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SUBMISSION ON ASPECTS OF THE CHILDREN'S BILL REIATING TO SUBSTITUTE FAMILY CARE

Attached is a submission by the Johannesburg Child Welfare Society, endorsed by SASPCAN, RAPCAN, the Network Against Child Labour, and Children First, on the aspects of the Children's Bill which relate to substitute family care. The paper deals with adoption, foster care and kinship care. While foster care and kinship care have been held over for the section 76 Bill which will be dealt with at a later stage, we believe that it is essential that the overall issue of how substitute family care is to be dealt with should be examined at this stage. This is because these forms of care have major implications for the courts, the social security system and the entire structure of the child and family service system.

We wish to make an oral presentation on this subject and request that time be allocated to us for this purpose.

Thank you for your help.

Yours sincerely

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ADVOCACY COORDINATOR

JOHANNESBURG CHILD WELFARE SOCIETY

CHILDREN'S BILL: ASPECTS PERTAINING TO SUBSTITUTE FAMILY CARE

SUBMISSION TO THE PARLIAMENTARY PORTFOLIO ON SOCIAL DEVELOPMENT

THIS SUBMISSION IS ENDORSED BY SASPCAN, RAPCAN, CHILDREN FIRST AND THE NETWORK AGAINST CHILD LABOUR

The Johannesburg Child Welfare Society (JCWS) is a registered non-profit organisation delivering services to children and families in the Johannesburg metropolitan area. Its programmes include statutory child protection services, family support services, foster care, adoption, residential child care, specialist services to children who have been sexually abused and their families, preventive education and capacity-building, early childhood development, economic empowerment, outreach to girls living on the streets, and advocacy for the rights of children. The JCWS reaches some 14 000 children annually through its services. In addition the organisation is very active in a range of local, provincial and national networks working to promote the rights of children and vulnerable persons, families and communities.

1. INTRODUCTION

This submission outlines features of the substitute family care scenario in South Africa and lists issues which the original draft Children's Bill developed by the SA Law Reform Commission set out to address. It takes the view that important improvements to the foster care and kinship care dispensation as proposed by the SALRC have been cancelled out or substantially weakened in the August 12 draft of the Bill, and an appeal is therefore made for this situation to be rectified. In relation to the chapters of the Bill dealing with domestic and inter-country adoption, most of the provisions are supported; however a few significant problems are identified and amendments are recommended.

2. FOSTER CARE IN THE SOUTH AFRICAN CONTEXT

In this country the term "foster care" usually implies the full-time care of a child by a person or a couple other than his or her biological parents, by order of the children's court. The caregivers are not assigned the responsibilities and rights of guardianship, and the placement may be terminated, or may lapse on the expiry of the court order.

Foster care is usually the preferred form of care for children who are unable to remain with their own families due to abuse, neglect or abandonment, but for whom adoption is not possible or not indicated. The intention is to ensure that the child continues to have the benefit of a family environment, which is generally acknowledged to be the context most favourable to the healthy development of children. It is accepted that foster parents should be screened and selected for their ability to act as substitute caregivers to children who have been maltreated or abandoned. Training for and ongoing support in this task are also usually indicated. The children in question typically have emotional, behavioural and/or developmental problems due to their past experiences, and integrating them into a new family can be very difficult.

In theory, foster care is a temporary arrangement which requires ongoing monitoring and an "exit plan". Services should be rendered to the biological family with a view to the child being restored to their care, or, failing this, the child's adoption by the foster parents or other permanent substitute parents. But in the South African context, factors have come into play as a result of which this pattern has arguably become the

exception rather than the rule. In many cases foster care is a long-term or permanent arrangement, for one or more of the following reasons.

° Organisations and provincial departments delivering foster care services are in many cases so overloaded and understaffed that there is no possibility of doing meaningful work with the children concerned and their families. Permanency planning and reunification services (among other tasks) are often simply not carried out.

° Often there are severe and recalcitrant problems in the biological families, and social service interventions may fail. Not infrequently the biological parents disappear. Overload on the foster care services, coupled with current obstacles to permanency in the law, lead to such placements being left as they are rather than being made permanent.

° Many, in fact probably a large majority of, foster parents are related to the children in their care and have permanently taken over the caregiving task. These tend to be cases where the parents have died, have disappeared or are in some way incapacitated. Many of these children remain with the relatives throughout childhood. These are "kinship care" placements, as discussed below.

