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Monitoring the media since 1993

Parliamentary Portfolio Committee
on Social Development
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27 July 2004

Dear Mr Fukula

RE: Submission on Children's Bill from the Media Monitoring Project

The Media Monitoring Project is an NGO based in Johannesburg that conducts research of the media within a framework of human rights. Based on our interest on children's rights in relation to the media the MMP feels it necessary to make a submission on the Children's Bill and would also welcome the opportunity to make an oral submission.

Please find attached a copy of the MMP's submission. Should you have any questions please do not hesitate to contact me or the Director, William Bird.

Yours sincerely

Bharti Daya

Project Co-ordinator
Media Monitoring Project



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1. Introduction

The Media Monitoring Project is a non-governmental organisation that conducts research of the media within a framework that upholds and respects human rights. The MMP was established in 1993 and has extensive monitoring experience. The MMP has researched various social and political issues including the media's representation of local and national elections, race, gender, HIV/AIDS and the representation of children and children's rights in the news media.

The field of children's rights is vast and complex which is given concrete expression in the media. While the field of children's rights is not the MMP's specific area of expertise the rights of children in relation to the media is an area the MMP has conducted extensive research in. The MMP is running a project called Empowering Children and Media (ECM) where one of the components was to conduct research with children on the representation of children and children's rights in the news media which was carried out in 2003. The research involved conducting an analysis of 36 news media including print, radio and television. Based on the research findings of this project funded by Save the Children Sweden and UNICEF the MMP found that in spite of the prohibition of naming and identifying the children involved in criminal proceedings in the Criminal Procedures Act, the media tends to name and identify children who have suffered abuse, rape, trauma and even those who have been witnesses to a crime or have been involved in criminal activity. (A summary document of the key findings is attached)

2. Aim of submission

This submission is focussed on protecting children in relation to the media and calls for the inclusion of a section that addresses the rights of children in relation to the media specifically rather than mentioning the media in relation to children under a section of "Miscellaneous Matters".

In doing so this submission examines the following areas:

- The Children's Bill (referred to as the Bill from hereon) does not state the legal implications of the publication of information relating to children's court proceedings which reveals or may reveal the identity of a child.
- Secondly, clarity is needed on who provides permission for the publication of such information.
- Thirdly, that the Bill needs to re-iterate legal implications in the case of contravention of the law which are clearly stated in the Child Care Act, Section 154(3) of the Criminal Procedures Act and also the Sexual Offences Bill to ensure that clarity and consistency in the application of the law.
- Fourthly, that the application of the prohibition is limited to children's courts proceedings and should extend beyond children's court proceedings to ensure that children receive the full protection of the law.
- Fifthly, that if the Bill is changed, the onus should be on the media to prove that the publication of such information relating to children is demonstrably in the best interests of the child.
- Lastly, that a clause is included that would extend protection to vulnerable children otherwise not covered by the Bill

3. Comments

This submission has been prepared in consideration of the aims and intentions of the Children's Bill, stated as:

"To define the rights and responsibilities of children; to define parental responsibilities and rights; to determine principles and guidelines for the protection of children and the promotion of their well-being; to regulate matters concerning the protection and well-being of children; to consolidate the laws relating to the welfare and protection of children; and to provide for matters connected therewith"

This submission also draws on the Constitutional Clauses which apply to children, especially section 28 (2) "the child's best interests are of paramount importance in every matter concerning the child."

This submission operates on the assumption that the Bill is to be read and used by the general public and the media. As such, it is important that it is clear and easy to understand.



Finally the submission is made on the assumption that the media in a democratic society has a particular role and responsibility to fulfill in relation to reporting on children. Not only does this necessitate the protection of children but also their participation in decisions that affect them.

An analysis of the Bill reveals that the only aspect of the Bill currently relating to children and media is "Miscellaneous Matters" under section 74

Publication of information relating to proceedings

74. No person may, without the permission of a court, in any manner publish any information relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings."

While the Bill places a clear prohibition on the publication of information without the permission of a court, relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings, the Bill does not however state the consequences in the event such information is published. In order to provide clarity the Bill should state whether the publication of such information is a criminal act, is contempt of court and/or the penalties applicable.

The Criminal Procedures Act and the Sexual Offences Bill clearly state the implications for the publication of information without the permission of a minister. While the former states the penalty for breaking the law is a fine of R1500 or one years imprisonment. The Sexual Offences Bill proposes that in the case of contravention of the law relating to the publication of information, the punishment would be increased to a fine or three years imprisonment or both. The MMP therefore submits that the Children's Bill is brought in line with the Criminal Procedures Act and the Sexual Offences Bill in terms of stating clearly the penalties applicable in the case of contravention of the law.

Section 74 of the Bill, states "no person may, without the permission of a court, in any manner publish information relating to the proceedings of a children's court...".

It is important that the Bill provide clarity on the individual or body endowed with the power to give permission, whether this is the magistrate or another individual. In this regard the Child Care Act states "information provided must be approved by the minister/commissioner." Such provision is essential as was seen in the case of Happy Sindane. In this particular case it was the police that provided information. That should not have been the case, however due to the lack of clarity practitioners were unaware of who is mandated with the responsibility to provide this information.



The MMP maintains that based on the current section 74, alone the Bill is insufficient in offering protection to children in relation to the media. MMMP submits therefore that an additional clause should be added. The inclusion of a section on media rather than mentioning children in relation to the media under the section of miscellaneous matters would strengthen children's right in relation to the media.

