



## **SUBMISSION TO THE CHILDREN'S BILL**

Prepared by Carol Bower, Executive Director

### **1 ABOUT RAPCAN**

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) is a non-governmental organisation which has been in existence since 1989. The organisation is a registered Section 21 Company in terms of the South African Companies Act, (registration number 97/216/87/08) and is also registered as a non-profit organisation (NPO number 010-744). We undertake a range of training interventions, run a Resource Centre, develop, produce and disseminate innovative and creative material aimed at abuse prevention, engage in the legislative process via our advocacy work, are involved in the rehabilitation of child sex offenders, and assist child witnesses and their care-givers at Sexual Offences Courts in Cape Town. Our web site ([www.rapcan.org.za](http://www.rapcan.org.za)) is helpful if you would like to find out more about us and what we do.

As a child rights organisation, we have focused in this submission only on certain aspects of the Bill which lie within our ambit of interest and expertise. Thus this comment on the Bill is by no means comprehensive.

### **2 GENERAL COMMENT:**

In general, we find the Children's Bill to be a forward-looking and rights-based document which addresses a number of the areas in which legislation and policy have up to now been absent from legislation relevant to and pertinent for children. In particular, the guiding principles, the emphasis on child participation and the best interests of the child, the entrenchment of child rights, the listing of these rights, and the concept of supporting families as a preventative strategy are welcomed. The Law Commission is to be commended for the thoroughness of the work done, in particular with respect to secondary and tertiary services.

Among our reservations, however, are that the Bill is sometimes ambiguous; that the principle of primary prevention is sometimes weakened; that participation needs to be strengthened; that the participation notion of "best interests" will need to be carefully defined; that specialist guidelines will be needed; and that certain rights which we believe to be both basic and necessary in fulfillment of South Africa's commitments in terms of the Convention on the rights of the Child are omitted. We feel that there should be an even greater emphasis on primary prevention than is currently the case. In general, in the section dealing with children's rights and throughout the Bill, we would like to see that provision is made for children's basic needs (food, clean water, clothing, shelter, health care and education) as the core principle of a primary prevention approach.

### **3 STRENGTHENING OF A PRIMARY PREVENTION APPROACH**

While the Children's Bill goes a long way to moving toward a balanced primary, secondary and tertiary prevention model, we are of the opinion that prevention is always better than cure and that this aspect should be further strengthened. To do so will require adequate resourcing at national, provincial and local levels; the implementation of a comprehensive social security system (which provides for more than social security grants, although these will be critical, and makes provision for subsidisation of health, education, transport and nutrition); and a significant degree of co-ordination and co-operation between all government departments and organs charged to any extent with providing basic services to children (this should include, but not be limited to the Departments of Finance, Water, Health, Education, Land, Housing, Safety and Security, Justice and Local Government in addition to Social Development).



To facilitate and support the proposed equal focus on primary prevention will require the development of legislation and resource allocation principles which are not currently available. While the Bill does make legislative provisions for this, it will be necessary to ensure that the Departments of Social Development and Local Government are generously resourced – with this seen as the major priority in a climate of competing priorities. The Bill should set the minimum standards to which all statutes affecting children must adhere, and ensure the appropriate co-ordination and reporting mechanisms are in place.

#### **4 CONSTITUTIONAL OBLIGATIONS TO CHILDREN**

The inclusion of provisions relating to children’s rights to be informed, and have their opinions listened to and respected are welcomed, but we are concerned that the health rights of children have not been addressed in the Bill, and recommend that this be done. In particular, children’s rights with respect to respect, consultation and communication within the health-care system should be addressed. A clear duty upon anyone charged with administering any aspect of the Children’s Bill to listen to children and give proper consideration to their views should be incorporated.

With respect to the rights of children to participate in the reform and development of laws and policies which affect them, we recommend that legislative provisions should be made in this regard.

The principle that children are best cared for within a family environment is supported, along with the obligation that it brings for the State to support families in need in providing for the basic needs of their children (i.e. this should apply to all children, and not only those being cared for by the State).