° Most caregivers in long-term cases need financial assistance to support the children and, in the absence of legal provision for adoption allowances, foster care status continues.

3. THE IMPACT OF KINSHIP CARE ON THE FOSTER CARE SYSTEM

A very large and rapidly growing proportion of foster parents are not recruited by child and family welfare agencies for children who are initially unknown to them, but are relatives of the children in their care. They have been taken through the children's court process because they need financial assistance, and the only or, in some cases, the most viable form of such aid which is available to them is the state Foster Care Grant (FCG). These placements are more appropriately termed "kinship care" arrangements. Many of the children concerned live with the relatives throughout childhood, and remain on social work caseloads until they "age out" of the system, typically at the end of the year in which the child turns eighteen. They are not adopted because in many cases the caregivers, who may themselves be pensioners, cannot afford to care for them without the FCG. In February 2003 the provincial Departments of Social Development had 133 400 beneficiaries of the Foster Care Grant on record - an increase of 168% over the 49 843 registered in 2000.[1] All the signs are that this escalation in numbers is continuing apace. While no breakdown of the figures is available, it seems likely that this massive increase is mainly accounted for by poverty-related applications by relatives, and that death and incapacitation of caregivers due to AIDS is a major contributing factor.

The SA Law Reform Commission (SALRC) in its Discussion Paper on the Review of the Child Care Act notes that the foster care system has become an "income maintenance system" for families offering kinship care who lack access to other forms of state aid.[2] The SALRC also observes that the current foster care system does not have the capacity to absorb the children who stand to be orphaned and/or otherwise rendered destitute by the AIDS pandemic. There is certainly no sign of a growth in child and family welfare infrastructure to accommodate the huge increase in foster care placements shown above – indeed there are regular complaints that services are being closed or curtailed because of lack of funding. The limited capacity of the children's courts is also an issue of great concern in this regard. Most areas do not have specialist children's courts, and magistrates must combine their duties as commissioners of child welfare with their other functions. Some are managing to process only a handful of children's court cases a month, resulting in a huge backlog.

[1] Department of Social Development Fact Sheet, March 2003: Beneficiaries of Social Grants.
[2] SALRC 2002: Discussion Paper 103 – Review of the Child Care Act, 10.2.2.

4. APPROACH TAKEN BY THE SALRC TO FOSTER CARE AND KINSHIP CARE

The SALRC gave attention in its process of reviewing the Child Care Act to models of substitute family care, to the quality of foster care services, to the process and implementation of permanency planning and family reintegration, and, where necessary, to providing children and their caregivers with greater security and continuity of care. It was noted that current limitations on the responsibilities and rights of foster parents, especially where guardianship issues were concerned, often hampered their ability to carry out their parenting functions. Also of concern were the present financial obstacles in the way of families who would otherwise be willing to care for children, including the charging of fees for essential public services, such as health and education, and the extra costs of caring for a child with special needs, for example those arising from physical or mental disabilities or chronic illness.

In its draft Children's Bill, the SALRC addressed the issue of foster care and kinship care mainly in chapters 1: *Interpretation, objects and application of this Act;* 13: *Children in alternative care;* 14: *Foster care and care by relatives;* and 23: *Funding, grants and subsidies*. Relevant provisions were also included in chapter 2 (provision for an intersectoral National Policy Framework), chapter 6 (options available to child and family courts), and chapter 8 (an intersectoral mechanism to coordinate the child protection system, and applications to terminate or suspend parental rights). Features of the approach were as follows:

° A universal grant for children in need (s341) would help prevent situations in which children would enter statutory care for reasons of poverty alone.

° Three forms of substitute family care (apart from adoption) were recognized, namely foster care, court ordered kinship care and informal kinship care.

The term *foster care* would be restricted to care of children coming into the formal child protection system and placed in the care of persons unrelated to them (s1). These caregivers would be selected and prepared for this function, and the placements in question would have a professional service component. Initial court orders would be of limited duration and they would be subject to a permanency plan and, where possible, to family reunification services. A non-means-tested grant would be payable to these caregivers (s342).

