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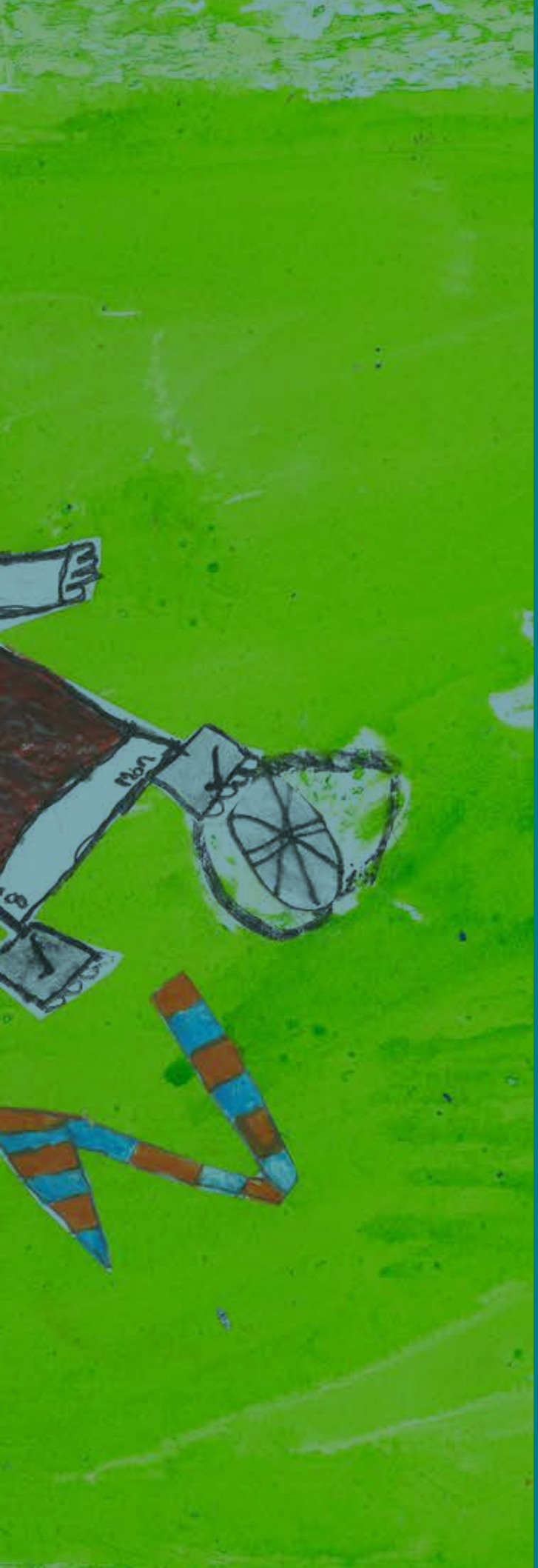

PART ONE:
Children and Law Reform

Part one examines recent policy and legislative developments that affect children in South Africa.

These include:

- Norms and standards for school infrastructure;
- A Constitutional Court decision on school admissions policies;
- High Court judgments on school furniture and textbooks;
- The Traditional Courts Bill;
- Constitutional Court rulings on consensual sex between adolescents; and children who commit sexual offences;
- An Amendment Act that provides for sexual offences courts; and
- Proposed amendments to the Children's Act.

Legislative Developments 2013/ 2014

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This review summarises and comments on a range of developments between July 2013 to July 2014, focusing on education, justice and social services for children. These include:

- New regulations that set minimum norms and standards for public school infrastructure.
- A Constitutional Court decision on the balance of power between provincial Education Departments and school governing bodies in determining school admissions policies.
- High Court judgments on the obligation on the state to provide school furniture and textbooks.
- The Traditional Courts Bill which seeks to recognise and enhance traditional justice systems and provide for structure and functioning of traditional courts.
- Constitutional Court rulings on appropriate ways of dealing with consensual sexual acts between adolescents, and children who commit sexual offences.
- An Amendment Act that provides for the establishment of sexual offences courts.
- Two new Bills that propose to amend the Children's Act.

