

**Soul City Institute for Health and Development
Communication**

SUBMISSION TO THE PORTFOLIO COMMITTEE

ON SOCIAL DEVELOPMENT ON

THE CHILDREN'S BILL

27 JULY 2004

Soul City is

- A multi-media health project, making information popular and accessible
- The last series reached 16 million South Africans and others in the Southern African region
- It examines many different health issues, and empowers learners to make healthy choices, both as individuals and as communities
- It has won a number of prestigious international awards
- The youth offshoot of Soul City, Soul Buddyz has reached 67% of children between the ages of eight and twelve when it went on air in 2000.

The Soul City project is made up of:

- A prime time television series
- A daily radio drama
- Booklets on the health topics covered in the broadcast media
- An advocacy campaign which keeps people talking and thinking about Soul City issues
- Adult education and youth lifeskills materials

Each series takes two years to develop. During this time intensive research and consultation is undertaken.

It is not easy to separate health and social issues as they are inter-dependent. Soul City therefore has, through workshops and focus groups held in the community, as well as other research, built up a vast body of

knowledge on issues such as child and women abuse, HIV/Aids, and sexuality education.

1. Introduction and general comments

Soul City is grateful to have the opportunity present its comments on this Bill.

We would also like to acknowledge and support the overall objectives of the Bill and its recognition of, and commitment to, children's rights. The inclusion of the standard of 'best interests of the child' being paramount in its implementation, is also to be applauded.

However, we also wish to express our concern regarding what has been described as the 'watering down' of the Bill that was drawn up by the South African Law Reform Commission after thorough consultation with civil society and other stakeholders.¹

2. Support for other submissions

Soul City has been privy to the wide range of submissions made to the committee. They originate from organisations concerned with every aspect of child care and children's rights. Soul City's work since its inception has touched on many of the issues these submissions address. We support their inputs and provide specific endorsement of a number of them.

2.1 ACCESS

Soul City has also been intricately linked to the social movement advocating a comprehensive package of social security for children. Not only was it involved in the establishment of the Alliance for Children's Entitlement to Social Security², but also it has worked closely with government utilizing its mass media skills to improve delivery of the child support grant.

Consequently, at the outset, we wish to record that as a member of ACCESS we fully support the contents of their submission and in this submission we

¹ Paula Proudlock of the Children's Institute said in examining the narrowing of the reach of the Bill, "The original Bill recognized that all children are the responsibility of the state. They did not become the responsibility only once they had been abused or orphaned."

² The Alliance was born out of a conference of children's institutions and government in 2001. Its membership has grown to over 1000.

will attempt not to unnecessarily duplicate its observations and recommendations.

Critical to the ACCESS submission and this one, however, is what we perceive as the diminution of the social security rights for children in the August 2003 draft of the Bill - which is substantially different to what was originally proposed in the SALC Draft Bill 2002.

In this context we wish to note:

- ❖ That the current Bill has failed to take cognizance of the detailed and thorough report completed by the Committee of Inquiry into a Comprehensive System of Social Security including the data regarding poverty and the millions of children who live in poverty.³ Even more worrying, is that despite the report's chapter on social security and children, the recommendations included in the report are not reflected in the Bill;
- ❖ The removal of the National Policy Framework (NPF)⁴;
- ❖ That despite our constitution, policy and various chapter nine institutions, children do not enjoy all the constitutional rights to which they are entitled and we therefore support the demand for the inclusion of a comprehensive **Children's Rights Charter** within the Children's Bill as per the SA Law Reform Commission's recommendations.⁵ Consequently we endorse the insertion of these rights and the formulation provided by the Children's Institute and elaborate further on some of these rights below;

³ ACCESS has elaborated on this and the minimum income transfer the report recommends to ensure that everyone gets at least a certain minimum income transfer to reduce or eradicate destitution and starvation.

⁴ The SALRC's draft included a chapter on the Inter-sectorial Implementation of the Legislation and mandated the Minister of Social Development to prepare the NPF to guide the implementation, enforcement and administration of the act in order to secure the protection and well-being of children in South Africa. **Childline South Africa** says that its removal is a retrogressive step and it undermines the commitment of the allocation of funding across sectors to ensure adequate service delivery to children is manageable. We agree and indicate later in this submission why the NPF is critical to the delivery of children's rights.

⁵ These include: Unfair discrimination; name and nationality; property; education; health; social security; water and sanitation; social services; children with disabilities and chronic diseases; food and nutrition; family or alternative care.

