

The logo features the text "IT'S YOUR MOVE" in a bold, white, sans-serif font. The text is set against a dark blue background with a subtle, glowing red and white circular pattern behind the letters, giving it a dynamic, energetic feel.

IT'S YOUR MOVE

Youth Action!

Submission on the Children's Bill

This is a joint submission which was workshopped and written by 70 young people, all between 14 and 17 years of age. These young people are from Molo Songololo's It's Your Move - Youth Action Group and young people from the Children's Resource Centre, Homestead, Berth Uriel, Khayelitsha Youth Group and the West Coast Children's Network.

Submitted to the Chairperson
Parliamentary Portfolio Committee
on Social Development
C/O Mr. Mzolisi Fukula

Date 27th July 2004

Introduction

We, the 70 young people, aged between 14 and 17 years, from different communities, backgrounds and experiences, representing different organisations and groups, who gathered on 23rd to 25th July 2004 in Muzenberg, Cape Town; welcome this opportunity to participate in the law making process concerning our well-being, needs, protection and rights.

We thank Parliament, the Parliamentary Portfolio Committee on Social Development and the Minister and Department of Social Development for the opportunity to comment on the draft legislation for children, The CHILDREN'S BILL; and to make our recommendations that we hope will be considered for inclusion.

Our submission was made possible by the child rights organisation Molo Songololo who organised and hosted an interactive consultative workshop for us young people to discuss the provisions in the CHILDREN'S BILL. Molo Songololo is part of the CHILDREN'S BILL Working Group, a national network of children's organisations, who supports us.

The workshop was attended by a diverse group of young people in the Western Cape from as far a field as Clanwilliam, Graafwater, Nuwerus, Klawer, Atlantis and Vredenberg on the West Coast; and Khayelitasha, Mitchel's Plain, Philipi, Bishop Lavis, Nyanga, Salt River and Wittebome on the Cape Flats. The workshop also included children who are refugees and those who are homeless and living in shelters. We also had participants who experienced abuse and violence, and those who come from very poor families.

The workshop was a great success as we were able not only to learn about the CHILDREN'S BILL, but also examine it and discuss issues concerning children and young people like us. Molo Songololo's trainers and youth peer facilitators from **It's Your Move**, created an environment that allowed all of us to interact, participated equally, listening to each other, sharing ideas and debating issues.

This workshop was preceded by a consultative meeting with 20 young people from Its Your Move and Children's Resource Centre to establish the scope and framework for our workshop. The consultative meeting provided insight into the concerns of young people and identified the core issues / focal points for our workshop, i.e.

1. Objects of the Bill
2. Children's Rights
3. Parental Responsibilities and Rights
4. Children's Court
5. Children in need of Care and Protection
6. Alternative Care
7. Trafficking in Children

Our submission focuses on these focal areas and we also request an opportunity to make an oral presentation at the public hearings on 11th to 13th August 2004.

Our Concerns

We, children make up more than half of our population. We are dependent on the rest of the population to take care of us, to protect us and ensure that we are fed and kept clean and healthy, that we are clothed and have shelter and to ensure that we are not exploited.

This year South Africa celebrates 10-Years of Democracy. Many of us learnt about the terrible apartheid past and how people including children was treated without respect, how people were discriminated against because of their skin colour, their sex and sexuality, gender, disability and even their religion and culture.

We also learnt and know that this has changed in South Africa, we now have a democratic country and a constitution that respect human rights, including our right, the rights of children. We know and learnt that all people are equal and that it is against the law to discriminate and exclude people.

The new South Africa has brought new hope, dignity and opportunities for all children, black, white, rich and poor. The rights, needs and protection of children are being given consideration in government and society. More importantly we are able to interact, share experiences and learn from each other's culture, language, traditions, music and our lives; and enjoy our rights.

However, after 10 years of change, which is most of our life times, there remain many things that are not right. Some of our biggest concerns is that of abuse, sexual assault, rape, violence and being killed. Almost everyday, we are affected in our communities by these crimes committed against us and others.

We are also aware that many of our parents are poor and out of a job. This brings lots of frustrations into the home and we suffer. Some of us don't eat properly because there is no food in the house. We know of many children who only have one meal a day; and that is when they get bread or soup at school.

Poverty causes many children to do things that are not good for them. Some are sent to the streets to beg for money and food, others are forced to become hawkers and sell goods. There are also those who are forced to steal. And many under-aged teenagers seek income by working as taxi guards, at shops, sweatshops, cafés, in people's homes and backyard businesses.