South African Schools Act: Minimum norms and standards for public school infrastructure

On 29 November 2013, the Minister of Basic Education published regulations[1] that provide for minimum norms and standards to which all public school infrastructure must comply. The norms and standards are necessary to ensure improvements are made to the poor and often unsafe state of schools across the country, particularly in rural areas. Adequate school infrastructure is necessary to protect the safety and dignity of learners and is key to their basic education.[2]

Data collected by the Department of Basic Education (DBE) in 2011 show there were over 400 mud schools, and of the 24,793 public ordinary schools:[3]

- 3,544 schools do not have electricity;
- 2,402 schools have no water supply;
- 913 do not have any ablution facilities and 11,450 schools still use pit latrines;
- 22,938 schools do not have stocked libraries;
- 21,021 schools do not have any laboratory facilities;
- 2,703 schools have no fencing; and
- 19,037 schools do not have a computer centre.

The norms and standards set out in detail the minimum that must be done to ensure appropriate learning environments for children. They specify, for example, classroom sizes, school toilets, and water and electricity provision.

All new schools, and schools renovated after the norms and standards came into effect, must adhere to the norms and standards in full. Table 1 presents deadlines that were set for the upgrading of existing schools, following a phased approach and starting with the most pressing needs as identified by the Minister. The provincial Education Departments must submit implementation plans to the Minister by 29 November 2014, and are required to report annually on their compliance with the plans.

The finalisation of the minimum norms and standards is just the beginning of the process of ensuring that learning and teaching

Table 1: Deadlines for the upgrading of existing schools

Norms and standards to be met	Implementation deadline
Schools built from mud, asbestos, wood and metal are to be replaced.	29 November 2016
Schools that do not have access to any form of power supply, water supply or sanitation are to be provided with these amenities.	29 November 2016
The standards relating to classrooms, electricity, sanitation, water, electronic connectivity and perimeter security are to be implemented in all other schools.	29 November 2020
The norms and standards for libraries and laboratories for science, technology and life science are to be implemented in all schools.	29 November 2023
All other norms and standards for school infrastructure such as computer laboratories, sports facilities and school nutrition centres as well as accommodation of learners with physical disabilities are to be implemented.	31 December 2030

take place in safe and appropriate environments. Effective implementation of the norms and standards is key. This requires, among other things, allocation of sufficient funds to meet the infrastructure needs of all schools, and oversight to ensure the proper and efficient expenditure of these funds. It is also possible that while there are now clear timeframes for implementation, emergencies may arise that threaten the health and safety of learners and teachers to such an extent that urgent intervention is required.

A recent analysis[4] of budgeting and spending of the school infrastructure budget has revealed that the process of eliminating "inappropriate structures", such as mud schools, is far behind schedule. If this process is not sped up considerably, the target set by the minimum norms and standards will not be achieved.

South African Schools Act: Admissions policies

On 3 October 2013 the Constitutional Court handed down judgment in *MEC for Education in Gauteng v The Governing Body of Rivonia Primary School*,[5] which involved the relative powers of school governing bodies and provincial Education Departments in determining a school's capacity to accommodate learners. In this case, the Head of the Gauteng Department of Education instructed the school governing body of Rivonia Primary School to admit a learner, even though the school was full in terms of its own admissions policy. The school governing body challenged this, arguing that the provincial department did not have the power to issue such an instruction.

The Court ruled that provincial Education Departments can override school admissions policies, but they must do so in a way that is procedurally fair and in accordance with their powers under the South African Schools Act[6] and any other relevant laws. The Court emphasised the importance of meaningful engagement between all role-players in education to ensure that the best interests of learners are promoted at all times.

This case was the third in a set of Constitutional Court judgments regarding the interaction of powers between provincial Education Departments and school governing bodies.[7] All three judgments have emphasised the need for consultation and co-operation to ensure full realisation of all learners' right to basic education.