- ❖ That notwithstanding promises that the Social Assistance Act would incorporate policy shifts in relation to social security provisions for children, we agree with ACCESS that the Children's Bill provides an ideal opportunity to legislate appropriate amendments and if necessary lead to amendments in that act;
- ❖ Space should be found for the insertion the SALRC 's draft Bill's proposal for a security system which included the introduction of various new grants and the expansion of existing grants.

2.2 The rights of foreign children

Soul City in both its adults series Soul City 6, and its children's series Soul Buddyz 2, addressed the issue of refugee and foreign children.

In our Bill of Rights, foreign children are protected not only by the clause pertinent to children, but also by other clauses including the equality clause. The UN Convention on the Rights of the Child and our international obligations relating to refugees and asylum seekers, add even more weight to our responsibility. Therefore the excision of this category of rights in Chapter three of the current draft is inexcusable⁶. We support the Children's Institute's formulation of this right not to be discriminated against because of its more comprehensive wording as it covers a wide gambit of discrimination based on the constitutional right of equality including that a child should not be discriminated against because of nationality.

Despite the fact that no child can ever be an 'illegal immigrant', Soul Buddyz research confirms that children of foreigners live with the stigma of an 'illegal immigrant' every day.

Children in schools, especially children from different racial backgrounds, in suburban and former white schools are seriously affected. These schools now have a more diverse learner and sometimes teacher population. In a

⁶ Earlier drafts recognized certain rights of refugee and undocumented children more specifically than the broad clause on the rights of all children.

study done by Vally and Dalamba⁷ 62% (1075) of 1729 learners from 60 schools reported having racial problems at their schools.

Some of the areas where learners are experiencing racial problems are:

1. The school culture - this is especially experienced in the areas of sports and religion, where schools have not changed any previous practices to accommodate their more diverse learner population.
2. Language is the other major area of school culture, which is listed as problematic. Often proficiency in the dominant language at the school is used to separate learners e.g. in reading groups, which inevitably take on racial dimensions because the dominant language is often the 2nd, 3rd or 4th language of some learners.

Children of foreigners are also denied access to schools. On-the-ground research reflects that the exclusion of children of foreigners is often done without authority; parents are often intimidated by staff who do not have the patience to deal with them particularly if there is a language barrier. Plus some schools are not aware that the Department of Home Affairs has removed restrictions on studying for asylum seeker children.

In addition to the above comments, we support the **Lawyers for Human Rights** submission dated 7 September 2003 in averring

- ❖ The Immigration Act does not address the rights of foreign children
- ❖ The Children's Bill provides the opportunity to address this gap;
- ❖ That the category of 'children in need' should include foreign children,
- ❖ The Bill should acknowledge the issues surrounding whether or not these children are returned to the country of origin and lay down that if a return is contemplated it be undertaken in a humanitarian and child friendly manner;
- ❖ That foreign children can also be wards of the state and that the Bill should assist in ensuring that these children have proper access to the Children's Court;
- ❖ That procedural gaps in dealing with the foster-care placements and trafficked children be addressed;

⁷ Vally, S. and Dalamba, Y., (1999), Racism, 'racial integration' and desegregation in South African public secondary schools: a report on a study by the South African Human Rights Commission (SAHRC), Johannesburg, SAHRC

- ❖ The Bill should confirm role that foreign embassies can play in assisting children of foreigners as opposed to the children of refugees who are served by the Refugees Act
- ❖ That Children's Bill should identify the office of the International Social Services within the dept of social development while providing that all social workers are familiar with the office and what role it plays, and that that office is appropriately resourced to deal with the issues

3. Children's rights

3.1 Children with disabilities

As has been noted in the ACCESS submission, the rights of children with disabilities or chronic diseases is a serious omission in the current draft. We therefore endorse the insertion of the rights of children with disabilities as formulated by the CI because of its expanded definition and the inclusion of children with chronic illness.

The Soul Buddyz Literature Review⁸ on Disability, emphasizes that the discrimination that people with disabilities experience in the South stems from negative cultural belief systems and attitudes within society. As a result, people with disabilities remain hidden from society with no opportunities to become informed, empowered and confident. According to the research, the majority of children with disabilities are black (92 out of 100). By extrapolating figures it is suggested that there is a crude prevalence rate of 6% disability prevalence among South African children, over half a million children with disabilities require services. These children are marginalised and excluded and the manner in which society perceives them, has primarily to do with cultural beliefs about disability.

The SALRC review highlighted the many issues the Bill should be addressing with regard to children with disabilities - some of which are addressed in different sections of the Bill. However, the inclusion of a section specifically related to the issues is preferable. It is also something that could be included in the National Policy Framework if it were returned to the Bill.

