the second approach has to date been the most prevalent. The study further identified a number of lessons for South Africa. They came to the conclusion that the department introducing the legislation should do costing.

Essentially costing is an administrative activity of government even if this activity is outsourced to independent consultants it is done on behalf of the government. Similarly Clark (2004) conducted an international review of countries to find out at what stage should costing be done. Due to the huge financial implications this has on governments the choice of when to cost depends on the legislation. In some cases it is necessary to cost before the legislation is drafted whilst in other cases it is necessary to cost only at the stage of implementation. It also emerged that some of the countries like Australia provided for public consultation for the RIA through established guidelines set by the mandated office.

How is costing done? Costing is a highly technical skill that should be differentiated from policy formulation and development. There are different costing methodologies with no one unique methodology for costing legislation and furthermore there are several methods for allocating costs (Shall et al, 2000). The two Bills used activity based costing as a method to calculate the cost of implementing these services. Activity based costing is a costing model that identifies activities in an organization and assigns the cost of each activity resource to all products and services according to the actual consumption by each: it assigns more indirect costs (overhead) into direct costs (http://en.wikipedia.org).

This research is concerned with the costs of budgeting and implementing legislation pertaining to children in respect of the two Bills. Implementation costs relate to the cost of providing services to children such as when a social worker writes a report on a child who is in conflict with the law. In other words the cost relates to the salary of the social worker in terms of time spent on writing this report, the cost of stationery used to write the report. Other implementation costs may relate to capacity building of government officials on such topics as diversion or on implementing legislation. These examples seek to illustrate that there are financial considerations for implementing legislation.

In January, 2007 the Cabinet in South Africa approved the use of Regulatory Impact Assessments (RIA) and is establishing a RIA unit in the Policy Coordination Unit in the Presidency. This was done after an investigation was conducted on behalf of government on the suitability of introducing RIA in South Africa. The findings of the first report of the investigation found out that there is lack of procedure on the costing of legislation. It also recognized that costing is only done at a much later stage in the legislative process. Finally it also found that whilst consultation was conducted it was necessary to consult widely and innovatively although it would not be possible to consult with every interest group due to capacity and cost factors. The second report of the investigation which reporting on a pilot of RIA supported and recommended that the above findings be implemented (Small Business Project Consulting, 2005).

RIA has become a common feature in both developed and developing countries. The following definition of RIA has been lifted from the consultants report recommending the use of RIA in South Africa.

> Regulatory Impact Analysis (RIA) is a formal method for assessing the costs and benefits, both economic and non-economic, of regulatory proposals. Regulatory proposals

> are defined as: Any proposed government rule that imposes some significant cost on other government agencies, businesses, other non-governmental organisations, or private individuals (Small Business Project Consulting, 2005).

What is of relevance to this research study is to understand that costing is one of the elements of RIA which is much broader as it looks at other aspects such as benefits, impacts of regulation. Therefore costing and RIA are two different methodologies with the latter being much more comprehensive than the former. Second it is a tool that promotes good governance because it uses public consultation to develop regulatory alternatives and to understand associated impacts (Garg and Kabra, 1999; Cabinet Memorandum, 2006).

3.4 IMPLICATION OF COSTING OR APPROVAL OF RIA IN SA

Both Bills were costed without any clearly laid down guidelines for the consultant. All that was stated was that the consultant should consult with affected departments with respect to the costing of the CB and nothing was mentioned in the CJB (Conrad Barbeton, personal communication, 20 June 2007). However the study bears in mind that costing is one aspect of an RIA and perhaps this is one of the reasons why there were no prescribed guidelines from the commissioning departments. The draft RIA guidelines have made it imperative that public consultations must be conducted. At the time of writing the procedures to conduct public consultation processes had not been finalised by the RIA unit in the Presidency.

The lack of guidelines for conducting the consultation process is clearly not to be encouraged as we have different conceptions of what consultation is and without any guidelines there is a risk of uncertainty and the subjectivity of the person conducting the consultation process being untrammelled. However the consultant through his own initiative consulted on both the CJB and the CB and it is from this experience that the study draws its lessons. It is still to be seen how to involve the public on this highly technical subject of costing and or RIA. However the

Minister of Finance in South Africa consults the public widely when he develops the budget process each year through the tips to Trevor and this demonstrates that it is not an insurmountable process (www.treasury.gov.za/).

3.5 EXAMINING GOOD GOVERNANCE PROCESSES

The discussion in this section traces the history, use and controversies of good governance. However, first it is necessary to understand governance, since it is the root concept of good governance. The concept of governance is as old as history surely because all the political struggles that had been waged throughout the continent were aimed at attaining good governance (Adejumobi, 2000; Weiss, 2000). The World Bank defines governance as the 'manner in which power is exercised in the management of a country's economic and social development' (Landell-Mills and Serageldin, 1992; World Bank, 1994). Nye and Donahue (2000) defined governance as the 'structures and processes for collective decision making involving governmental and non-governmental actors'. There is a plethora of definitions of governance which all point to some form of decision making.

In general the concept of good governance gained popularity as a result of World Bank when it said Africa was not developing because of bad governance and adopted the concept as a lending condition for developing countries (World Bank, 1989; Simonis, 2004). When the concept was first used it had an apolitical meaning but over the years it has transformed to include political elements (Simonis, 2004).

According to Weiss (2000) there are four factors credited with the ascendancy of this concept. The end of the cold war made it inevitable to turn a blind eye to glaringly illegitimate authoritarian regimes anywhere in the world. It was necessary to lobby against such regimes whose governance was authoritarian. The second factor came about as a result of the third wave of democratization that swept through the third world and the former Soviet bloc countries. Third the proliferation of non-state actors doing what hitherto were government functions and State functions and finally the willingness of the international community to go behind the veil of sovereignty to probe crimes of genocide or against humanity. This was what led to the conceptualizing of governance.

Despite its short history good governance is ‘definitely on the international agenda’, as a controversial but influential standard to which countries, institutions and organisations have committed (Weiss, 2000). It is indeed on the agenda of the UN agencies, multilateral institutions, the AU together with NEPAD and APRM and is part of the South African Constitution. The history behind its conceptualisation and usage has not been without controversy partly because of differences on conception, definitions, qualities, usage and ambit (Hyden, 2001; Mhone and Edigheji, 2003). However despite its controversial history there are few if any that would argue against the ideals and ethos of the concept.

Good governance is a normative, pliable term that is derived from governance which despite having become fashionable is as old as history (Weiss, 2000; Doornbos, 2004). There is debate about the origins of the concept of good governance. Mkandawire (2007) has stated that the concept of good governance originated among African scholars who were working in the World Bank in relation to state-society relations in Africa expressing the concern that these be developmental, democratic and socially inclusive. She argues that the World Bank and other multilateral institutions misappropriated the concept. Finally she says the concept must sustain the three elements proposed by the African scholars. This conception of good governance contains two aspects (democratic, developmental) of the preferred definition of the concept that we have adopted here.

It was the World Bank which said the core of Africa’s problems was the lack of governance and suggested that in order for Africa to be rescued it had to put in place administrative processes that would result in good governance (Simonis, 2004). These administrative processes in the beginning were apolitical and directed towards the improvement of public sector management (Ibid). However with time this changed to become political. It is the World Bank’s connotation of good governance that has seen most African governments resist the imposition of the term in their countries (Mafeje, 2002). It does not follow that with the introduction of good governance this would result in democracy. In fact even some developed countries that practice some form of good governance have remained undemocratic such as the so called Asian tigers. Some of these countries have achieved phenomenal success in terms of development however this has been achieved at the expense of the suppression of the values of good governance and democracy.