It is also useful in this assessment of the Bill that a comparison is made with what exists currently in the law.

The Child Care Act of 1983 section 8 states that:

**No person shall publish information relating to children's court proceedings.
The identity of the child involved shall not be revealed.
Publicity should serve the interests of the child
Information provided must be approved by the minister/commissioner.**

And the Criminal Procedures Act section 154 (3) states

no person shall publish in any manner whatever information which reveals or may reveal the identity of the accused under the age of 18 years or of a witness at criminal proceedings who is under the age of 18 years

The Child Care Act re-iterates the Criminal Procedures Act in section 154 (3). The Child Care Act also goes further by saying that where there is going to be publicity it should serve the best interests of the child. The Bill should also re-iterate what is said in the Criminal Procedures Act to ensure clarity and consistency in the application of the law. In this respect it is important to contextualise the Bill. A concern about restricting coverage of children in law s that not only does it offer a potential claim of a restriction of freedom of expression but it may also serve to discourage media from reporting on children and children's court proceedings. It is imperative that in building on the rights of the child that critical children's stories are told by the media. The media should not therefore be prevented from reporting on children's courts but should rather be encouraged to report on children in a responsible manner.

The MMP proposes that the Bill include an additional clause which states that in instances where media reports reveal or may reveal the identity of a child the report shall demonstrably be in the best interests of the child. Some suggested criteria to determine whether the publication of information is in the best interests of the child are :

- That the publication of information does not violate the child's constitutional rights to privacy and dignity and/or
- Place the child at risk or danger
- Result in the social marginalisation of the child



Given the emphasis of children's rights in the Constitution the MMP submits that when reporting on children the publication of information about vulnerable children must be demonstrably "in the best interests of the child". A vulnerable child, in this context can be understood to be a child who has been affected by HIV/AIDS, poverty, trauma, street children, child labourers, children with disabilities as well as children who work as sex workers. While it is acknowledged that the media plays an important role in highlighting the plight of certain children it is imperative that the media demonstrate a respect for children's rights to dignity and privacy when reporting on them. With reference to research findings of the (ECM) project, it was found that the media tends to name and identify children affected by HIV/AIDS. Revealing the identity of children affected by HIV/AIDS often has dire social consequences for the child considering the social stigma attached to the disease. The MMP therefore submits for the inclusion of a clause that would extend its protection to vulnerable children.

The Children's Bill will replace the Child Care Act of 1983. The Bill, the previous Child Care Act and section 154(3) of the Criminal Procedures Act and the Sexual Offences Bill all have the aim and intention to protect children and to ensure the best interests of the child are paramount in legal matters concerning children.

The Children's Bill provides for the protection of children, which could be applied to the media. In terms of section 74 the protection of children is confined to reported cases and legal proceedings and does not protect children in relation to the media outside of these confinements. MMP submits that this clause is amended to protect children in court cases and outside of legal proceedings to ensure that children receive the full protection of the law.

By amending the wording from "court proceedings" to "criminal proceedings" this would extend the application of the clause over a greater period of time and would be more effective in protecting the identity of a child and his/her best interests.

Criminal proceedings are understood to start the moment it is clear that a crime has been committed, or where a charge has been laid. Court proceedings are limited to events that take place within a court. The difference is that the former has broader application geographically while the latter's geographical application is limited to the courtroom. The previous Child Care Act provided for the protection of the identity of all children whether or not the case has been reported or gone to court, whereas the Children's Bill is confined to reported cases.

The Bill also does not effectively allow for the publication of any information that relates to a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings. The Child Care Act on the other hand states that information may be published provided it serves the best interests of the child. A blanket prohibition prevents the publication of information regarding children's court proceedings. There are however those cases where the publication of information could improve the status of children's rights in general



and deemed to be in the child's and the public's interest. When faced with the dilemma of whether it would be in the public's interest, in such cases the best interest of the child should take precedence. In this respect cases should be assessed on an individual basis to determine whether publicity serves the best interests of the child.

Furthermore in line with the aims and intentions of the Children's Bill it is pertinent that the measures taken to protect the identities of children involved in criminal proceedings also be extended to children affected by HIV/AIDS. The Bill itself contains a comprehensive section that provides for children affected by HIV/AIDS. Clauses in the Children's Bill, and the Criminal Procedures Act are inadequate in this respect and the MMP therefore recommend that a provision is included in the Bill to provide for the protection of the identities of those children affected by HIV/AIDS. The MMP would be happy to help in the development of such a provision.

Positive elements of the Bill are the inclusion of children's participation that is in line with the aims and objectives of the United Nations Convention on the Rights of the Child.

- 61. (1) The presiding officer in a matter before a children's court must –**
- (a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development, is able to participate meaningfully in the proceedings and the child chooses to do so;**
 - (b) record the reasons if the court finds that the child is unable to participate meaningfully in the proceedings or is unwilling to express a view or preference in the matter; and**
 - (c) intervene in the questioning or cross-examination of a child if the court finds that this would be in the best interests of the child.**

4. Conclusion

In conclusion, MMP believes that the recommendations as outlined in this submission correspond with the aims and intentions of this Bill and section 28(2) of the Constitution to ensure the protection and the well being of children. Based on our interest relating to children and the media the MMP would welcome the opportunity to make an oral submission to the Parliamentary Portfolio Committee on Social Development. MMP would also be happy to assist the Committee with any media and children related issues.

Please contact:

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