High Court ruling on furniture shortages in the Eastern Cape

On 20 February 2014, the Eastern Cape High Court delivered judgment[8] in an urgent application brought against the national and provincial Education Departments to compel the delivery of desks and chairs to schools across the province. The Education Departments argued that the allocation of resources, procurement and delivery of furniture could only happen after an independent audit of furniture shortages across all schools in the Eastern Cape was completed later that month. The Court rejected this argument, holding that such an open-ended approach amounted to a continued breach of the right to basic education, which requires that learners have desks and chairs. The Court recognised that the national and provincial Education Departments had been aware of the furniture shortages for a long time, and therefore ordered them to deliver the furniture by 31 May 2014, but specified that they could apply for an extension if they were unable to meet this deadline.

This judgment emphasised that the right to basic education must be realised with immediate effect. While it is important for state departments to plan and budget for services, they cannot use their internal processes to justify delays in taking action when they are aware of a violation of the right to basic education.

Unfortunately, the deadline of 31 May 2014 was not met. The Education Departments applied for an extension of the deadline. This application, which was opposed, has not yet been heard. There are currently an estimated 200,000 learners without school furniture in the Eastern Cape.[9]

Litigation to compel the delivery of textbooks to schools in Limpopo

Textbook shortages in Limpopo schools were first brought to the attention of the courts in 2012.[10] In that year, Judge Kollapen granted three court orders against the national and provincial Education Departments, compelling full textbook delivery to schools in Limpopo, among other things.

Although the DBE has committed in its policy documents to ensuring that every learner has access to his or her own textbook for every learning area, and despite the three court orders in 2012 compelling full textbook delivery, textbook delivery to schools in Limpopo was not completed in 2013 and 2014. Indeed, the South African Human Rights Commission (SAHRC), after investigating the delivery of learning and teaching support materials across South Africa, has reported that textbook delivery is a problem across many provinces, and has put forward recommendations to address these.[11]

On 27 March 2014, the community-based organisation Basic Education for All (BEFA) and 18 Limpopo schools approached the North Gauteng High Court for an order compelling full textbook delivery to all schools in Limpopo.[12] They argued that independent monitoring was necessary to ensure that all learners received their textbooks, and asked that the SAHRC take on this role.

In their answering affidavit, the national and provincial Education Departments acknowledged that approximately 800,000 books had not been delivered to Limpopo schools by the start of the 2014 academic year. They cited two reason for this: that they did not have enough funds to order the outstanding textbooks; and that school principals did not follow the prescribed procedures to report textbook shortages.

On 6 May 2014, Judge Tuchten declared that for as long as there is one child who does not have all their prescribed textbooks, there is a violation of learners' rights to basic education, dignity and equality.[13] However, he declined to prescribe deadlines for full textbook delivery, or to direct the SAHRC to monitor delivery. Continued monitoring by BEFA and the SAHRC found that the DBE failed to meet its own deadlines for textbook delivery, and that there remained significant textbooks shortages after these deadlines had passed.[14]