The main features of good governance can be represented by three elements which are: how people of a country are governed, how the country's affairs are administered, and the quality of management and institutional capacity to be found in public agencies (Agere, 2000). Most organisations agree to eight characteristics of good governance (UNDP, 1997; Agere, 2000; OHCHR, 2000; UNESCAP, 2007). This study restricts itself to only three of the characteristics of good governance.

The theoretical basis for good governance in international human rights law is found in Article 21 of the Universal Declaration of Human Rights (UDHR) which talks of a participatory democracy. Besides the theoretical basis of UDHR giving credence to good governance we can trace another source of authority in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) which recognises participatory governance. Another authority for good governance is found in Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which recognises the rights to political life as well as economic social and cultural development (Patel and Watters, 1994). Having traced and established the existence of good governance in the human rights regime is further justification for analysing the process of costing legislation through good governance and the rights based approaches.

First is a review of some of the definitions of good governance in this study. The first definition says good governance is 'the process of decision-making and the process by which decisions are implemented or not implemented' (UNESCAP, 2007). This definition is process orientated. The next definition forms the basis of the definition given in the APRM Questionnaire of good governance and democracy.

> 'Good governance means creating well-functioning and accountable institutions-political, judicial and administrative-which citizens regard as legitimate, in which they participate in decisions that affect their daily lives and by which they are empowered' (Annan, 1998).

This definition projects a number of ideas which relate to capacity of institutions to formulate and implement policies and suggests that citizens are able to participate and are empowered through their participation. The second issue to note is the fact that the institutions referred to are not limited to the political realm but cover a range including the administrative realm.

In 2004 the former Office of the High Commissioner for Human Rights and the UN Development Programme in relation to good governance stated:

> Depending on the context and the overriding objective sought, good governance has been said at various times to encompass: full respect for human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy access to knowledge, information and education, political empowerment of people equity sustainability and attitudes and values that foster responsibility solidarity and tolerance (www.ohcr.org/english/issues/development/docs/sem2004-2.doc).

Iqbal (2006) defines good governance as simply respect for human rights. The preferred definition for this research states that 'good governance is a system of administration that is democratic, efficient and development oriented' (Jeffries, 1993: 27). What appeals about this definition is primarily that it alludes to a system of administration that is democratic. We know that democracy has a number of characteristics which most of the time coincide with the elements of good governance. However the major reason why this definition has been chosen is the fact that it regards good governance as developmental orientated.

Leftwitch (1993) has argued that the features of good governance conceived by the World Bank basically reflect the minimum institutional, legal and political conditions necessary for Western liberal democracy. This formulation of good governance consists of three components. The first component is systemic referring to a democratic capitalist regime presided by a minimal state; second, politically a state that enjoys legitimacy and authority and finally administratively is a public service that is efficient open and accountable and that can design and implement policies. Uvin (2007) says since the 1990's human rights have been associated with the good governance agenda as part of the World Bank to repackage its rhetoric and asks how strengthening financial institutions is a human rights activity except as a show of the naked face of the powerful countries.

The final issue we consider is the usage of good governance it is used both as a means or end alternatively as a process or a goal (Agere, 2000). When perceived as an end this means good governance has been able to achieve all its characteristics and has achieved the highest state of development and management of the nation's affairs as a goal (ibid). If it is perceived as a means or a process it means that it is a vehicle with which to achieve economic growth, human development and social justice (ibid). The third usage of the good governance is by conceiving it as a development process this usage seems to coincide with the good governance definition that this research has chosen to use for the study (ibid). The researcher for the purpose of this study does not distinguish between these usages perspectives but uses the concept as a means, an end and or as a development process (ibid).

In conclusion, whilst there are serious criticisms of good governance especially when it is used as an aid conditionality and to ensure a fertile ground for western liberal democracy it does not go far enough to ensure that there is development, democracy and respect for human rights. As a standard it has to be complemented with other tools to ensure that the developmental challenges are met in a climate that respects human rights. It is submitted that to complement good governance it is necessary to invoke the Rights Based Approach to ensure the implementation of the rights of children.

3.6 RIGHTS BASED APPROACH

There are several variations and definitions of RBA according to academic and development related literature that are based on legal, socio-economic or political perspectives that came to prominence after end of the cold war (Cornwall & Nyamu-Musembi, 2004: Kapur & Duvvury, 2006). A RBA enables people to influence government decisions that affect their lives and it promotes transparent, fair, equitable responsive and participatory governance (Theis, 2004). In 2003 the UN agencies agreed to a Common Understanding on how they would apply a RBA and several other development agencies have come up with their own versions of RBA (ibid). A common thread running through all the definitions is captured in CARE's policy paper which says:

> A rights-based approach deliberately and explicitly focuses on people achieving the minimum conditions for living with dignity. It does so by exposing root causes of vulnerability and marginalisation and expanding the range of responses. It empowers people to claim and exercise their rights and fulfil their responsibilities. A rights-based approach recognises poor, displaced, and war-affected people as having inherent rights essential to livelihood security, rights that are validated by international laws (CARE, 2001).

There are a number of benefits for adopting a RBA by UN and development actors such as equity, non-discrimination, accountability, participation, legitimacy, integrated approach and greater impact and effectiveness (Save the Children Sweden, 2005). The issue however is the relevance of RBA to this study and to costing in particular.

Uvin has stated that there are two aspects to a RBA: the first is that it creates claims and secondly is the realisation that the process by which development aims are pursued should itself respect and fulfil human rights (Uvin, 2004). Since the focus of this study is the process of costing legislation the RBA was used as a framework for analysing the process of costing legislation. The objective was to examine whether the process that was used in costing the Bills respected or fulfilled children's rights. It is acknowledged that RBA is a normative framework and the researcher by using it as a framework for analysis is bringing certain values to the costing process.

The reason that the researcher has used RBA as a framework for analysis is the added value it brings to holding government accountable for implementing children's rights as well as the other reasons already alluded to in the preceding paragraph. Secondly, the three indicators that this study is using to examine the process of costing are rights based concepts even though they have come to be regarded as political concepts as well (http://www.internationalbudget.org/). Finally, since the process of costing as well as the Bills were aimed at bringing far reaching social change to children they are simultaneously rights based and economically grounded (ibid).

3.7 PARTICIPATION, ACCOUNTABILITY AND TRANSPARENCY

South Africa's system of governance is based on the values and principles of the constitution which promotes transparency, accountability of government and participation of citizens in all aspects of governance and administration (Hilliard and Kemp, 1999). There are three organs of government and the focus of this study is mainly on the executive whose mandate is to implement laws as an administrative activity. The vehicle with which the executive exercises its mandate is through the civil service and public administration (Van Wyk et al 2002: 60):

> 'The essence of public administration as a democratic institution is to use the principles of good (democratic)

> governance to design and structure state institutions, their internal processes and mechanisms and their mission' (Cheema, 2004).

The costing of the Bills was an administrative activity that was executed on behalf of the two respective government departments by the consultant in collaboration with the officials of the two departments. The process of costing had to comply with the values and principles of public administration in Section 195 (1) of the Constitution Act 108 of 1996. These values and principles are interpreted in essence as the core elements of good governance and the study as stated will focus on participation, accountability and transparency to analyse the process. It is important to bear in mind that the theoretical foundations of these indicators are derived from three sources being Liberal democracy, Law and Human Rights.