Court-ordered kinship care would apply to children unable to remain in their own homes due to abuse or neglect, where a professional service component was required and where reunification services might be indicated, but where relatives were willing and suitable to serve as the substitute caregivers, thus offering the child the many benefits of remaining within the extended family. In such cases the court would have discretion to issue a long-term care order at an early stage of the placement (s203), and to dispense with social work supervision if no need was seen for such a service. A means-tested grant would be payable for the care of children in this form of care (s342; s347).

Informal kinship care was regarded as the appropriate arrangement for destitute children not requiring child protection services as such, but being in need of social security provision to enable them to be cared for by relatives. The SALRC sought to afford their caregivers the right to exercise parental responsibilities over them (s205). Such an approach is in existence in various other African countries where care within the extended family is seen as normal.[3] These caregivers would have access to a grant payable via the social security system, which would not involve children's court enquiries or ongoing social work supervision (s343). This was regarded as an essential component of provision for children of persons incapacitated or deceased due to AIDS. It was also regarded as a means of enabling the country's limited formal child protection resources to be focussed on dealing effectively with cases of child maltreatment. These cannot be adequately attended to at present due to the bureaucratic demands of processing and monitoring formal foster care placements in situations where poverty rather than abuse is the central issue.

° To make it possible for more people to offer their homes to children in need, provision was made for free health care, education and official documentation and for subsidised school uniforms, stationery and transport for children in court-ordered alternative care, given that such children are wards of the

[3] SALRC Discussion Paper; Project 110 – Review of the Child Care Act, 2001, 17.2.3.

state (s188). In similar vein, provision was made to increase the ability of caregivers to provide for children with disabilities and chronic illnesses, by inclusion in the Bill of a means-tested supplementary special needs grant (s346) and for a means-tested subsidy to enable those with disabilities to obtain assistive devices (s347). These measures to facilitate the care of children with special needs were intended to assist anyone undertaking such care while having inadequate resources for this purpose, including biological families, foster and adoptive families, kinship caregivers and child and youth care centres.

° Attention was paid to the capacitation and improvement of services essential to the proper functioning both of foster care and of court-ordered kinship care, via the mechanisms provided throughout the Bill to ensure ongoing needs-assessment, planning and budgeting for essential children's services (for example s113A; s338).

° Recognition was given to new forms of foster care, to allow for greater mutual support and increased flexibility of care arrangements. This was done especially with a view to the challenges posed by the increasing numbers of children being orphaned or in other ways affected by AIDS, and the need to build community capacity to care for them. Thus a "collective foster care scheme" was defined in the draft Bill (s1). This allowed for a group of caregivers to share in the responsibility for a child, although that child would live in a single family household, in terms of a programme operated by the Department of Social Development or a designated child protection organisation. Provision was also made for regulations to guide the operation of such schemes (s209) and for their subsidisation or outsourcing by the state [s339(1)(h) and (i)]. Provision was also made for more than the limit of six children to be cared for in one household,[4] if they were siblings or relatives, or where for other reasons the court deemed this to be in the interests of all the children concerned (s202).

° Numerous measures were put in place to promote the development and implementation of permanency plans for children in all forms of alternative care. This was an attempt to prevent the phenomenon of "drift in care", with its associated hazards for children and insecurity for their caregivers.[5] Such planning was made a required part of the children's court process (s176). Provision was made to promote adoption, with the minimum of delay, in clear cases of abandonment of very young children [s176(3)]. The court was given the authority to confer increased parental responsibilities and rights on foster parents or kinship caregivers where a child had been orphaned or abandoned, or where family reunification was not in the child's interests. In such cases, provision was made for orders of more than the usual maximum of two years to be issued (s205) and for social work services to be dispensed with in cases of court-ordered kinship care, and also, after at least two years of monitoring, in foster care (s203). A foster or kinship care placement was not to be terminated without having regard to the bond between the child and the caregiver, and to a range of possibilities for permanence, including permanent foster care or adoption by the caregiver (s206). The grounds for dispensing with a biological parent's consent to adoption were expanded (s261, s266). The court was given authority to terminate, suspend or restrict any or all parental rights and responsibilities of a parent or caregiver of a child in alternative care, once such a child had remained in care for a defined period, the length of which would depend on the age of the child – varying from six months in the case of an infant to two years for a child over seven (s141). A means-tested adoption grant was provided for, so as to enable long-term caregivers

[4] This limit currently applies in terms of the Child Care Act of 1983, and would also be the normal ceiling as recommended by the SALRC.