#### **5 GENERAL PRINCIPLES (CHAPTER 3)**

We recommend that the core objectives and principles underlying the Bill make very clear that the promotion of equality and the principle of primary prevention are the bedrock of the Children’s Bill. We welcome the fact that the “best interests of the child” standard has been given prominence in the Bill, but are concerned that this is open to subjective interpretation. We would like to see this standard defined, and suggest that a general list of standards which should be applied when decisions and actions about children are being made is included in the Bill. This list should be subject to regular review.

#### **6 CHILDREN’S RIGHTS (CHAPTER 4)**

We welcome the inclusion of a list of children’s rights in the Children’s Bill, and would recommend that provision also be made in respect of health rights, social security rights, rights to food and water and the right to be heard and participate. These rights, as listed and with the recommended additions, should have legislative superiority over all other legislation, with the exception of the Constitution.

We recommend that virginity testing of girl children be prohibited (section 18 (5)).

We are concerned at the numbers of children who do not attend school because of the inability to pay fees or buy uniforms and stationary, despite policy and legislation which are in place to disallow this. We recommend that the right to education despite poverty and inability to afford fees, uniforms and stationary be made explicit in section 21.

We welcome the inclusion of the right to social security (section 23), but would recommend that the obligation of the State to provide support and material assistance to children and their care-



givers when the care-giver(s) are unable to do so – with an emphasis on facilitating the care-giver’s ability to provide for the child.

We support the provision that a child be defined as any person under the age of 18, and that the age of majority be reduced to 18 years of age (section 18).

## **7 PARENTAL RESPONSIBILITIES AND RIGHTS (CHAPTER 5)**

We welcome the shift to the concept of parental responsibility rather than the concept of parental power, and the recognition implicit and explicit in the Bill of the diversity of family types in South Africa.

In section 41 (6) we recommend that the wording be changed from “*The Court may ...*” to “*The Court shall ...*”.

## **8 CHILD AND FAMILY COURTS (CHAPTER 6)**

Much of the subject matter of this chapter lies beyond our competency. In general, however, we welcome the empowering of family courts, the emphasis on the child’s right to participate in and be heard concerning such proceedings, and the inclusion of the child’s right to legal representation. We particularly approve of the prohibition on cross-examination if this is found not to be in the best interests of the child (section 84 (c)).

## **9 PROTECTION OF CHILDREN (CHAPTER 8)**

We welcome the removal of “reasonable chastisement” as a common law defence (section 140 (2)) but are particularly concerned that corporal punishment in any sphere has not been prohibited, and strongly urge that this be reviewed.

There is no research evidence that corporal punishment is more effective than other forms of discipline in managing behaviour. Indeed, there is much research evidence that strongly suggests that it is less effective than other methods. Corporal punishment does not result in long-term behaviour change; rather it teaches the child to avoid the punishable behaviour when the person who does the spanking is nearby. There is also evidence to suggest that corporal punishment tends to lose effectiveness over time, so that beatings become increasingly severe. Also, because beatings are often administered in “the heat of the moment”, there is always the risk that the person doing the beating will not realise or care how much physical damage they are inflicting.

In addition, when corporal punishment is used as a consequence of hitting or hurting other children, the punished child is receiving mixed and confusing messages. The hypocrisy of this is not lost on children.

We would suggest that corporal punishment fundamentally violates the human rights of children, both as human beings and as children, as these are enshrined in our Bill of Rights and the CRC, which we have ratified. Thus, from a human rights perspective, all forms of corporal punishment should be banned, and indeed, legislated against.

## **10 CHILDREN IN NEED OF CARE AND PROTECTION (CHAPTER 11)**

With regard to section 167 (1), we recommend that ministers of religion, labour inspectors and traditional healers be included in the list of those with a duty to report children in need of care and protection, and that this be on the suspicion that the child has been injured as a result of abuse, sexual abuse or deliberate neglect, rather than on a definite conclusion in this regard.



## 11 FUNDING, GRANTS AND SUBSIDIES (CHAPTER 23)

We fully support and endorse the submission of the Children's Institute and the Alliance for Children's Entitlement to Social Security with regard to a comprehensive social security system for children which goes beyond financial assistance, but which critically incorporates this as a major component. We also strongly support the removal of means testing, and the facilitation of access to grants to which children are entitled by removing the current obstacles such as the need for birth certificates.

Thank you.

Prepared by Carol Bower, Executive Director, December 2002.