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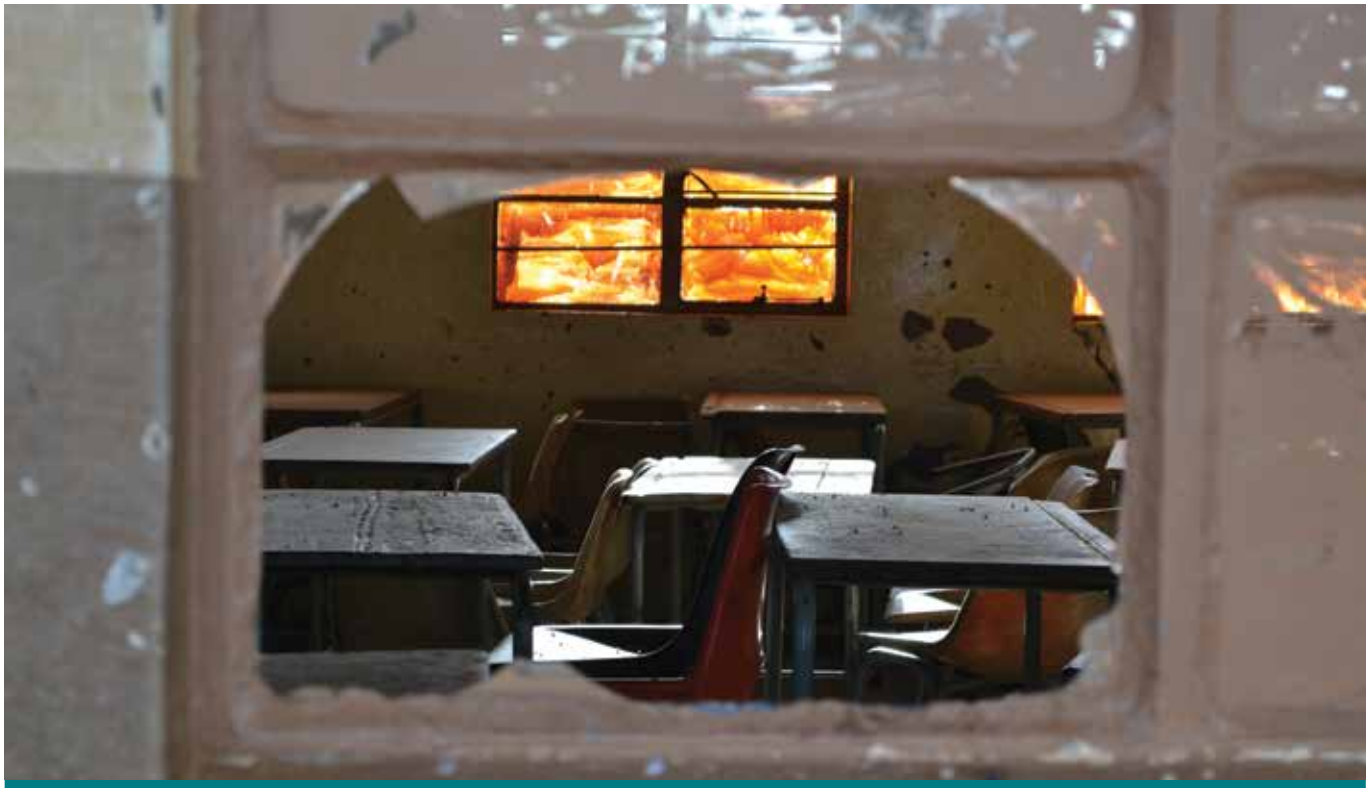

Norms and standards to put in place: Adequate school infrastructure for children's safety, dignity and basic education

Judge Tuchten also ordered the national and provincial Education Departments to give detailed information to the Court and to the applicants on the funds requested and made available for textbook procurement in 2015.

The national and provincial Education Departments applied for leave to appeal to the Constitutional Court against the judgment and order of Judge Tuchten, and also filed a conditional application in the North Gauteng High Court to appeal to the Supreme Court of Appeal (which would take effect if leave to appeal was refused by the Constitutional Court). In both applications, the departments argued that the right to basic education does not require that every child receives every prescribed textbook, as this would impose a standard of perfection that they cannot meet. They also applied for leave to appeal the order requiring them to provide information on the funds requested and allocated for textbooks for 2015.

BEFA and the applicant schools opposed this approach, arguing that the right to basic education is absolute and that the state must do everything possible to realise the right in full and immediately. They argued that the national and provincial Education Departments should not be allowed to appeal the judgment of Judge Tuchten, as they had failed to appeal the previous orders granted by Judge Kollapen in 2012 (which also called on the national and provincial Education Departments to comply with their obligation to deliver textbooks in full).

BEFA and the applicant schools have also applied for leave to cross-appeal the failure of Judge Tuchten to order independent monitoring of textbook delivery, as well as his failure to find that the national and provincial Education Departments did not comply with the court orders handed down by Judge Kollapen in 2012. The SAHRC also emphasised in its affidavit the need for the court to supervise the implementation of the order to ensure the full delivery of textbooks.

On 20 August 2014, the Constitutional Court dismissed the application for leave to appeal, reminding the parties of their right to approach other competent courts. The application to the North Gauteng High Court for leave to appeal to the Supreme Court of Appeal has not yet been heard.