[5] The temporary nature of foster care as envisaged in the Act and associated policies creates a situation in which neither the child in care nor the caregiver can be certain that the placement will continue. Combined with the limits to the parental responsibilities which are at present legally conferred on the caregiver, this creates a situation in which the child cannot fully "put down roots" and develop a sense of trust and belonging. Caregivers in such situations often have problems in fully committing themselves to their charges, as they fear the pain of a future separation. Many children who are "drifting in care" display disruptive behaviour due to their insecurity, and their caregivers may too easily call for them to be removed because of the stress this situation places on their families. Permanency planning is designed to prevent this period of mutual insecurity from continuing longer than is required for the delivery of early reunification services designed to restore the child to the original family, and/or for assessing his or her adjustment in the new family.

who could not afford to give up the foster care or court-ordered kinship care grant to adopt the children in their care.

Read together, these innovations would mean that only those children who clearly need to do so would come into the formal child protection system, and that these would much more rapidly move out of insecure forms of placement and into arrangements where they could achieve a sense of lasting security. Social work services would be of a more effective quality and would be strategically focussed on those children whose situations require professional skills and knowledge. Children whose main need is for financial support would have access to such assistance via the social security system. Where indicated this could be supplemented by community-based developmental programmes. A greater pool of families would be available for both informal and formal types of family care, due to the reduction of the financial obstacles facing potential caregivers.

While there has been strong support for most of the provisions incorporated into the SALRC draft Bill, it has been pointed out that if a non-means-tested grant accessible to every South African child were in place, this would do away with the need for an informal kinship care grant and an adoption grant, and would avoid possible perverse incentives which could be associated with these measures. As long as there is no universal grant in place, however, such measures remain essential underpinnings for the system proposed by the SALRC.

A further issue of concern to many NGOs is that the SALRC draft restricted automatic provision for free state services, such as health care and education, to children in court-ordered care. The lack of genuinely free basic services is one of the reasons why children are falling victim to inadequate care or destitution in their own families, increasing the risk of their coming into alternative care. There are widespread calls for these services to be provided for all children. Again, in the absence of such provision for children in general, it becomes essential to provide them at least for those children for whom the state assumes legal responsibility, given that available caregivers are frequently unable or unwilling to carry the full costs involved in caring for them.

5. CHANGES TO THE BILL WHICH AFFECT FOSTER CARE AND KINSHIP CARE, AND THEIR IMPLICATIONS

Many of the proposed new measures remain intact in the latest draft of the Children's Bill, and this is welcomed. Nevertheless, the overall thrust of the original draft as it relates to foster care and kinship care has been significantly altered, with very negative consequences. Relevant changes include the following:

° Provision for a grant accessible to all children in need has been deleted (SALRC s341). This removes a key primary preventive measure which would have helped keep children who need support in their own homes out of the formal child protection system.

° The entire concept of informal kinship care has been removed, along with provision for a grant for children in such care (SALRC s1, ss207-9, s343). This means that poorer kinship caregivers are thrown back on the children's courts and the relevant social work services in order to obtain financial assistance and the right to function in a parental capacity. Not only does this create heavy and expensive bureaucratic burdens for the families concerned, it also keeps them dependent on a system which simply does not have the capacity to accommodate more than a minority of them. Further, it continues the present pattern in terms of which social work services needed by severely abused children are not delivered, because those concerned are swamped with cases in which the central issue is poverty.

° Provision for an adoption grant has been deleted (SALRC s344). This means that many children who could have the benefit of adoptive placements would, for purely financial reasons, have to remain in less secure forms of care, which also drain the scarce resources of the state and the relevant NGOs.

- There is no longer provision for free and subsidised state services for children in any form of alternative care SALRC s188). Thus a major disincentive to families who would otherwise be able to come forward to care for children remains in place, at a time when our need for such families is at unprecedented levels and is escalating fast.