3.7.1 PARTICIPATION

The right to participate is derived from Article 21 of the Universal Declaration of Human Rights adopted in 1948 by the UN which states that everyone has the right to participate in the government and to have access to the public service of his country. This right to participate freely, actively and meaningfully is furthermore recognised by Article I the UN Declaration on the right to Development (Patel & Waters, 1994). The constitution in SA provides for citizen participation in both governance and administration as this is essential to sustaining democracy and promoting good governance and administration (Hilliard and Kemp, 1999). SA is a participatory democracy. Citizens are encouraged and expected to deliberate actively and get involved in decision making of government. What is participation?

> 'Participation is defined as a process whereby stakeholders exercise influence over public policy decisions and share control over resources and institutions that affect their lives thereby providing a check on power of government' (Agere, 2000: 9).

Through participation, citizens exercise power directly over the government in the formulation and implementation of legislation and their participation keeps the government in check.

In general participation is usually ascribed to individual citizens but other formations like civil society or the private sector can participate in matters affecting them or the interest groups they represent e.g. as political parties, student organizations or chambers of commerce etc. Children are usually excluded from participating in matters that affect their lives and their full citizenship rights are limited in most constitutions such as the right to vote (Van Beers et al, 2006). There was participation in the development and drafting of the Bills by civil society and children but participation of civil society in the costing process was limited only to participation in the development of norms and standards used in the costing unless we regard the consultant as representative of civil society. Children did not participate or input at all in the costing process. Members of Parliament did not participate as well: indeed the only participants were government officials who represented their respective departments. However, some civil society organizations were consulted on specific issues by the consultant.

There are many benefits in stakeholder participation in both policy formulation and implementation according to Hilliard and Kemp (1999). Participation allows for many viewpoints to be heard. It is educational as it helps ordinary citizens to grasp the nuts and bolts of government and administration. Finally, it creates a sense of ownership when citizens are afforded the opportunity to have their say. The participation of government officials from various departments' personnel in the costing process of both Bills is illustrative of the above mentioned points. Most of the government officials had not been involved in any costing exercise and through their participation they gained skills and some have used these in their annual planning activities in their respective departments (Conrad Barberton, personal communication, 20 June 2007).

3.7.2 ACCOUNTABILITY

According to Maltose (2000) institutionalization of accountability is a defining feature of democracy. What this effectively means is that all the rights contained in the Constitution of South Africa can only be realized if there are mechanisms which allow holding government accountable. Some of these institutions are Parliament, Courts, Chapter 9 institutions of the Constitution i.e. human rights commission and any other administrative bodies whose mandate is to monitor observance of the rights in the constitution. Accountability is a key requirement of good governance and the question who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organization or institution (http;//www.unescap.org/huset/gg/ governance.htm). The concept of accountability is littered throughout the Constitution (Act 108 of 1996) wherein the government is enjoined to not only be democratic but to be accountable. For the purpose of this research study the focus is on Section 195(1) (f) regarding accountability of the public administration as applied in the process of costing legislation.

There are four types of accountability that can be identified and these are public, administrative, legal and political accountability (Zarei, 2000.) What is the meaning of accountability?

> 'Accountability is defined as holding responsible elected or appointed individuals and organizations charged with a public mandate to account for specific actions, activities or decisions to the public from whom they derive their authority' (Agere, 2000:7)**.**

For the purpose of this research the type of accountability this research is concerned with is administrative accountability because this is where the costing process can be explained as an administrative project.

This research study is using the costing process of the CJB and CB as case studies and the question is who is accountable and to whom? The commissioning departments for the costing process would seem to be the ones that should be held accountable for the costing process. Alternatively the study could look at the consultant however this would be very artificial legally speaking we cannot hold the consultant but the commissioning department accountable. However considering that there were several other departments that participated in the costing process it becomes imperative that each department be held to account, alternatively government as a unit.

The next issue to address is what should government be held accountable for? One of the reasons for holding government accountable is that the process of costing as well as the actual costing was done on behalf of government by the consultant. It is necessary then to hold government responsible to account to the stakeholders who have an interest or are affected by costing. Some of these stakeholders are obviously the parliament, civil society organisations and children. The second level of accountability refers to the accountability of each respective department officials who would have to report their participation internally in the department. In other words each department must account for its participation, they also have to account in terms of transparency and finally they have to account by giving a report on the process to the public or parliament.

In conclusion, accountability fulfils an important role in promoting democracy, human rights and good governance. The costing of the two Bills was undertaken by departmental officials and the consultant who accounted to the respective departments and informed other stakeholders of the process which is not the same thing as being accountable. It is submitted that whilst it was correct for the official of government and the consultant to have accounted to the departments this fell short in terms of accounting to the key stakeholders being civil society and children. Civil society and children are important stakeholders in view of the fact that they have an interest to know how the process was conducted and are affected by the process chosen to cost.

3.7.3 TRANSPARENCY

It is submitted that the right to information relates to transparency and this right is located in Article 19 both in the UDHR and ICCPR, providing the theoretical authority for this concept. Transparency can be seen as a goal, norm or an instrument (Zarei, 2000). Openness is one of the values underpinning our Constitution and is used in the same level as transparency in this research study (Act 108 of 1996). What transparency requires is that decisions taken by the government are done in a manner that follows rules and regulations. Secondly, information must be freely available and directly accessible to those who will be affected by such decisions and their enforcement. Finally, enough information is provided in easily understandable forms (Miruka, 2007). What is transparency or openness? ‘Transparency is broadly defined as public knowledge of the policies of government and confidence in its intentions’ (Agere, 2000).

Transparency can take a number of dimensions in the particular circumstances of the two costing projects considered here. Transparency can refer to the transparency regarding the methodology used for costing. The second dimension relates to transparency regarding the process that is followed: is it clear who is responsible for what in the process? The third dimension relates to how the results of the costing are reported and written up in other words is it understandable to the majority of people or is it written in a difficult way (Barberton, C. 2007. Personal interview 20 June, Pretoria).

How do we relate the concept of transparency to the costing process of the two Bills? The first issue is whether the process was transparent and secondly whether the results of the process were debated so as to be transparent. To respond to the first issue reading from the interview held with the consultant the process was conducted in a transparent way for those who were participants. However, it is submitted that it was not transparent in the sense that few stakeholders could participate in the process because it was only selected officials from government who could participate.

Regarding the second issue raised, the question that becomes relevant is whether the departments released or made public the results of the costing process. The issue is whether the results where released merely to inform or whether the report was released for comment that would further be taken into consideration in the final report. The results of the costing process were disseminated by the two lead departments respectively through workshops. Perhaps that is the reason why the costing of the CJB received ‘positive acclaim’. There was a conscious effort to brief even the Members of Parliament in a workshop held at Kopanong Hotel in Benoni. The second issue is whether there has been any transparency in the implications of the costing report. How have the public been informed regarding the implications and how is the public supposed to comment back to government on the implications of the costing report.

3.8 CRITICAL ANALYSIS OF GOOD GOVERNANCE

There is no doubt that the introduction of the concept of good governance especially to developing countries was seen as an instrument of control that the World Bank and other agencies were trying to impose on these countries. Good governance has been perceived as an aid conditionality meaning that in order for the World Bank/IMF to lend money to countries they were had to practice the standards of good governance. The second criticism of the concept is that it does not follow that by subscribing to the political agenda of good governance this will result in economic development as the World Bank has tried to convince developing countries. Another criticism of the concept is that it does not go far enough to hold governments accountable especially in those countries where there are no enforcement mechanisms within their constitutions against the government. In other words it may be a tool that lacks enforcement. Finally, good governance as a concept has been used to focus on the political aspect and has not focused on being developmental and socially inclusive (Mkandawire, 2007).