Traditional Courts Bill

The re-introduction of the controversial Traditional Courts Bill[15] in Parliament early in 2012 resulted in a strong and unified civil society calling for it to be scrapped because the consultation process was flawed; the Bill was unconstitutional; and it failed to address regulation and accountability in customary courts.[i] The Bill was once again withdrawn in Parliament in early 2014 after an intensive campaign led by the Alliance for Rural Democracy. However, the Department of Justice and Correctional Services has indicated that the Bill will return, although it is unclear when, or to what extent it will be revised to address civil society's concerns.

The Bill contained clauses that undermined the right to equal protection and benefit of the law by essentially creating two separate legal systems: one for people living in urban areas, and

i A large number of submissions to the National Council of Provinces Select Committee on Security and Constitutional Development, as well as corresponding committees in provincial legislatures, took this position. A portion of these can be found at: www.lrg.uct.ac.za/research/focus/tcb/

one for people living in the former apartheid homelands with lower standards for legal representation, appeals and sentencing. It also made no reference to children's rights in the Constitution, the Children's Act or the Child Justice Act, and lowered some of the standards set by this legal framework for children living in rural areas.

Although the Bill excluded important decisions relating to custody and guardianship of children from being dealt with in traditional courts, the civil matters which could be dealt with were not defined. Therefore, except for those issues expressly excluded, the Bill left room for matters such as the property and living arrangements of children who are orphaned to be decided at this level, without any provision for legal representation or support to the children. This may result in substantial injustice and violate children's constitutional right to legal representation.[16] The Bill specifically defined the criminal matters that could be heard by these courts, including theft, malicious damage to property, assault where no grievous bodily harm is inflicted and *crimen injuria*. Because no specific direction was provided in the Bill regarding matters where the accused or complainant is a child, it left space for a range of children's matters to be heard by these courts. This included the potential for forms of child abuse (assault where no grievous bodily harm is inflicted); harmful religious and cultural practices such as virginity testing and circumcision; and child labour to be heard in traditional courts.

Undoubtedly the traditional courts are required to work within the framework created by the Constitution and specific laws relating to children. However, these courts' capacity to protect, promote and respect children's rights adequately is questionable. Customary courts are reportedly[17] dealing with matters that are currently not within their jurisdiction (eg some sexual abuse cases, including rape, and forced marriages of young girls, known as *ukuthwala*). The Bill's provisions for accountability were limited to appeals on some (not all) of the sentences of the courts but the decisions of the court could not be appealed. Further, by vesting greater power in the traditional leader alone, the Bill undermined the customary role of the traditional councils, which, when functioning well, can provide a forum for accountability. Given the absence of checks and balances on traditional leaders' decisions and a lack of clear direction on which cases must be referred to the formal criminal justice system, the Bill fails to put in place adequate safeguards to protect children's rights within traditional courts.

One of the greatest areas of concern was the Bill's potential ramifications for children accused of crimes. As with the Child Justice Act, the Bill included a strong principle of promoting restorative justice and reconciliation. While the Child Justice Act recognises the vulnerability of children in conflict with the law and introduces mechanisms to improve the protection of children's rights and the functioning of the criminal justice system in this regard, the Bill provided no similar measures. It did not refer to the Child Justice Act provisions, nor did it require that matters involving children be referred to the formal justice system.

Only one organisation made a submission on the impact of the Bill on children, and suggested bringing customary practices into the formal justice system where possible, and incorporating child rights standards and training into the Bill to strengthen the capacity and obligation of traditional courts to give effect to children's rights.[18]

Given current social norms that disregard children's rights and the profound violation of children's rights across the country, there is a need for vigilance and strong accountability systems to ensure that the people tasked with protecting children do not abuse their position of power. Irrespective of the status or passage of this Bill, it is essential that children's rights are better understood and protected within customary law.