⁸ Produced for Soul City by Washiela Sait

It should also be noted that children with disabilities' right to education is a particular concern needing the allocation of substantial resources. Just one example, deaf children are taught by teachers who often cannot sign; they don't seem to cover the same curriculum as other children in mainstream school.

Birth parents must also have the right to information about the disability and the possible ways of coping with the challenges that come with the disability

The birth of a child with disabilities, especially when the impairment is visible at birth, is a traumatic experience for any family. Issues of guilt, rejection, denial and anguish are emotions that the family has to deal with on a daily basis. This exacerbated by the cultural norms surrounding the child's birth. This should be debated and a solution sought with reference to Section 12 (Harmful social and cultural practices).

Soul City endorses the submission made by the **Disabled Children's Action Group** and believes that it provides strong and cogizant arguments for the reinstatement of the National Policy Framework and its importance in terms of a holistic approach to the needs and rights of children with disabilities. We note that the aspects which emerged in our research in relation to the relationships between parents and children with disabilities is also identified as an area of concern is this submission.

See further comments below.

3.2 The right to health care

Notwithstanding the inclusion of the right to information on health care in the Bill, it is disappointing to note that the right, more fully prescribed in earlier drafts, has been reduced to only this. Although it may be argued that the delivery of health care is a provincial responsibility, Soul City research indicates that health equity is not a priority in some provinces. Furthermore rural resources are often not on a par with those of their urban counterparts. Including the extension of the right along the lines of the wording suggested by the CI would hold provinces more accountable.

Substantive equality means that children across the board in South Africa should enjoy the same rights, it is therefore unacceptable that because of their geographical location, this does not occur. This will also be particularly pertinent in the treatment of children who are HIV positive.

The SALRC review says: "In addition to proposing that a universal non means-tested grant be paid to all children, the Commission also recommends the inclusion of a provision on preventative measures against diseases and malnutrition in the new children's statute. Such provision will include an obligation on government to initiate programmes providing for a package of services comprising nutrition, immunisation, and health and referral services for children below a certain age, and regular health check-up, immunization and supplementary nutrition for pregnant and lactating women."

We therefore support the inclusion of these obligations along the lines of the Indian Children Code Bill 200.

3.3 The right to education

Research by Soul City and other educational organisations and institutions indicates that despite legislation which should protect and guarantee children's right to education, a high percentage of our children are not accessing this right. Notwithstanding the fact that the SALRC Review said that some aspects of the review would remain in primary education legislation, it is again of particular concern that previous drafts had a more substantial commitment to the delivery of education.

We therefore support its reinsertion into the rights chapter and endorse the **Centre for Applied Legal Studies Education Law Project's** recommendations. Especially that which would see the original SALRC's working strengthened to guarantee the provisioning of educational facilities of a reasonable standard to ensure adequate education for all South African Children. We also endorse ELPs call for an entitlement defining South Africa's obligation in respect of the free education guarantee to ensure that all South African children have access to education. Again the arguments that are made regarding substantive equality to ensure that all children regardless of financial status or geographic location enjoy the same rights are relevant.

3.4 The right to nutrition basic nutrition, shelter, social services; The right to leisure and recreation

It is our understanding that the Children's Bill was to provide a better framework for the primary prevention of the abuse of children and their rights. A cornerstone of such an approach is to develop an enabling environment in which this can take place. This would include ensuring access to nutrition⁹ and shelter and more importantly social services and security. Hence the inclusion of these rights more specifically and comprehensively, as in previous drafts, is recommended.

It is also argued that although government has various interventions to address the hunger and lack of nutrition South African children endure,¹⁰ there appears to be a lack of co-ordination and impact.

Food Security Working Group recognizes how essential it is to have a more co-ordinated approach to the issue:

The broad scope of food security calls for a comprehensive and multisectoral approach. The right of access to sufficient food and water is enshrined in the South African constitution. The state has a primary responsibility to provide a framework within which households and individuals can exercise choices to achieve food security in a manner that will not jeopardise the security of future generations. The state must also take appropriate measures to ensure that vulnerable groups, particularly young children and the elderly, are able to meet their food needs.

We therefore believe that this is all the more reason for the reinstatement of the National Policy Framework and all it implies in terms of an inter-sectorial approach and the allocation and maximisation of resources.

Although the right to leisure and recreation may not seem as critical as some of the other rights articulated, we contend it is as it contributes to

⁹ Much data is available on the high child mortality rate and stunting levels. Many submissions refer to the so we have not repeated them here.