- The proposed powers of the children's court to create permanency for children in foster care and court-ordered kinship care have been gravely weakened, because the power to confer, transfer or terminate parental responsibilities has been limited to the High Court, the divorce court and eventually the family court [tabled Bill s45(3)]. Almost none of the children in question, or of the organizations assisting them, have access to the High Court due to the prohibitive costs involved. The family courts are likely to take many more years to come into being, and are unlikely to be present in all areas. Thus the creative and flexible set of options which the SALRC draft contained to allow for a strengthening of the position of substitute family caregivers, and the creation of greater security for the children in their care, have in large measure been negated. Even in the few cases where there is access to one of the required courts, this takes us back to a counterproductive fragmentation of court processes, which is one of the very problems which the SALRC sought to address in the first place.[6]

- Provision for an intersectoral National Policy Framework to ensure coordinated planning and provisioning for children, and for an intersectoral mechanism to coordinate the child protection system, have been removed (SALRC ss5 and 113A). These measures were critical to the proper functioning of all aspects of children's services, including foster and kinship care. Without these measures the present dire circumstances of the child and family welfare service network is unlikely to improve, and the children who depend on such services will continue to be failed by them.

The abovementioned changes to the Bill are noted with great alarm. We appeal for the restoration of all the essential we ingredients, as described above, of the model for foster care and kinship care as proposed by the SALRC. **Specifically, we call for the reinstatement of the following clauses from the SALRC draft Bill: ss1, 5, 59(1)(i), 113A, 188, 207-9, 341, 343 and 344.** We regard these ingredients as critical for the functioning of an effective system of substitute family care in our country. **We also recommend the deletion of s45(3) of the present Bill,** dealing with parental responsibilities and rights, at very least to where children in statutory care are concerned. These children's affairs are the focus of the children's court, and should not be fragmented by being handed over in part to the High Court.

We further call for **urgent consideration of the role which a universal grant for children along with a package of free public services** could make in preventing the need for children to come into care in the first place, in facilitating informal kinship care for those who cannot remain in their own homes, and in promoting adoption of those children for whom this is the most appropriate option.

6. DOMESTIC AND INTER-COUNTRY ADOPTION

Chapters 16 and 17 of the Bill dealing with adoption in general and with inter-country adoption respectively, are in most respects supported. Changes are, however, recommended in the following sections.

S229(c): Respect for cultural, ethnic and religious diversity is not in itself a purpose of adoption, but rather a principle to be followed as far as possible when arranging it. These considerations at times have to be made secondary to other factors such as the availability of suitable adopters, or pre-existing bonds between an applicant adopter and the child in question. **It is recommended that this clause be deleted.**

S231: A glaring omission is that of provision for the child's consent to be required for his or her adoption, if he or she is capable of understanding what is involved. The right of a child aged

[6] SALRC: Issue Paper 13, 1998; Discussion paper 103, 23.3, 2001.

ten years or more to give or refuse such consent has been in place for decades and it is unthinkable that this should now be removed. The SALRC, in line with the principle of participation by the child in decisions concerning him or her, expanded this provision to cover all children capable of understanding the implications of adoption and of the consent being given. **It is recommended that the wording of s259(i)(c) of the SALRC draft Bill be added to s231 of the current Bill.**

S232(5)(a)(i): The present Child Care Act of 1983 [s18(5)] requires that consent to adoption be signed in front of the Commissioner of Child Welfare. This is, one would suspect, to ensure that the consent is being given freely and without any form of duress. The new Bill gives this responsibility to the clerk of the court, a shift which is dangerous, especially in a context where reports of parents being pressured or offered incentives to consent, without necessarily understanding their rights, are surfacing from time to time. (The more highly trained Registrar of the Court as envisaged in the SALRC's draft Bill would perhaps have adequately equipped for this task.) **It is recommended that the words "clerk of the children's court" in this clause be replaced with "presiding officer of the children's court".**

S233(4)(a): This section provides for a "freeing order", which would enable a biological parent to hand over his or her parental responsibilities to a designated child protection organisation or an adoption social worker pending the adoptive placement. This would apply in a situation where an adoptive family has still to be found, and would relieve the biological parent from having to continue to carry responsibilities for the child after having made the immensely difficult decision to distance herself or himself from that child. It is also designed to give the adoption agency or social worker authority to make whatever decisions are required, and to reduce the insecurity experienced by adopters before the adoption order is finalised. As it stands the section provides that a freeing order will lapse if a single application to adopt the child has been turned down. But other prospective adopters may be available and it could defeat the purposes of this section to simply cancel the order. It is suggested that this clause be replaced with the words: **"a freeing order may be terminated by the court if after twelve months since the issuing of the order there appears to be no reasonable prospect of adoption of the child, and the order no longer appears to be in the best interests of the child".**