Sexual Offences Act: Consensual sexual activities

In January 2013, the North Gauteng High Court ruled that sections 15 and 16 of the Sexual Offences Act,[19] which criminalise consenting sexual activity between children aged 12 – 15 years (inclusive), were unconstitutional.[20] The Constitutional Court subsequently also found that these provisions are unconstitutional and declared them invalid.[21] It is important to emphasise that the court rulings only deal with matters where both children consented. Cases where one or both children do not consent to a sexual act are still considered offences and are not affected by this judgment. Furthermore, committing a sexual act with a child under the age of 12 remains an offence, whether the child consented or not.

While recognising the need to deter early consensual sexual activity, the Constitutional Court agreed with the applicants that the provisions which criminalise consenting sexual activity increase adolescents' risks by limiting their access to communication, education and health care that can help them to make emotionally, socially and physically healthy sexual decisions.[22] The Court also found that the criminalisation of these behaviours "punishes" "developmentally normal" forms of sexual expression, was degrading, and "inflicts a state of disgrace on adolescents".[23] Hence, the Court found that criminalisation was not the best protection of children.

The Court has ordered that Parliament correct the law by 3 April 2015. Until then, a moratorium has been placed on reporting, investigation, arresting, prosecuting and initiating any criminal and additional proceedings against children under 16 years for engaging in consensual sexual activity.[24]

Sexual Offences Act: National Register of Sex Offenders

In May 2014, the Constitutional Court declared section 50(2)(a) of the Sexual Offences Act[25] unconstitutional.[26] This section specifies that any person convicted of a sexual offence against a child or person who is mentally disabled (regardless of whether the offender is a child or an adult) must automatically be included on the National Register for Sex Offenders (NRSO). People whose names appear on the NRSO are deemed unfit to work with children and can not apply for a licence for certain facilities and ventures.

The Court ruled that the obligation to include a child offender's name on the NRSO infringes the child's rights to have his or her

best interests considered of paramount importance, as determined by the Constitution and international law.[27] Although, the purpose of the NRSO is to protect all children from sexual abuse, the rights of potential victims have to be balanced with the rights of the child offender. The Act assumes that it is always acceptable to limit the rights of a child offender, and the courts thus have no discretion to order that a child offender's name be recorded in the NRSO or not. Consequently, there is no opportunity for child offenders to make representations, and the court cannot consider the best interests of the child offender.

The Child Justice Act states that the objectives of sentencing include "promot[ing] an individualized response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society".[28] Evidence shows that not all children who commit sexual offences against other children reoffend or pose a risk to children in adulthood[29] and that child offenders are more responsive to treatment than adult offenders[30]. Experts have argued that proper assessment and treatment of child sex offenders – and not automatic placing their names on the NRSO – will yield optimal results for the safety of child victims.[31]

The Court found that it is not justifiable to limit the rights of child sex offenders and that their best interests must be considered of paramount importance. The Court's declaration of constitutional invalidity was restricted to child offenders; hence adults who commit sexual offences against children and persons with mental disabilities must still be added to the NRSO. The Court suspended the declaration of invalidity for 15 months to give Parliament an opportunity to correct the constitutional defect.

Stop press

In October 2014 the Department of Justice and Correctional Services published the Criminal Law (Sexual Offences and Related Matter) Amendment Amendment Bill [B- 2014].[32] The definitions of statutory rape and statutory sexual assault now exclude consenting adolescents where the gap in their ages is less than two years. Previously there was a close-in-age defence for adolescents consenting to non-penetrative sexual acts. The new formulation will protect children from the early stages of criminal processes.

Where a child commits a sexual offence against another child or a disabled person the court will have the discretion to add the child's details to the NRSO but must consider the report of a registered psychologist or psychiatrist and hear representations from the child before deciding.

Judicial Matters Second Amendment Act: Sexual offences courts

The Judicial Matters Second Amendment Act[33] was passed in January 2014 and amends the Sexual Offences Act to provide a legal framework for the establishment of sexual offences courts. These courts specialise in the prosecution of sexual offences. The Bill was introduced by the (then) parliamentary Portfolio Committee on Justice and Constitutional Development after a national alliance of 52 organisations (who are promoting the implementation of sexual offences legislation) involved the committee in their campaign to improve the legal framework and resourcing of courts to deal specifically with sexual offences.[34]

The existence of these courts has been precarious. First established in 1993, they were rolled out until 2005, when a moratorium was placed on creating new sexual offences courts. Thereafter, many of the gains made in infrastructure and court practice were lost.[35] Under the previous framework, each court was required to appoint two prosecutors, victim assistants, court preparation officials and dedicated magistrates; and maintain infrastructure, such as separate waiting rooms and closed-circuit television equipment, to protect complainants.