Poverty forces many children to drop out of school. Teachers and principles put lots of pressure on us children for school uniforms, school fees, school books and many other things. There are still lots of corporal punishment taking place at our schools.

Other things that worry us a lot are gangs and drugs and peer pressure. Gangs are all over. Some of our friends and even some of us ourselves have been involved in gangs, or still are. There is nothing else to do. There are very little recreation and sport activities and facilities in our neighbourhoods. And before you know it, you are part of a gang or you hang out with gang members and soon it is drugs and alcohol and sex. But not all children who are doing drugs and alcohol belong to gangs.

This brings us to teenage pregnancies, prostitution and sexual diseases including HIV/AIDS. Girls are dropping out of school because they are pregnant; some are as young as 14 years old. There are also girls who are prostitutes. They have sex with adult men for money, cloths, protection or a place; for food, drugs, alcohol, and hang out. There are also boys who prostitute themselves, or are forced to do so.

The kidnapping of teenage girls is a big problem. Every weekend there are mothers and fathers who are looking for their children. Teenagers go missing. Some are found and appears a few days later. Some of these teenagers are kept at 'suiker huisies' and shebeens, some against their will. Others are held at places where they do drugs and are available for sex.

Many children land up homeless and living on the streets because of abuse, poverty, domestic violence, overcrowding, pressure at schools, or simply because they don't like being home. Once on the streets they are exposed to all kinds of hardships and abuse.

Another concern that we have is that of HIV/AIDS. We know and believe that it is killing people. Some of us know children who lost their parents. We also know of teenagers and children who are HIV positive. We also know that people are treating those infected with HIV very badly and that they do not get the support that they need. We are very worried that infections amongst children and teenagers are increasing.

We know that the government is providing many services for children. However we also know that there are children who do not get help and support. In our communities there are many poor children who do not get social support grants. In many case these children do not have proper documents or their parents do not know how to get the grants or the grant offices is not helping them. **We want all poor children below 18 years to get a social support grant.**

Also we are concerned about children in rural areas and those living on farms. Many of these children are recruited into exploitative labour, such as on farms and into domestic work in the suburbs in city areas. We are also aware that rural children are sexually abused and forced into prostitution.

The Children's Bill

We are very excited that the draft law, the CHILDREN'S BILL, will help to provide rules and regulations of how the government and the public should deal with us children concerning our needs, care and protection. We know that this will be one of the most important laws for South African children and those from other countries.

We believe that the CHILDREN'S BILL must give effect to all the rights of the child; our Constitution, including Section 28; and the United Nations Convention on the Rights of the Child and the African Charter on the rights and Welfare of the Child; and other international mechanism.

We believe that the CHILDREN'S BILL, which will become law, must be based on all of the rights as reflected in the documents mentioned; including our right to

- Life, human dignity, human rights, respect and privacy
- A name, nationality, heritage and identity
- Equality and be treated fairly and not to be discriminated against
- Parental and family care or alternative care
- Food, clean drinking water, basic nutrition, shelter, health care and services and social services
- Education and creative expression, like the arts
- Social security and protection
- Protection from maltreatment, neglect, abuse or degradation
- Protection from sexual abuse, exploitation, prostitution and pornography
- Protection from violence, domestic and gang violence, armed conflict and war
- Protection from being stolen, sold, bought, trafficked and exploited
- Protected from addictive substances, like drugs, alcohol and cigarettes
- Learn about and practice our own religion, culture and traditions
- Protection from harmful social, religious, cultural and traditional practices
- Protection from exploitative labour practices and work
- Not be detained unless as a last resort, and for the shortest period of time
- Legal representation and to express ourselves
- Participate in matters affecting us as children and help make decision
- Support to form our own clubs, organisations and run our own activities
- Recreation and sports and participate in cultural activities
- Be taken seriously, our rights, needs and protection to be given first priority.
- Support and care when disabled, ill or injured, orphaned, adopted, homeless and living on the street, refugee or separated from family or guardians

We further believe that the CHILDREN'S ACT must ensure that all persons who provide care, support and protection for children, must know and understand the CHILDREN'S ACT; and that there must be a special body to ensure that the Act gets implemented and monitored, and report on progress and problems.