What is positive about the good governance concept is that when properly used the concept offers a tool that we can use to hold government accountable not only politically but in terms of development. The tool incorporates three aspects as Mkandawire (2007) has argued. In spite of these shortcomings good governance is a tool that has enabled civil society to use and to demand from government observance of standards that seek to promote participation, accountability.

What has compounded the problem is the issue of definition of what good governance is because each country has its own political and socio-economic background or outlook therefore it is a challenge to promote a uniform definition. Good governance is an inclusive political concept but the notion of ‘good’ is a normative value (Ademujobi, 2000). However, there is a view that says there is a causal connection between the practice of democracy, human rights and good governance. A number of international instruments and bodies have alluded to this and in the African continent the AU, NEPAD and APRM are institutions that have endorsed this connection. Thus, in spite of the negative connotations that the concept evokes, most countries nevertheless have committed their countries to the objects of democracy, human rights and good governance.

The big question is whether there is any relationship between the costing process and good governance. The process had to comply with the broad values and principles of public administration that are imposed by the Constitution in section 195 (Act 108 of 1996). We should bear in mind further that the core values of public administration are efficiency, effectiveness, economy and equity (Engela, 2007). It is accepted that these values and principles are an expression of good governance in the context of SA. So, for this reason, the costing process was measured against these values and principles or, put differently, in terms of good governance using participation, accountability and transparency as indicators.

In conclusion, the literature review has been able to identify that the three characteristics of good governance that are used to examine the costing process are rights based concepts although their political nature has been emphasized.

CHAPTER 4- CASE STUDY ON THE COSTING OF THE TWO BILLS

4.1 INTRODUCTION

This chapter describes the process used in the costing of the two Bills as a case study for this research with a view to tracing the interplay between the costing process and good governance. The idea is to highlight how public consultation or involvement is integral in good governance and as evidence of good practice. Although costing as a tool for budget and implementation planning was experimental in South Africa it became a topical subject with the costing of the CJB and was further refined in later costing exercises such as in the CB. The involvement or consultation with stakeholders whether they are the public, civil society or other government departments enhances the decision making process of good governance. We examine the role of consultation in the costing process using three indicators of good governance as criteria or guideline for conducting such processes.

4.2 PURPOSE OF THE TWO BILLS

Both Bills provide the framework for the implementation of children's rights. The CJB proposes a new child friendly system and procedure for dealing with children who are in conflict with the law. The new system discourages the processing of alleged child offenders in the criminal justice system so as to avoid criminalising them by having a criminal record [B49-2002]. The general understanding is that when a child engages in behaviour that is delinquent is usually a manifestation of deeper social problems. The CB on the other hand is a comprehensive Bill that seeks to deal with all aspects of a child's welfare. This Bill proceeds from the basis that children who are in need of care have to be dealt with in a manner that accords them their rights in terms of the constitution [B-2003]. The Bill introduces new services for children as well as proposes to change the existing services to accord with the constitution. Both of the Bills were subjected to a costing exercise and this research is interested in the process of costing the Bills.

4.3 OBJECTIVE OF COSTING THE TWO BILLS

The primary reason for costing these Bills was to plan their successful implementation once enacted (Skelton, 2007). There are several examples of legislation in SA that had difficulties to be implemented because of the failure to conduct costing or budget implementation planning either before, during or after these laws were passed. In other words when they were debated Parliamentarians had no idea how these laws would be implemented. By costing these two Bills the government knew how much it would cost to implement the CJB and the cost of providing the services envisaged by the CB. Since government knew the cost of implementation as well as the cost of providing the various services it could budget for their implementation in terms of the MTEF framework. Through the MTEF government was able to prioritise in terms of implementation as well as provision of services to children.

4.4 THE PROCESS TO COST THE BILLS

The nature of the costing process was 'experimental' because 'there is no unique costing methodology for costing of all legislation' in spite of this however the process received widespread 'positive acclaim' making costing a topical subject in SA (Shall et al 2000; Skelton, 2007). A tender process was used to select the consultant to undertake costing for each of the Bills in terms of government procedure. The Applied Fiscal Research Centre (AFReC) attached to the University of Cape Town was awarded the contract to cost the CJB (Conrad Barberton, personal communication, 20 June 2007). A consortium led by Cornerstone Economic Research won the contract to cost the CB. The same person did the costing for each of the Bills and he developed and managed all the costing processes (Barberton, 2006).

Due to the experimental nature of the costing exercises there were no guidelines given to the consultant on the procedure that had to be followed when the costing was conducted. The only requirement was that the consultant had to ensure the participation of relevant stakeholders in the costing exercise and that was only in respect of the costing of the CB (Ibid). This requirement came as a result of the lessons learnt from the costing of the CJB where the participation of key stakeholders made the process succeed. It is submitted that the costing process was a collaborative partnership between the government and civil society organisations. The costing process was essentially an administrative activity. Even though it was contracted out to independent consultants it nevertheless was subject to the values and principles of public administration in the Constitution (S.195, Act 106 of 1996). Since no guidelines existed for the costing process the researcher examines how eventually the process unfolded.

It is necessary to clarify that a total of three costing exercises were conducted for the CJB but for the purpose of this research we will regard them as one unless we have to refer to a particular exercise to illustrate learning or a point of interest. The first costing exercise for the CJB was conducted by AFReC as a cost effective investigation as well as to develop an implementation strategy for the CJB. It was conducted by Conrad Barberton on their behalf and was completed in 1999 (Skelton, 2007). He consulted members of the SALRC project committee on juvenile justice, relevant government departments and other relevant stakeholders. He consulted all of these stakeholders for purpose of understanding as well as getting their views on a cost effective way of implementing the Bill (ibid). The consultations that he engaged in were motivated by his own sense as well as the fact that it was these stakeholders who were in a better position to advise him on the most cost effective way to implement the CJB. It was through this limited participation of stakeholders that the cost effectiveness analysis was conducted. Issues of accountability and transparency of AFReC on the process have to be measured against this background.

The second costing exercise for the CJB was done under the auspices of the UNDP technical assistance programme again by AFReC the objective being ‘to plan for implementation of the CJB through ‘budget and implementation planning' in 2001 (Skelton, 2007). The other purpose of this costing exercise was to update the cost effectiveness analysis which had been done in 1999 as well as to consider the subsequent changes that had been made on the Bill (Shall et al, 2000).

> 'The updated cost-effectiveness analysis confirmed the findings of the earlier analysis, that, overall, government was likely to realize significant savings from the full implementation of the Child Justice Bill' (Skelton, 2007: 23).

The process of updating the cost effectiveness analysis was undertaken again by Conrad Barberton and John Stuart it did not involve other stakeholders to the CJB. This process is also measured against the three indicators of good governance. The results of this second study were not acceptable to the stakeholders in government because they had not been involved in the process and had no ownership of the process (ibid). This failure to take ownership of the second process by government officials goes to show how they felt with regards to not having participated in the process and therefore rejected the product of the costing by the consultants.

The third costing process for the CJB was motivated by the fact that the CJB was being introduced in Parliament. It was necessary to have a budget and implementation plan that would be generated through the full participation of relevant government departments and stakeholders in terms of the three year MTEF (ibid) having learnt from the second costing process. An Inter-Sectoral Committee for Child Justice (ISCCJ) was formed comprising government officials from different departments to drive the budgeting and planning process. Each participating department generated the figures it would need as a department to budget and implement the CJB (ibid). The Chief financial officers of each respective department were requested to attend a meeting on the process to get buy in to the process at the highest level.