The new legislation safeguards the ongoing provision of specialised sexual offences courts. However, the Act is weak from an implementation perspective in spite of civil society submissions and the findings and recommendations of the Ministerial Task Team on the Adjudication of Sexual Offence, set up in 2012.[36] It is framed very broadly and fails to place a duty on the Minister of Justice and Correctional Services to establish these courts. It does not provide direction on the pace of implementation of the courts; does not require the department to provide resources for the courts; and it sets no standards in terms of infrastructure, staffing or support services to victims. Without these, there is no guarantee that sexual offences courts will reduce secondary victimisation and improve conviction rates. This is of concern, given the inconsistent standards that plagued these courts in the past.[37]

Children's Act: Amendment Bills

The Department of Social Development has published two draft Bills for public comment in November 2013: the Children's Amendment Bill[38] and the Children's Second Amendment Bill[39]. Both propose to amend the Children's Act.[40] The reason for two Bills relates to the Constitution's prescribed processes for passing legislation. When the national Parliament deals with a Bill that will be implemented by national government departments, the National Assembly and the National Council of Provinces are the only bodies that deal with the Bill. However, when a Bill deals with matters that the provinces must implement, then the provincial legislatures have a right to participate in the process of developing the legislation alongside the national bodies. The Children's Act contains competencies that must be implemented by both national and provincial departments; therefore the Amendment Bill – just like the original Act – was split into two parts. Although they will be processed separately, the two Amendment Bills should be read together. For the sake of simplicity, we refer here to the "Amendment Bill", although in some cases the provisions are found in both Bills.

The definition of child in need of care and protection

Controversially, the Amendment Bill seeks to change the definition of a child in need of care and protection. The Act states that a child who has been orphaned or abandoned and "is without visible means of support" is a child in need of care and protection.[41] This section is interpreted by some magistrates to mean that children

in the care of relatives are not in need of care and protection, whilst other magistrates are finding them to be in need of care and protection, and place them in foster care.

Two cases concerning these interpretations came before the South Gauteng High Court. In the first, the Court ruled that orphans living with a caregiver "who does not have a common law duty of support towards such child"[42] may be placed in foster care if the child does not have the means to support him/herself (i.e. does not have his/her own inheritance) and does not have an enforceable claim of support against a caregiver and "the means of support is not readily evident, obvious or apparent".[43] In the second case the Court considered what should happen in the case of orphans living with relatives such as grandparents and siblings who do have a common law duty of support. It ruled if the child did not have an inheritance or other income (such as an insurance policy) that the Foster Child Grant (FCG) means test should be applied to the relative caring for the child. Where the relative did not have sufficient means to care for the child, that the duty of care was not enforceable on the relative and therefore the child could be placed with them in foster care, meaning the family could claim the FCG.[44]

The Amendment Bill proposes to change the definition of a child in need of care and protection so that it includes any child who has been orphaned or abandoned, and who "does not have the ability to support himself or herself and such inability is readily evident, obvious or apparent".[45] The new phrasing aims to clarify that relatives caring for orphaned and abandoned children can become foster parents.

There are several problems with the proposed amendment.

Section 1 of the Children's Act defines an orphan as a child who has no surviving parent caring for him/her. Most children who have lost their fathers live with their mothers[46] and therefore do not fall under the definition of "orphan" for purposes of the Children's Act. However, over 1.4 million children have lost both parents or are maternal orphans living with relatives[47] and could be considered in need of care and protection according to the proposed new definition. The amendment would mean that all these children and their relatives would have to be assessed by a social worker, go through a children's court inquiry which would include a means test, and be declared in need of care and protection in order to access the FCG.