Our Recommendations and Proposed Changes

Unfortunately, due to the short time period, we were not able to examine every aspect of the CHILDREN'S BILL. However we were able to discuss a number of issues and reflect on our own experiences with child care and protection services provided by the government. For example;

"Exactly five years ago at the tender age of 12 a young girl was ganged raped. She was terrified and traumatised. But luckily for her she had a wonderful family that supported her. At the time she had reported the incident, she was told to leave her home and stay at a relative's place for her safety. She waited six months before appearing in court and went there for regular meetings and preparations. Because of the support she received she was strong and brave the morning at the trial. All the months while she was still waiting to appear she was being prepared to appear in the children's court where she wouldn't see anybody and would have social worker at her side. On the morning when she arrived all she was told was that she looked strong enough to sit in the adults' court and wasn't asked how she felt about it and this made matters worse because she was now reminded of the incident all over again. Her parent weren't even allowed in court but the perpetrators family was present. This was a traumatic experience for her and her family and they just glad that it's al over"¹

The above case study illustrate the long time it takes before a matter gets heard in court; and how the court violated a child's rights to protection and support when appearing in court. There are many cases where children do not get proper support from their families, or get trauma counselling. This particular case took 5 years.

There also appear to be no action taken against those social workers, police, teachers, prosecutors and shelter personnel who abuse their power and the rights of children. One of our workshop participants reported the following experiences of street children;

"I am from Beth Uriel Youth Centre. Since the age of four I lived on the street. Some of my daily experiences was good, others alright and then there was days when I police would arrest me for no reason what so ever. The police, as a means of punishment, would take me about 50km out of the city centre and leave me there to walk back to town. This happened to me about 7 years ago, but still some of my friends experience this awful form of punishment and I don't think that it justifies my rights and needs as a child. The reason why they do this is because prominent businessman and women complain when we roam around the city centre...I think it is really unfair and disgusting. The streets are the only place that I know. - 17 year old workshop participant

"When we go to hospital or to the clinics we are treated like scum. They make us wait for long hours until everyone else is done and then when they, the nurses and doctors, do see us and treat us, they work very roughly and quickly." - 15 year old workshop participant

"Nothing happens when you complain that a teacher or social worker hit you. Corporal punishment is illegal in schools and shelters; but it still happens. Those who do complain are intimidated and punished, so now nobody complains anymore." - 14 year old participant

¹ The case study was written by 16-year old Tanya Benecke from the Children's Resource Centre

We suggest that the CHILDREN'S BILL must also make provision for regulations for the report of ill treatment of children, abuse of power and neglect of duty; and ensure that regular inspections done and charges brought against offenders.

We, further propose the following changes to the CHILDREN'S BILL as discussed and agreed in our consultative workshop. The propose changed are as follows:

**Chapter 1: Interpretation, objects, application and administration of the Act -
Section 2: Objectives of the Bill**

We, the children feel that there is a need to interpret the Bill in a manner that all citizens, especially children, can understand. We, however, feel that the bill does not make provision for effective child participation, in the section as mentioned, in the current bill. To address this need, we submit that the following should be inserted:

- **For children to participate, in a child friendly manner, in all government initiatives and law making processes where child rights and protection is concerned.**
- **To strengthen and develop child and youth organisations which can assist in providing support and strategies for prevention.**

Chapter 3: Children's Rights

Here we feel that section 10 and 11 needs specific attention and are concern that the Bill does not make provision for all of the child's rights to be considered.

Section 10: Child Participation

We wish to submit the following on this section:

- **Every child capable of participating meaningfully in any matter concerning that child has the right to participate in those proceedings in an appropriate way and views expressed by the child must be given due consideration, without dictation of discrimination.**

Section 11: Rights of Children

Only eight rights have been mentioned in the Bill. We the children feel that it is vitally important for all our rights to be mentioned in the Bill so that people can understand our needs as children. We submit that the following be inserted into this section:

- **Education, irrespective of the child's social and health status**
- **Fee exemption for education for children who's parents are unemployed**
- **To be heard and taken seriously**
- **To privacy and respect**
- **To beliefs and to express their beliefs without being unfairly discriminated against**
- **To be loved and cared for**

- Right to dignity
- To be treated equally, regardless of disabilities
- Children have the right to display their talents without being discriminated against

Subsection 1(g)

- Not to be detained for longer than 1 hour without inform the parents of the child or caregiver or guardian.

Subsection 1(g) ii

- Treated in a manner, and kept in a room that the child feels comfortable in, under supervision, and not be detained in a cell or confined space, that takes into account of the age of the child.
- For the child to make contact with that child's parents, caregiver or guardian

Chapter 4: Parental Responsibilities and Rights

Section 22: Parental Responsibilities and Rights agreements

We wish to submit that the following be inserted:

- Right to discipline their children, but should not physically abuse them
- The responsibility to put the needs and emotional well being, of the child first; in divorce or any other form of separation proceedings.