The UNDP technical assistance programme gave support to the ISCCJ. The intention was to ensure the commitment, buy in and ownership by each department to both the budget and implementation plans that were generated. The product of this collaboration was that the CJB was the first Bill in the history of SA Parliament to be introduced having a budget and implementation plan. This Bill set an important precedent, members of Parliament could engage with the Bill with all the facts and figures. It showed that by implementing the Bill the government would make a saving in the long run. The lessons in terms of good governance of this third costing exercise are self evident and what sets this third process apart is the participative nature of the process.

Regarding the costing of the CB it is acknowledged that the experience from the three CJB costing exercises provided important lessons for designing the costing of the CB. The Department of Social Development (DSD) had the lead to cost the CB and issued the tender contract that was awarded to the consortium led by Cornerstone Economic Research. The process to budget and cost the CB only began in 2004 when it was already in Parliament (ibid). The consulting team was quite adamant that the respective government departments would generate the figures to cost the CB, instead the consulting team would

> 'drive the process, provide training and expert advice, undertake critical research, develop costing models, and monitor the quality and accuracy of the outputs received by the departments' (ibid at 27).

How did the process unfold to cost the CB that is relevant to good governance values and principles? It is to be noted however that the costing was focused on costing the services envisaged by the CB (Barberton, 2006).

A national interdepartmental committee and an interdepartmental provincial committee was formed to work cooperatively on the costing of the CB. The chief financial officers of all the cooperating departments were expected to sign off the final MTEF budgets and phased implementation plans they had produced and to bind their respective departments to these budgets and plans (Skelton, 2007). Government officials were trained on costing legislation through a series of workshops and were expected to get budget figures from their respective departments to cost the CB. The process also involved officials from non-governmental organisation who participated only in the development of service delivery norms and standards.

The experience from the CB costing process has important lessons for the process of good governance. Participation of officials from forty eight government departments in the costing process was important for the purpose of getting the necessary buy in including the signing off by their chief financial officers (Conrad Barberton, Personal Communication, 20 June, 2007, Skelton, 2007). Second, participation in the process meant that there was ownership in the costing process because the figures generated came from the concerned departments. The officials were accountable not only to their respective departments but to the interdepartmental committee of the children's Bill and were further accountable to Parliament for their work and to the general public. The process was transparently done and the officials from the departments had to be transparent as to how the figures had been generated. The consultative nature of the costing processes for the CB has contributed to the refinement of the costing methodology.

4.5 CONCLUSION

Whilst there is no unique costing methodology for costing all legislation it is quite clear from the costing processes of the two Bills that the involvement of stakeholders was necessary. The results of the costing process also dispelled the notion that government officials who had no prior experience of costing could not cost their own activities on these two Bills. It was however with the assistance and support of the consultant who designed the costing methodology that the government officials could cost the Bill. Once there is consultation and involvement in processes most people accept the product of such cooperation and it is usually very good. The values and principles of good governance contained in Section 195 of the Constitution (Act 107 of 1996) are not just lofty ideals but have to be exercised and guarded to ensure service delivery and democracy.

CHAPTER 5- RESEARCH FINDINGS AND ANALYSIS

5.1 INTRODUCTION

It is on the basis of the in depth interviews that were conducted, analysis of documents and the researcher's own observation of the costing process that the research findings have been made. This chapter presents and analyses the research findings using good governance and RBA based on the accountability of government as the primary duty bearer. The indicators of good governance used in this study are derived from the international human rights framework such as the UDHR, ICCPR and Declaration on Development. Similarly, the sources of the RBA come from the international human rights framework that applies several human rights principles such as universality, equality and non-discrimination, accountability and participation etc. The theoretical foundations of the indicators used in this study derive from liberal democracy, law and international human rights framework. South Africa is a signatory to instruments such as the CRC, ACRWC must respect, protect, promote and fulfil these rights.

5.2 INTER-SECTORAL COLLABORATION

An African adage says 'it takes the community to raise a child'. This remains true even in today's society and in order to successfully implement the two Bills there was a need for inter-sectoral collaboration between government departments in the costing process. The first step was to identify the departments that had a role to play in the implementation of the Bills. And then to identify the officials who performed these roles. Many departments were identified who had a role to play in the implementation of the two Bills. It will take the intervention of the three spheres of government to raise a child by implementing children's rights in an inter-sectoral approach. Inter-sectoral collaboration is mandated in terms of cooperative governance found in chapter 13 of the Constitution as well as the Intergovernmental Framework Relations Act (No. 13 of 2005).

According to Skelton (2007), the inter-sectoral nature of the process was very important because it enabled the different departments to collaborate and support one another when they approached Treasury to fund the Bills. As an example the Department of Social Development would incur huge expenses because of the added responsibilities. Other departments on the other hand made savings so it made sense for these departments to support those departments that now had added responsibilities and costs. The significance of this finding is that government departments within and amongst themselves complied with the three indicators of good governance. However good governance also includes civil society and the private sector (Mafunisa, 2004). The study will now look into these aspect.

In terms of RBA or good governance indicators of participation the process of costing legislation did not meaningfully involve civil society nor did it involve children whose rights are the target of implementation by the costing process. RBA requires that stakeholders who are the intended recipients of the process have to be consulted (Uvin, 2007). In general the failure to involve children in implementing their rights is a problem that society faces because society does not know how to meaningfully involve or consult (Van Beers et al, 2006). Within the framework of good governance practice the process therefore did not involve these two key stakeholders. With reference to the indicators of good governance chosen the process did not comply with these.

In a subsequent telephone interview the consultant was quizzed on why there was limited involvement of civil society and no involvement of children. His response was that it had to be understood that the costing exercise and law development were two distinct processes. The consultant argued that during the development of the Bills both civil society and children had been extensively involved but costing was a different exercise that children would not be able to do as it was technical (Telephonic Interview on 17 February 2009 with Conrad Barberton).

The question that arises is what contribution would these stakeholders have made to the process. Whilst it is true that costing is a technical exercise it does not mean that ordinary people are in capable of doing so, they have contributed 'Tips for Trevor' in the budget making process which is also technical. Therefore there is scope to argue that both civil society and children could have made meaningful contribution to the process. The consultant does not agree with this view and believes that children would not have contributed much because costing was a technocratic process and not concerned with policy development. However the researcher believes the participation of children and civil society is essential to the promotion of good governance for an efficient and effective administration in South Africa (Hilliard & Kemp, 1999). Unfortunately the research study did not find any examples of children's participation in any costing exercise and therefore cannot prove that their participation would have influenced the findings.

When one takes the same finding using a RBA the question is whether or not the government honoured its obligation to the right holders in the process of costing the Bills. We have stated that government has four obligations towards the right holders, in this case children. Theis (2004) defines what each of these obligations means. The conclusion reached is that however well intentioned the process was, the process assumed what was best for children instead of consulting with them to get their views. In general the root of the problem is the failure to include child participation in everyday life processes is a matter that affects them (Van Beers et al, 2006).

5.3 IMPLEMENTING CHILDREN'S RIGHTS

In order to facilitate the realisation of all children rights in terms of its obligations the government embarked on a costing process to translate the implementation of children's rights into monetary units for budgeting and implementation purposes. The starting point for the implementation of children's rights is to recognise that children are right holders and are entitled to hold government accountable for their fulfilment. The process by which decisions were made to translate and convert these rights into monetary values and implemented is at the core of good governance (Teshome & Alemu, 2006). Government was able to determine what service it could provide, when it could provide them, how it would provide, why it would provide them in that way. In other words it was able to prioritise (Barberton, 2006). In conclusion to translate children's rights into tangible reality government had to determine the cost of realising these rights and putting in place the budget to implement these rights. Does this finding resonate with the RBA? The intention of government to address children's rights by embarking on costing seems to resonate with Article 4 of the CRC where government was putting in place a process towards meeting its obligations to children. What perhaps is the issue is the process used that did not comply with the RBA and Uvin (2007) has argued processes aimed at fulfilling rights must of themselves be democratic and abide with the RBA in terms of the process and product of the process.