In March 2014, 512,055 children received the FCG,[48] with the majority being orphans. It took almost 10 years to increase the number of children in foster care from 50,000 to 500,000.[49] Reaching 1.4 million is likely to take much longer.

The child protection system is ill equipped to deal with the current number of cases, including abused and neglected children, and any expansion in demand threatens to increase the time that it takes for children and families to get support, and can reduce the quality of the service. As the majority of children in need are not able to access the system, legal experts have argued that the foster care system fails the reasonable measures test.[50]

Furthermore, using the child protection system as the delivery mechanism impacts on a number of other children and violates their rights to social services and equality:

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Child Witness Project: Uses court support workers to minimise secondary trauma for child witnesses

1. Children who have been abused or neglected are waiting for extended periods to receive social work services, which violate their right to protection from maltreatment, abuse, neglect and degradation.[51]
2. Almost a third (29%) of children live with relatives and there is little difference between the wealth of those whose parents are still alive and those who are orphaned.[52] So it is not clear on what basis children living in the same financial circumstances should receive different amounts of financial aid from the government.
3. The phrase "does not have the ability to support himself or herself and such inability is readily evident, obvious or apparent" is ambiguous; therefore, it is likely that some orphans will be placed in alternative care whilst other will not, again violating the right to equality.

Judicial review of emergency removals

In January 2012, the Constitutional Court declared sections 151 and 152 of the Children's Act unconstitutional.[53] The Court ordered that two new subsections be added, stating that a judicial review is required when a child is removed from the care of his/her family and placed in temporary safe care. Regardless of whether the removal was done with or without a court order, the children's court must review the decision before the end of the next court day. Prior to this order, the parents or the child had to wait until the children's court hearing to contest the removal. The Act requires that a children's court inquiry must be held within 90 days of the removal, but in reality it can take much longer. Although, social workers have been obliged to follow the procedures outlined by the Court since 2012,[54] the new subsections do not appear in the Act. The Amendment Bill aligns the Children's Act with the court order. This amendment gives effect to the child's right to participate, and to the general principles of the Act to give the child's family a chance of expressing their views (if in the child's interest), and to avoid delaying action and decisions on the well-being of child.[55] The children's court review also allows an independent arbitrator to balance the child's rights to family care with the right to protection from abuse.

Persons unsuitable to work with children

At present the Children's Act states that people convicted of certain offences must be deemed unsuitable to work with children and their names must be entered automatically into the National Child Protection Register.[56] However, there are some critical omissions in the list of offences, such as attempted rape. A proposed change to the Act will ensure that a person convicted of any sexual offence against a child under the Sexual Offences Act is deemed unsuitable to work with children.

The Amendment Bill also empowers provincial Heads of Social Development to transfer children between different forms of alternative care; and amend or insert new definitions to:

- ensure that young people can stay in alternative care until they complete their education (including high school, further education and training, and higher education); and
- allow departmental social workers to process adoptions.

Conclusion

Crafting a legislative framework that fully respects children's rights is a process, one that is no doubt taking longer than was initially envisaged. While South Africa has incorporated many international rights into the Constitution and has passed pioneering laws for children, the process of ensuring these laws are designed and implemented in accordance with children's rights and best interests is far from complete.

Over the past two decades civil society organisations working together, through formal participation processes such as public hearings and informal protest, have drawn on children's rights in the Constitution to shape legislation in Parliament, or even to persuade parliamentarians to dismiss some, as with the Traditional Courts Bill. When laws have violated children's rights, civil society organisations have challenged them in the courts. In some cases the Constitutional Court has interpreted ambiguous provisions, amended legislation or sent it back to Parliament for review. The government has also consulted with organs of state and civil society on their experiences of implementing the legislation to identify improvements to laws, as with the Children's Act.

Civil society has also actively monitored the implementation of these laws and where the government has not committed sufficient resources to implement the legislation, they have dialogued, protested or litigated. In the textbook and school furniture cases the courts have interpreted the right to education broadly and refused to excuse inadequate planning or budgeting.

These developments show how child law is progressing and how South Africa's democracy is consolidating as all spheres of government and civil society are steadily building and strengthening the legal framework to realise children's rights.

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