Chapter 5: Children's Courts

Part 2 *Court Proceedings*

Section 53: Who may approach the court

Subsection (2)(a)

- A child who is, regardless of age, gender, status, racial or religious background, and that child's place in society, affected by the matter that is to be adjudicated

Section 54: Legal Representation

A person who is a party in a matter before a children's court is entitled to appoint a legal practitioner, that the child feels comfortable with and if the child wants, a representative that is of the same gender, racial, religious and social background as that child and at his or her own expense and this legal representative needs to represent the child's needs and rights in the court and not take decisions for that child.

Section 57: Compulsory attendance of persons involved in proceedings

- The parents, guardians or caregiver of that child and with whoever that child feels comfortable to testify.

Chapter 10: Children in need of Care and Protection

We the children insist that this chapter address the following issues and concerns:

- **The rights of refugee children and there needs to be included in the children's rights chapter, regardless if that refugee child has an asylum or has arranged for temporary citizenship in the Republic of South Africa.**
- **Like all other children in the Republic, all legal refugees will have access to the services that children of this Republic enjoys**

Chapter 12: Children in Alternative Care

This chapter needs to address the following:

- **That children will have the right to live on the street by choices and should not be discriminated against**
- **Government protection officials should do all possible to protect children living on the street from harm.**

Chapter 19: Trafficking in Children

Section 280: Purpose of this chapter

To include...

- **To give effect to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the African Child.**
-

Subsection (c)

- **To put an end to child trafficking in the Republic whether this is internal or cross-border in nature.**

Section 282: Assistance to Children who are victims of Trafficking

To include...

- **Provide emotional, physical and mental support and services to victims of Trafficking**
- **Arrest the perpetrator, if certain, immediately**
- **Set up comfortable courts for victims of Trafficking**

Conclusions

We thank parliament, the parliamentary portfolio committee on Social Development and the Minister and Department of Social Development for this opportunity and for considering our submission.

We note that there is another part of the CHILDREN'S BILL, which is referred to as section 76, which will be made available later in the year. We don't understand why the CHILDREN'S BILL had to be separated. We believe that the CHILDREN'S BILL must be comprehensive and must make sure that all the necessary provisions to ensure our care, needs, protection and rights are considered.

One of the small group discussion report back at our consultation noted the following' *"South Africa's Constitution and other national and international instruments define a child as any person under the age of 18 years. Furthermore, sec 27 & 28 respectively, states that if the parents of any child are unable to meet the basic needs of that child, then the state is obligated to provide that child with his/her basic needs"*

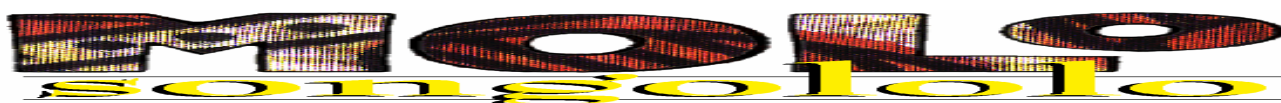
"The only viable vehicle for delivery of these obligations is a comprehensive, effective and efficient social security system comprising of a package of grants, services and benefits that accumulatively ensures children's basic needs and socio economic rights, of which all children do not have. This bill needs to accommodate and address all the issues and challenges that children and young people face"

This quote reflects our opinion regarding the very important law for children. We trust that parliament will consider to ensure that the CHILDREN'S BILL reflects the best interest of all children and that it will receive the highest priority.

The CHILDREN'S BILL needs the commitment of politicians and civil society, and the active participation of children and young people to ensure that the LAW for CHILDREN realize support, services and protection for us children.

This proposal was drafted by the core group members of the CHILDREN'S BILL young people's consultative forum and finalised by 18-year old Viyon Hammond of It's Your Move - Youth Action. We can be contacted at Molo Songololo. See details below.

And lastly, we request to make an oral presentation at the public hearings on the CHILDREN'S BILL on 11th to 13th August 2004



No.3 Braeside Road, Kenilworth, 7700, Cape Town, South Africa, - PO Box 43326, Salt River, 7915, Cape Town, South Africa -Tel: +27 (0)21 762 5420 - Fax: +27 (0)21 762 5431

Email: info@molo.org.za / youth@molo.org.za