S234(2)(c): This section provides that an unmarried father who has been convicted of raping the mother, which rape has given rise to the conception of the child concerned, will not be required to give his consent before such a child can be adopted. It is, however, useless to include a conviction of rape as a basis for removal of a biological father's right to prevent the adoption of his child. Conviction rates for rape, as we know, are extremely low and if they occur at all this may be after several years. This clause sets up an appalling situation for women and girls who fall pregnant due to rape, and for the babies themselves. Among several highly unacceptable consequences would be the prospect of delays while a man who may be dangerous and/or vindictive holds up adoption proceedings to the detriment of the child, or uses the child as a lever to resume contact with the mother. The current requirement as introduced by the Adoption Matters Amendment Act is for a **finding by the court on balance of probabilities that the child was conceived as a result of rape.** This principle was fought for very hard by NGOs delivering adoption services, and it is recommended that the present clause be replaced accordingly.

S235(1)(b) and (4): These clauses require that the court take all reasonable steps to establish the identity and whereabouts of any person whose consent is *not* required to the adoption because grounds exist for his or her exclusion – also that a social worker who becomes aware of such information must supply it to the court. This would in practice apply to certain biological parents and unmarried fathers who have forfeited their rights. It is not clear why the court would have to do its utmost to get the address of a person who does not have to be notified of a pending adoption. This would set mothers up to lie to the courts and to social workers about

what they do and do not know, and would create an unnecessary ethical dilemma for social workers. There is merit in naming the person and giving reasons why he or she does not have to be notified, but not for the court to be required to insist on having further details. It is also not clear why should a social worker who is in confidence given information which is not relevant to the proceedings should be obliged to pass this on to the court. **It is recommended that these two clauses be deleted.**

S248(1): This clause provides for an adopted child over 18 years of age and the adoptive parents, and in some circumstances the biological parents of such a child, to access information contained in the adoption register. An order of court is required to access such information for a person under 18 years of age. It has, however, been pointed out that if such information is required for medical reasons and if a medical emergency arises, the expense and delay involved in obtaining a court order could have severe and even fatal consequences for the child. Good adoption practice requires that all available medical background information be obtained by the social worker processing the adoption, and that this be handed over to the adoptive parents, and adoption agencies will generally in any case supply such information on request by the adoptive family. However in situations where the relevant information has not been recorded or is not being made available, provision needs to be made for it to be obtained without delay. Therefore. **it is recommended that that a clause be added to stipulate that any pertinent medical information related to the biological parents that would have a direct bearing on the child's health and wellbeing should be made available to the adoptive parents at the onset of the adoption. It is also recommended that a clause be inserted to provide that in case of a medical emergency where the health and wellbeing of the adopted child is at risk, the necessary medical information can be accessed from the biological parents.**

S249: This section seeks to bring some order into the present anarchy relating to "considerations" which change hands during adoptions, especially those managed by private practitioners in various disciplines. These "considerations" are illegal but the meaning of the law is being distorted and many children's courts appear to be turning a blind eye to such practices. A number of aspects of the present formulation, which were also included in the SALRC version, are problematic.

(2)(a)(i): This clause provides for compensation to be paid to the mother for loss of earnings due to pregnancy. There is no logical reason for such a provision for a mother who gives up her baby for adoption. Such mothers can claim payments from the Unemployment Insurance Fund as do other pregnant women. Such payment provides an incentive to a mother to surrender a child for adoption to a particular person or couple, often as part of a package involving payment of medical costs in expensive clinics etc. **It is recommended that this clause be scrapped.**

(2)(a)(ii): As mentioned, the payment of medical costs tends to be part of a package which gives leverage to specific applicants in obtaining the consent of an identified mother to their adoption of her baby. Such arrangements are typically brokered by various professionals in private practice. On the one hand there are advantages to opening up sources of help with these costs; also, conditions in some public hospitals are at present so poor that this practice could be driven underground if it is banned outright. A possible solution could be to provide for applicants to contribute, in accordance with their means, to a fund which the Department of Social Development or NGOs as well as accredited adoption social workers in private practice could use to assist women with reasonable medical expenses, whether or not they decide, after counselling, to give their babies up for adoption. Such a fund should operate without any linkage between a specific mother and a specific applicant, thus removing current perverse incentives both for the mothers involved and for practitioners in various disciplines.