5.4 EXPERIMENTAL NATURE OF THE COSTING PROCESS

The scepticism towards the costing of the CJB at the time was because the practice of costing legislation had not been fully developed and few if any examples could be quoted to support costing as good practice. In other words costing of legislation was 'experimental' and it could not be guaranteed that the results of the costing exercise would result in 'positive acclaim' (Skelton, 2007). The other side of the story is that whilst costing was experimental the people involved gained some important lessons through the process.

Does this have any significance to good governance? It is submitted it does, even though it started on an experimental basis, the results of the costing projects produced 'positive acclaim'. What this means is that this was an efficient use of government resources that was also to yield important learning for the participants. When compared to the three indicators of good governance used as our yardstick we can say that the experimental nature of the process was in line with the three indicators. In conclusion there is no template for costing legislation and certainly these two costing projects have not come up with a template but have provided some learning that will build upon this knowledge when costing is required.

5.5 BUDGETING IN THE COSTING PROCESS

According to Gore (2004) implementing the CRC places a clear resource obligation on State Parties as well as on civil society, non-government organizations, media, and international organizations. Furthermore, State Parties must ensure that public resources are made available, allocated and spent in order to progressively realize children's rights. The budget that was generated when costing the Bills had to be in line with both the medium term expenditure framework three year budgeting cycle as well as to be in line with the ethos of good governance to which SA is committed . The budgets also had to be in line with PFMA by promoting transparency and accountability whilst at the same time being result oriented.

When one relates this finding to RBA the question arises to who was the government accountable to in relation to the budgeting process? The executive, through its administration, prepared the costing and only accounted to itself. Members of Parliament were consulted on the costing in a workshop, however it is submitted that this was only for the purpose of informing them rather than to elicit views that could improve the costing report. Therefore, from a rights based perspective, there was no accountability by the executive to Parliament or to civil society. Budgets are meant to finance the activities of government projects for the purpose of delivering services to its citizens, however the budgets were inclusive and participatory. The revenue that is used to fund a budget comes from tax payers as public finance and the budget had to comply with the values of accountability and transparency.

The silo budgeting tendency usually associated with government was not followed by the two interdepartmental committees. Instead the government departments featuring in both Bills consulted amongst one another and sat together to generate figures for the budget. Consultation was an important feature of the two costing projects and as the budgets were being developed there was an awareness that some departments were going to make a saving in the long run whilst others would have to spend more at the initial implementation of the legislation. So departments were able to support one another with the budgets they had developed and would be able to present and defend their budget together when Treasury or Cabinet was challenging the budget they had developed.

In generating the budget for the costing of the two Bills the committee followed certain values and principles of good governance and democracy. The Chief Financial Officers of each of the participating departments was required to sign off the figures and budgets that had been developed by their respective department officials. What this meant was that by signing off they were acknowledging that they had seen and agreed to the figures and budgets that had been developed by their officials. This was important to the process because, firstly, it meant that officials took their participation seriously because the output of their work would bind the department. Second, signing off signalled the commitment of each respective department to the costing process.

The process, it is submitted, within and amongst the government departments complied with the three indicators of good governance but with respect to RBA the process was not so positive. However as mentioned previously the development processes that are aimed at pursuing development objectives must of themselves respect and fulfil human rights (Uvin, 2007). Did this finding echo the RBA? It is difficult to agree in view of some of the studies which have shown how children have participated in the development of budgets both in South Africa and other countries (IDASA, 1997). Whilst no specific examples could be found of children participating in costing exercises the researcher is of the view that future costing processes can involve them in terms of an RIA. In terms of both good governance and RBA decision making process were only made by government officials in their respective capacities and did not extend to canvass children in particular or civil society generally.

5.6 GUIDELINES FOR CONSULTATION

The main problem that this research attempted to address was that costing processes were conducted without any guidelines from government amongst and how to consult or involve stakeholders or how the process is conducted in general. When the costing of the two Bills was commissioned it was not accompanied by any guideline or procedure that the consultant had to follow. This finding is supported by the investigation done by government on the feasibility of a RIA for South Africa (Small Business Project, 2005). This fact may be indicative of the experimental or evolving nature of the practice of costing in SA at the time. However, whilst costing is evolving or experimental, the government learnt from costing the CJB the necessity for participation of stakeholders as a condition in the tendering process. In general terms however the two costing projects were done without any guidelines on how to consult stakeholders and the service provider who conducted the consultations did so because of his own initiative. It is crucial when conducting such processes that consultation is done with the participation of all stakeholders.

Cabinet in January 2007 approved the use of RIA in South Africa and amongst the recommendations contained in the Cabinet memorandum was that guidelines be developed for conducting RIA which included amongst other things consultation with stakeholders. As costing is a component of an RIA and is the preferred economic analysis model used at this time it is necessary that these guidelines be developed. The Cabinet memorandum emphasized the need for guidelines (SBP, 2005). Jacobs (2004) has stated that RIA is an institutional reform that supports good governance because costing analysis yields calculations of costs and benefits of government action. Secondly consultation responds to wider interest and transparency builds trust thereby reducing regulatory risks. She says integrating multiple policy goals results in the breakdown of vertical silo thinking in favour of horizontal thinking which is inclusive. Costing is a financial planning tool that has to integrate consultation with stakeholders (Jacobs, 2006).

In spite of the fact that there were no guidelines for the costing process, the consultant on his own initiated consultations with the various government departments and civil society in respect of the CJB. The involvement of the different government departments through the two committees is highlighted here as an example of good practice of the costing process. Government departments were involved and participated fully in the costing process resulting in the success of the process. However civil society and children are essential partners in the good governance trio and they were not meaningfully involved.

The relevance of consultation to the research study cannot be emphasised because we are able to measure this against the three indicators of good governance and we can assess the lack of guidelines through a RBA. One of the reasons that this framework is important is that it is able to provide legitimacy and also because it has greater impact and effectiveness. The lack of guidelines in the process of costing creates uncertainty and may certainly be the reason why important stakeholders were not consulted such as children and civil society.

5.7 GOOD GOVERNANCE

The preferred definition of good governance this research study has adopted defines good governance as **'**a system of administration that is democratic, efficient and development oriented**'** (Jeffries, 1993:27). The reason for choosing this definition is because it is the closest to the formulation by Mkandawire (2007) which says good governance consists of a trio of developmentalism, democratic and social inclusiveness. Since 1994 SA has committed to the ethos of good governance and democracy and has put in place a legislative framework aimed at promoting adherence to these ideals.

It is of interest to this research to know and understand the role played by good governance in the costing process of the two pieces of legislation relating to children in SA. Whilst it is acknowledged that both of the costing projects were experimental in nature and that the latter costing project was built on the lessons learned from the initial costing project, certain good governance processes were followed. Good governance consists of eight characteristics, this research has focused on only three of these characteristics and these are participation, accountability and transparency. What the study has attempted to do is to examine each of these characteristics in relation to the costing process. In other words how was the process of costing of legislation participative, accountable and transparent in terms of good governance. Each of these indicators is discussed in relation to the research study.

Participation is a fundamental principle of democracy, is an important characteristic of good governance and can be traced back to the Article 21 of the Universal Declaration of Human Rights of 1948 by the UN. Participation is not just limited to casting a vote in election every five years but citizens are expected to participate at all times in all the aspects of governance. In the two costing projects participation was mainly limited to the government officials who represented their respective departments in the each of the two committees of the costing project.