¹⁰ These include the Primary School Nutrition Programme (PSNP); The nutrition education and promotion programme, (Integrated Nutrition Programme); The household food security programme; Child Support Grants (CSGs), water and sanitation programmes

mentally and physically health children - a preventative measure against children becoming involved in harmful activities and abuse. Involvement in leisure and recreational activities can influence the direction a child takes in life for the better. Schools and local councils have a responsibility to provide recreational activities and yet in today's current budgeting climate these expenses are seen as being dispensable. Therefore inclusion of this right will provide communities and groups with leverage to insist on delivery.

We suggest the Bill reverts to including this right as in previous drafts and suggest the following wording.

Every child has the right to recreational activities appropriate to the child's age including access to recreational facilities within reach of his/her home or school

3.5 Children's responsibilities

The chapter on rights concludes with a section on children's responsibilities. We believe it is inappropriate and not generic to place responsibilities on children in the Children's Bill.

4. Children in especially difficult circumstances¹¹

The ACCESS submission elaborates substantially on the inadequacies of the Bill in this regard and the attention that was given to it previously in the SALRC draft. Signaling out children in difficult circumstance does not mean they should enjoy any rights outside of those enjoyed by children more generally. But if they are to enjoy the same rights as other children, a national strategy must be developed to address the shortcomings that prevent them from doing so because of their circumstances.

We also recognize the need for a national strategy setting out the responsibilities and roles of municipalities and provincial organs of state and promoting the engagement of NGOs in the development and implementation of programmes and projects giving effect to these strategies.

5. The sale of solvents and other harmful substances

¹¹ Those affected by malnutrition, HIV/Aids, those with disabilities/ with chronic illnesses, those subject to exploitative labour practices, those living and working on the streets, in child-headed households and children subjected to commercial sexual exploitation.

The SALRC's review did not see fit to address this issue in the legislation saying that it did recommend the enactment of a provision prohibiting the sale of harmful substances to children because it believes it would be impossible to enforce. The Review supports the Drug and Drug Trafficking Act which criminalises these acts as well as the Prevention and Treatment of Drug Dependency Act for rehabilitation.

We believe this is a defeatist attitude to one of the most pressing problems confronting childcare. An inclusion of a provision addressing this issue in conjunction with the inclusion of National Policy Framework thereby incorporating an inter-sectorial approach to the problem and hopefully the commitment of further resources to resolving it, could be a start.

Further the provision should legislate for on-going education on the abuse of harmful substances, drugs and alcohol even though there are currently limited programmes doing this.¹²

We concur with the recommendation by the SALRC that research be conducted to improve best practice guidelines on advertising and children. The impact of advertising and promotion of alcohol on children is of concern and this too could be addressed if a provision on the issue was introduced.

7.2 s 13 Information on health care

Soul City endorses this section and suggests that consideration be given to expanding the ensuring that 'reproduction' includes information on prevention/contraception and legal termination.

Furthermore we contend

- ❖ Although there are parents who out of mistaken concern and their own limitations do not provide the necessary information on sexuality, prevention, and termination to their children, parents of child with disabilities are particularly loathe to provide them with this information. Our research has shown that often the carers of children with disabilities are over-protective and, in being so, tend to deny them access

¹² See Article 17 (a) of the UN Convention of the Rights of the Child, Access to Information: State parties must....(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child ...

to information essential to their well-being. We therefore believe it is important to specifically mention the child with disabilities. The manner in which the developing sexuality of children with disabilities is suppressed for example, places the child in a vulnerable state. For this reason, children with disabilities are vulnerable to sexual abuse and this is exacerbated by their ignorance of what constitutes an abusive situation.

- ❖ Many caregivers are also unable to accept that children with disabilities experience sexual growth and arousal in the same way as other children and therefore have a right to and a need for sexuality education in the same way as other children.
- ❖ The inclusion of the right to information regarding prevention and termination is critical in a society where coercive sex is common, as is sexual abuse. The South African Termination of Pregnancy Act allows for a minor to terminate and it is appropriate that this information is shared with those affected. Although we understand the concerns the SALRC review expressed in terms of statutory rape not coming to the attention of the authorities because children are able to access terminations, section (b) does cover this eventuality. We note that the SALRC recognised the right to information on (and access to) contraception and termination.
- ❖ The HIV/Aids pandemic makes the provision of information to children a matter of life and death. The HSRC/Mandela Foundation study found unexpectedly large numbers of children between the ages of 2 and 12 infected with HIV. Adolescent mothers are a particularly vulnerable group whose rights must be fulfilled both as women and children. TAC says paediatric treatment, in particular HAART, differs significantly from adult treatment and requires special attention by provinces in planning, training, implementation and monitoring. The Operational Plan for Comprehensive HIV and Aids Care and Treatment recognises the importance of information sharing. There are also issues around access of children to VCT.