



# **SOUTH AFRICAN SOCIETY FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT**

## **CHILDREN'S BILL: SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT**

### **ASPECTS OF THE CHILDREN'S BILL PERTAINING TO CHILD PROTECTION, INCORPORATING PREVENTION AND EARLY INTERVENTION, AND CHILDREN IN ESPECIALLY DIFFICULT CIRCUMSTANCES**

#### **EXECUTIVE SUMMARY**

This submission examines the broad approach taken by the South African Law Reform Commission (SALRC) in developing the Children's Bill, as detailed in its Discussion Paper 103 on the Review of the Child Care Act. It refers in particular to the Commission's recognition of child maltreatment as a multifaceted problem in which multiple causative factors are apparent, and seeks to address this phenomenon from different angles and at different levels.

The SALRC approach was characterised by the following elements:

- A multi-level, multi-sectoral approach in which provision was made for a level of preventive and promotive measures, a second level of early intervention mechanisms, and a substantially improved formal protection system, involving collaboration between a range of government structures and civil society at all three levels.
- A balanced approach which was reflected in the proper equipping of a formal child protection system focused on children with the most pressing needs, while not dissipating valuable resources on children who could be better served at the levels of prevention or early intervention. Particular attention was paid to the elements of the formal protective system to ensure that children are not further abused and traumatised by the system. Mechanisms to ensure that the needs of abused children for access to healing and for rehabilitation for offenders were also developed.
- Attention to the needs of "children in especially difficult circumstances" (CEDC), who are subject to daily violations of their basic human rights, including children who are affected by malnutrition, are affected by HIV and AIDS, have disabilities and chronic illnesses, are subject to exploitative labour practices, are living or working on the streets, live in child-headed households, or are subject to commercial sexual exploitation. The role of socio-economic and structural factors was acknowledged, and specific measures were included which were designed to protect children from becoming marginalised from the social mainstream. A range of specific measures to address particular problems of each of the categories of CEDC was provided. Protection for displaced foreign children was a regrettable omission, although this group was given some coverage in the SALRC's chapter on the rights of children.

The submission then addresses specific features of the SALRC approach to the formal child protection services in terms of when and how the state should intervene in the lives of children and their families, and issues related to permanency planning. The benefits of an inter-sectoral approach involving all elements of government and civil society, particularly in the under-resourced rural areas, was outlined in detail, as well as the roles of various stake-holders. Particular attention was paid to the issue of ensuring adequate resourcing for services to children, and to the setting in place of a series of measures including:

- Provision for a properly resourced intersectoral mechanism to coordinate and manage the child protection system, with a wide range of functions directed at bringing about and maintaining the effective functioning of this system, which was recognised as being beset at present by crippling problems which rendered it incapable of providing dependable help to abused children..

- Provision for greater flexibility of and wider powers for the children's court, and for a more child-friendly court environment, with a wider range of options for early intervention, assessment, treatment and alternative care.
- Provision for thorough permanency planning for children coming into care, and for the reliable implementation of permanency plans.
- Provision for a two-pronged approach to corporal punishment, virginity testing and male circumcision as harmful or potentially harmful practices. This approach placed considerable emphasis on the need for training and public awareness with regard to these issues.
- Provision for a limited and focused system of reporting of child abuse, with reference to the debates and controversies around the issue of mandatory reporting which were examined at length by the SALRC.
- Provision for a register of offenders against children so as to prevent the employment of such persons in the children's services, with clear guidelines for the circumstances under which this should be used.

Finally, the submission contains extensive comment on the redrafted Bill as at 12 August 2003, in terms of the excisions that were made to the SALRC Draft Bill and the consequences of these excisions for the original intentions of the Bill.

- The removal of almost all measures aimed at addressing the plight of identified groups of vulnerable and marginalised children, and at preventing children from falling into these predicaments, undermines the entire Bill and the approach taken by the SALRC. This has in effect removed the structural underpinnings and therefore the impact of much of what is contained in the chapters on protection and prevention. Provisions removed include the inter-sectoral National Policy Framework, vital aspects of the chapter on children's rights, the whole of the chapter on grants and subsidies, and all of the proposed improvements to the structure and functioning of the child and family court, apart from an increase in the range of orders which it may issue. The submission lists the chapters and sections which have been removed from the Bill and discusses the consequences of these excisions for prevention and early intervention.
- The removal of provision for free and subsidised government services for children in statutory care, which was envisaged in view of their being wards of the state.

The submission concludes that the redrafting process has inflicted massive damage on the entire fabric of the proposed legislation. It no longer has the ability to ensure that the formal child protection system is properly resourced, coordinated and managed. Neither does it have the ability to prevent children coming into the formal care system if promotive, preventive and early intervention approaches would be more appropriate, or to address the needs of large identified categories of vulnerable and marginalised children.

An appeal is made for a thorough reworking of the Bill based on the original vision, which was developed on the basis of the Constitution, the many international child rights instruments to which our nation is a party, a massive research process, and extensive consultation with state departments, organs of civil society and groups of vulnerable children, over a period of more than five years.