Accountability is the second indicator that is discussed in relation to the two costing projects. Each of the government officials in the costing projects were accountable to their respective department for the figures and budget generated as well as accountable to the other government departments for the same figures and budget. Accountability within the context of the costing projects means that the respective government departments and its officials represented in the costing project committee are held responsible. Accountability is one of the values and principles that public administration have to comply with and it is our submission that the costing projects were public administration activities that had to be in line with Section 195 of the Constitution (Act 108 of 1996).

The next indicator on which a finding has been made is transparency. Transparency is one of the foundational values and principles of democracy as well as good governance that underpins the Constitution of SA. As a norm, transparency within the context of the costing project means that each activity and decision reached by the costing project committees was made in an open manner. Each department was transparent towards the other departments regarding the figures and budget it had developed. By being transparent to one another, the departments were able to realize that whilst some of them would have to spend more in their budget in the initial stages of implementation in the long run they would make a saving. The costing project committee provided a good platform for the different departments to share in an open and transparent way their budgets and priorities. Section 195 of the Constitution (Act 108 of 1996) also requires transparency as a value of public administration and mean good governance in the context of the costing project.

In conclusion, good governance within and amongst the government departments was practiced in the sense that there was participation accountability and transparency but not extend to civil society and the private sector. The researcher is of the view that the other two actors in good governance were not meaningfully consulted as a technocratic process was followed by the consultant. Children as a key stakeholder were never even considered. However it is accepted that children depending on their level of maturity and support by adults are capable of participating meaningfully (Save the Children Sweden, 2004). The consultant has indicated that it would not have served any purpose to involve children at the costing stage and whilst there are no examples to rely upon the researcher believes involving them would have been good.

Using a RBA the conclusion one can come to is that whilst good governance is certainly a process and an end in itself it does not go far enough. Theis (2004) has argued that beneath the layer of formal democratic institutions there are deeply entrenched structures of inequality. Mafeje in a keynote address for OSSREA states the same point in a different way saying that although South Africa practices good governance it is of no consequence to the majority of the population because there is no social justice or social democracy. What this actually means for this study is that even though the indicators of good governance were present in this study this did not mean that children rights were realized or fulfilled because the process was patronizing to the children.

5.8 CONCLUSION

The analysis of the findings using good governance and the RBA yields results which show that the process was not inclusive and certainly did not comply with the RBA in so far as the process did not take into account children's rights to participation. A RBA is premised on holding government accountable. Children as right holders and the object of the costing process were not respected or fulfilled by the process followed. The unavailability of examples of children participating in a costing exercise is acknowledged but the researcher believes children and civil society could have meaningfully involved as well.

The government followed a technocratic process of good governance according to the consultant when asked to define the form of good governance used. Technocratic good governance certainly does not in any way address the problem of children being excluded from matters that affect them. The government in the costing process were not accountable to those who should have been the participants, but was accountable to its own structures only. Ideally, through a RBA, the process followed would have consulted children, civil society organisations working with children together with government. Whilst there may be nothing wrong in the actual costing report, the fact of exclusion goes to the credibility of the process. By using a RBA the researcher introduced a normative framework to the costing process because good governance whilst instructive did not go far enough to hold government accountable for the failure to involve stakeholders in the process of costing. Importantly the question is why government knowingly excluded children and civil society from the process? Where was the accountability of the government in the process? How could children challenge government for lack of accountability when the costing projects were never shared with them?

The analysis further notes that this is the first time that research has examined the interface of good governance, costing and certainly RBA. There is need to further research once the guidelines have been prescribed for RIA to find out whether it will meet the standards of good governance and RBA. There is recognition amongst policy makers of the importance of costing of legislation in SA as a budgeting and implementation planning tool. The findings have shown the clear linkages between good governance and costing of legislation and the need for further studies on these linkages.

CHAPTER 6- CONCLUSION AND RECOMMENDATION

6.1 INTRODUCTION

This is the final chapter of this research study. Presented here are conclusions and recommendations that may be considered for future costing of legislation. There is a dearth of literature on the subject matter of costing as it interfaces with good governance in SA. This research attempts to contribute to the creation of knowledge regarding the relationship or interplay between costing and good governance. The data that was collected was analysed through a rights based approach and it was collected with the objective of answering the research questions. It is hoped this research will be useful to government as it attempts to implement the RIA in South Africa and to develop consulting guidelines for RIA. There were several questions that this research has grappled with other than the research questions stated in the beginning and it is necessary to first deal with these before moving into the conclusions.

The rights based approach is a method of analysis that this study has used to analyse the process of costing and it is therefore not an end. RBA as used in this research to analyse the costing process was not looking at the socio-economic impact of costing but was concerned with budgeting and implementation planning. The impact of costing was not the focus but the research interest was on how costing was used by the government to implement these rights. Costing is a tool that also has gained prominence in this epoch characterised by neo-liberal democracy. The indicators of good governance which are the subject of analysis are derived both from rights based approaches as well as being political concepts. Therefore the researcher has not found any contradictions between these two concepts although it is acknowledged that costing can be used by government to limit the implementation of rights. However, the RBA is specifically there to ensure that costing is done in a non-discriminatory way for the benefit of all children. Secondly, this approach proceeds from the understanding that government is obligated to implement all rights and costing provides the vehicle to do so. Consequently, costing and rights based approaches reinforce one another in order to ensure that costing is not used for ulterior motives by government. The RBA is there to ensure that the process fulfils rights.

This rights based approach is born out of the dominant political ideology of this epoch which basically is neo-liberal western democracy that promotes market based economies. The first conclusion made is that costing in general is recognised as a financial planning tool however the basis of costing from a rights based approach is entitlement of children as rights holders. In other words costing is undertaken to realise and fulfil the rights of children not as an act of charity but as fulfilment of an obligation. When we contrast costing in a traditional approach to costing in a rights based approach in the former the children cannot claim as of right the fulfilment of their rights.

Costing from a rights based approach must be done in a non-discriminatory way so that all the good and services to which children are entitled in terms of the Bills must be costed and implemented. In other words there must not be a trade off between children's rights contained in the Bill with other national interests. All the rights that are granted in the Bills must be fulfilled and government cannot claim not to have money to implement these rights. Non-discrimination from a rights based approach means that there is no prioritisation of certain categories of children all and children are entitled to all the services to which the Bill entitles them. Most development projects have focused only on orphans and vulnerable children as a result of HIV and AIDS yet many other children are vulnerable as a result of poverty and rights based costing does not discriminate against these children but says all are entitled to goods and services.

Rights based costing puts the responsibility of being a primary duty bearer on the government and imposes an obligation for government to fulfil its duty to children. Government therefore is expected to fulfil its obligation and must not be allowed to plead that it does not have resources and therefore cannot implement children's rights. Many socio-economic rights of children have not been fulfilled because governments plead poverty yet in terms of rights based approach a government is duty bound to make provision for socio-economic rights.

Participation, accountability and transparency are essential elements that a rights based approach relies on. It is necessary that a costing process give space for children to participate based on the level of maturity. A costing process must in terms of the rights based approach be transparent so that children and civil society can be able to meaningfully participate in it. Finally, accountability is the core element of rights based approach. Government must account to children as right holders how the process of costing is undertaken.

A rights based approach recognises costing as a budgeting and implementation planning tool. However, rights based approaches realise costing can also be extended to address the root causes of children's rights violations. This approach says costing must not be done on the basis of what government can afford but on ensuring the fulfilment of children's rights. In other words, government must not be allowed to argue that they do not have resources to implement children's rights but instead must make resources available towards fulfilling children's rights.