It is recommended that provision for the establishment of one or more such funds, and for the regulation thereof, be written into the Bill.

(2)(b): There is no shred of reason for a lawyer to be involved in an adoption, unless possibly if appointed by the court to represent a child where there is some form of conflict or another special problem involved. Provision as is made in this section for payment of lawyers is just one more way in which incentives are created for people to encourage a parent to consent to the adoption of his or her child by a specific client – the danger always being that this client may be the highest bidder rather than the most suitable person. **It is recommended that this provision be deleted.**

S250(1)(d): The stipulation that intercountry adoption practice is restricted to the Central Authority and designated child protection organisations is strongly supported. It is believed that perverse incentives exist for private practitioners in vartious professions to arrange intercountry adoptions when local options exist, and to engage in practices which are not in keeping with the spirit of the Hague Convention on Intercountry Adoption. These incentives can only be overcome in a situation in which there can be seen to be no link, either direct or indirect, between the income earned by the practitionerts involved and the decisions they make with regard to applications to adopt children. It is suggested that this principle should be further clarified, as there is concern that some individuals will form loose arrangements with NGOs in order to be permitted to arrange intercountry adoptions, while themselves collecting the fees paid by adoptive parents. To forestall such a possibility, **it is recommended that a clause be included to the effect that all fees with regard to intercountry adoptions must be collected in their entirety by the management of the accredited organisation, and that no payments must be paid by that organisation to any individual practitioner except in the form of a standard salary.**

S257(1): The official in the Department of Social Development who would be responsible for the management of the Central Authority dealing with inter-country adoptions was specified in the SALRC Bill as being at least of the rank of Director – now he or she is merely "an official". This is a position of great responsibility involving decisions which will profoundly shape the lives of many children. **It is recommended that the wording as in s284(1) of the SALRC draft Bill be restored.**

Ss259 and s261: In the SALRC draft Bill there was provision for agreements only with agencies in Convention countries, or in "prescribed overseas jurisdictions". This was apparently changed to allow for adoptions by persons from African countries including neighbouring states, as these are not Convention countries, but could be regarded as destinations preferable to countries on other continents for purposes of maintaining a child's identity and heritage. This is a sound argument; however one wonders whether there should not be some restriction, otherwise the Hague Convention loses its teeth; also the field is left open to countries where questionable practices are common. Perhaps there could be a reference to "prescribed foreign jurisdictions" and a system for designating countries from or to which children may move for purposes of adoption, or at least a system for excluding a country where circumstances so indicate. For example, some years ago International Social Services for various reasons declined to be involved in adoptions of children from Russia. In such a situation South Africa could decline to permit placements in or from the country concerned. **It is recommended that s259 be expanded to include provision for working agreements with "a prescribed foreign country", subject to regulation, and that the words "non-Convention country" be replaced with "prescribed foreign country".** Such restrictions need not apply in the case of children who are to be adopted by family members or by the spouse of a biological parent**. It is further recommended that a procedure for the prescribing of non-Convention countries and the development of the necessary regulations be added to the Bill.**

In the SALRC's draft Bill, s295 provided for an application to a court to terminate the relationship between a child and his/her biological parents in the country of origin if this had not already transpired in terms of the law of that country. This section also provided for sufficient provision to be made for refugee children to retain and foster ties with family, tribe and country of origin, which is a concern that arises in some of the literature pertaining to foreign children. This section had merit and its removal is unfortunate. **It is recommended that s295 of the SALRC's draft Bill be reinstated.**

Also omitted from the present Bill are ss297 and 300(3) in the SALRC draft. The first of these provides for the adoption of a child from a prescribed jurisdiction to be recognised in SA, and the second allows for placements to be refused by a court if a denial of natural justice or a non-compliance with the requirements of substantial justice has occurred, even if the relevant procedures have been followed**. It is recommended that these two sections be reinstated.**

JOHANNESBURG CHILD WELFARE SOCIETY

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