Despite government's noble intentions in the costing process for the two Bill, the process fell short of the standards of good governance when analysed from a RBA. A technocratic use of good governance was used in the process of costing legislation as admitted by the consultant but the question is why this was the preferred method when the drafting of the Bills was done in a very consultative way. The consultant's response to such a question was that costing was a highly technical process and it was not viable to be consultative in the costing process. In this context, the process was administratively understood by the government, however, it ought to have complied with the standards of good governance contained in the Constitution.

Another challenging question that arose from the research was whether it was possible to achieve rights through costing if the standards of good governance were observed. It was obvious to the researcher that the standards of good governance chosen for this research were concepts whose theoretical foundations came from the rights based approaches as well being political concepts. Basically, then the question is whether the costing process reinforced the standards of good governance. The primary research has indicated that these standards were understood in a technocratic sense by the consultant who designed the process. However, the process although having failed to in so far as it did not involve civil society and children, costing as a tool did not preclude the observance of good governance standards.

When this research was being formulated the researcher was of the view that the costing process for the two Bills had been consultative outside of government structures. The research however has revealed that the costing projects were not necessarily consultative outside of government. Consultation with civil society organisations whose work with children would be affected by the costing project and members of parliament was limited.

Most importantly for this research is that unless and until you involve and get a commitment by government officials it becomes difficult to get their buy in especially where they are supposed to implement such projects. The lesson that the first costing project made was to realize that it was necessary to get the buy in of government officials for any future costing projects. It was good thinking ahead of the service provider that in order to get commitment and buy in, the CFO also had to sign off whatever figures and budgets that were generated by the government official in the costing projects. In the end each department was serious about the work as well the output of their work.

The final conclusion reinforces other studies that have been done that acknowledge costing as a budgeting and implementation planning tool. Each of the costing projects that this research examined once again showed the significance of costing of legislation as a planning tool. Whilst the focus of the research was not so much the results of the costing process the fact cannot be ignored that the results of the costing projects received positive acclaim and are regarded as good practice not only in SA but internationally (Skelton, 2007). Costing as a subject, it is submitted also enhances good governance as it promotes transparency and accountability as well as participation.

In terms of the RBA the study comes to the conclusion that children were discriminated against, marginalised by the process and there was no equity nor participation or accountability by government. The five elements common to RBA stated in Chapter two of this study were never respected, protected, promoted and fulfilled by the government. It is necessary for further research on how government should honour its obligations in terms of RIA for future public policy processes.

6.2 RECOMMENTATIONS

For the purpose of this research costing of legislation is but one component of an RIA. In view of the fact that the use of RIA has been approved by the Cabinet it is necessary then to attempt to apply the recommendations emanating from this research to RIA. This research supports the establishment the RIA unit at the Presidency. The following recommendations were formulated for costing of legislation but there is nothing in them that disqualifies their application to RIA.

6.2.1 GUIDELINES

The recommendation made by this research is that future costing projects must be accompanied by a guideline or procedure made by government that specifies how the costing exercise is to be conducted. Secondly, consultation must be made a condition of the costing exercise and it must specify the stakeholders that must be consulted and those that may be consulted. The consultation would not merely be consulting for the sake of consultation but it would be consultation for the sake of getting information to inform the costing exercise. By specifying guidelines as well the need to consult stakeholders will make it clear how the process will be conducted not only for the benefit of the service provider but for all interested stakeholders to the process. Without guidelines or consultation procedures specified, the process is left to the whims and bias of the service provider who may not be objective and creates uncertainty.

6.2.2 GOOD GOVERNANCE

Costing legislation it is submitted, does not negate the achievement of human rights and good governance gives added value to the process. The research has revealed that the two costing projects were participatory, accountable and transparent within government but was none of these with respect to civil society, children and the private sector. It is recommended that participation, accountability and transparency be the minimum standards with which future costing projects must comply for all stakeholders that include civil society and children. All three standards are amongst the values and principles of good governance specified in Section 195 of the Constitution (Act 108 of 1996) governing public administration. Each of the three standards when applied correctly in any costing exercise not only comply with good governance but also conform to democratic principles. Whilst the other values and principles may be invoked in a costing exercise as and when there is time, the three mentioned standards are core to any costing exercise. The observance of these standards will certainly enhance the process of costing legislation in SA

6.2.3 LINKING COSTING, BUDGETING AND PROGRAMMING

It is recommended that silo budgeting in government is stopped so that programme staff and financial staff doing costing as well as budgeting will sit together to do strategic planning for their respective departments. In the past the legislative process did not liaise with the budgeting process, however, the introduction of PFMA has made it mandatory that there must be a linkage between the two processes. The costing projects revealed that the officials doing programming as well as the officials doing budgeting in departments had no clue what each were doing. This of course is not unique to government and in other concerns the linkage between programme and budget work is usually poor. What the costing exercise revealed was that when programme and budget officials strategically plan together this leads to efficiency, effectiveness and economy thereby enhancing good governance. By doing strategic planning together these officials will stop the silo budgeting mentality and facilitate the linking of programmes with their budgets.

6.2.4 RIGHTS BASED APPROACHES

There are few people skilled in costing legislation in SA as a whole and there is a need to expand the skills base on this competency. It is recommended that each government department seconds staff from their programme and budget units that will be trained on costing legislation by the proposed costing central unit in the Presidency. It is further recommended that academic institutions design training courses that will train officials whether government, civil society organisation on costing of legislation. There is an increase in the number of regulations that are passed by parliament and if the cost or impact of such regulation is not measured by trained staff the development of our country will be hampered. Last but not least as there will be an increase in the number of regulations passed by government requiring costing it is necessary that parliament’s capacity to engage with these costing reports is strengthened. Most parliamentarians do not have any costing skills it therefore is necessary that they be trained as well to be able to engage with the executive on such issues (Conrad Barberton Personal Communication, 20 June 2007). Unfortunately the term of office for MPs is five years and the turnover in terms of training maybe prohibitive however for the sake of good governance they must at least be trained to challenge the executive on such costing reports.

6.3 CONCLUSION

The transformation of SA into a constitutional democracy brought with it the need to abide with the standards of good governance that the country has set as a pedestal in processes such as the costing legislation. This research has focused not so much on the results of the costing projects but on the process followed when costing the two Bills. However both the process and the results of the costing process have highlighted the important role of human rights in good governance. The standards of good governance that were the focus of this research pertain mainly to civil and political rights however it is these rights that enable children to claim their socio-economic rights. The usual refrain by governments is that they cannot implement children's rights because of the unavailability of resources. Rights based approaches insist that government is the duty bearer and must provide mechanisms to implement rights of children. This is probably the first time in the history of legislative drafting and implementation that Bills were presented to Parliament before being passed with proper costing and implementation plans such as the CJB this is happening in South Africa. On the other hand, the costing of the CB revealed that government is failing to provide for the needs of children and in fact is not spending what it is supposed to spend for children (Barbeton, 2006). Both of these points are good governance issues that perhaps the media has not picked up and put on the national agenda.

When the researcher undertook the research he believed that the costing process had been consultative or had involved stakeholders. However it fell short of good governance. Parliament has passed two of the three pieces of legislation on children and the CJB has been introduced in Parliament in 2008 which is a positive development. Whilst it has taken almost a decade to have these laws passed setting out to protect, respect, promote and fulfil children's rights, it is hoped that their implementation will be facilitated by the costing tool that has been the major focus of this research. We further hope that the results of the costing projects are seriously implemented by government to secure the future of children who do not have the voice to champion their cause in the adult world.

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8. APPENDICES

8.1 TRANSCRIPT 1

8.2 TRANSCRIPT 2