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SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE FOR SOCIAL DEVELOPMENT ON THE CHILDREN'S BILL 12 AUGUST 2003 SECTION 75 BILL

INTRODUCTION

The S.A. National Council for Child Welfare is the national coordinating body of 179 affiliated and 52 developing child welfare societies working in urban, peri-urban and rural areas. Child Welfare Societies render social services to thousands of children within the context of their families and their communities. Child Welfare's core business is child protection with services focusing on child abuse, child neglect, statutory intervention, alternative care that includes foster care, adoption, residential care, early childhood development and programmes for the care of children affected by the HIV/AIDS pandemic.

This Council is a member of the NGO Children's Bill Working Group and participated in the deliberations of this Group. **We support and endorse**

- The submission of ACCESS "Calling for a Comprehensive Social Security System" and specifically.

- The extension of the Child Support Grant to poor children between the ages of 14 and 18
- The inclusion of a coherent social security scheme for children in the Children's Bill which supports all children living in poverty and in the context of HIV/AIDS.
- That children's grants and their eligibility should be created and defined in the Children's Bill and administrative details concerning the administration of grants be included in the Social Assistance Act.

DISSECTION AND ANALYSIS OF SPECIFIC SECTIONS

Our comments and recommendations focus on certain chapters and specific sections within these chapters that we found problematic.

CHAPTER 1 INTERPRETATION, OBJECTS, APPLICATION AND IMPLEMENTATION OF ACT

INTERPRETATION

- 1 (1) **“abuse” - © “bullying by another child” cannot be included in this definition of abuse.** We are dealing with child statutory services and children's court procedures. Such a broad definition of abuse is inappropriate for what this legislation is intended to achieve. Will we bring a child who bullied another child before the Children's Court? This is a matter that is usually dealt with in a school or child and youth care facility and related policies should address this kind of abuse.

We again refer to our recommendation contained in our comments to the Department of Social Development dated 7 October 2002. We proposed a broad definition of abuse, accepted internationally i.e. “Child Abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”

(ISPCAN, 1999) We again urge the Department to accept this as the definition of abuse and to include this in the Children's Bill.

We also recommended that a further breakdown of terms be contained in the Bill to substantiate abuse. Although sexual abuse and neglect are defined, definitions on physical abuse and emotional/psychological abuse are omitted. We recommend that these definitions be included in the Bill and that they as well as the definition of “neglect” be the same definitions as in the “National Policy Framework for the Prevention and Management of Child Abuse, Neglect and Exploitation.” (Department of Social Development, Draft Policy, June 2004) It is imperative that both the Bill and the proposed policy framework have a common understanding of these concepts and that the definitions contained in this Bill and the Policy Framework be the same.

1 (1) “Care-giver” – why would we define a child as a care-giver, even when that child is the head of a child-headed household? Although we recognise the reality of the many child headed households in S.A. within the context of the HIV/AIDS pandemic, we should not condone this practice. Will 8 year olds now be considered care-givers? It is a grave injustice to burden a minor child with this responsibility and counter-productive to the aims of this Bill. With this stance we are compounding the abuse of children. By accepting the concept of “child-headed households” we are in fact giving up on children and not eliminating this phenomenon. Children and their needs are expected to adapt to the system and not visa versa. Our position is based on sound research. “The parentification process” which refers to creating a parent out of a child to care for a parent or siblings, is associated with social isolation. Children assuming adult responsibility are deprived of nurturing, experience trauma, guilt and grief and terrible uncertainty about their future. They usually struggle without services and/or support systems in impoverished communities.¹ Also note our comments on Chapter 10.

We recommend that the definition of care-giver should only include (a), (b), (c), (d) and (e). The primary care-givers described in (e) would force us to find care-givers for households that consist of children.

1. Children living with HIV/AIDS in South Africa. A Rapid Appraisal. A NACTT Project. Rose Smart. Undated

IMPLEMENTATION

4 (1)

Lobbying Government for many years for the establishment of a national child protection strategy/policy framework/plan it was encouraging that such a policy framework was contained in the 1st draft. This was also due to civil society's input in the S.A. Law Commission's consultative process. Recommending that it should be incorporated in the new Child Care legislation was one of the ways we felt that such a Policy Framework could be realised. After many memorandums to the Department of Social Development and submissions to Parliament urging the development and implementation of such a plan it was extremely discouraging to note that it was left out of the 2nd draft, August 2003 especially if we acknowledge that our country's present child protection system is characterised by fragmentation, disintegration and a lack of guiding policies and strategies. Our argument has always been that a National Policy Framework would allow this country to apply a coordinated and synchronised child protection plan. It would promote an intersectoral approach to child protection, clarifying the roles and responsibilities of all Government sectors and civil society and would allocate resources to give effect to such a strategy.

We have heard many arguments from Government on why the proposed National Policy Framework cannot be legislated and thus cannot be incorporated in a Children's Bill. Regardless, our country needs an orchestrated, intersectoral child protection plan. This could never be viewed as too idealistic or too visionary. The "National Policy Framework for the Prevention and Management of Child Abuse, Neglect and Exploitation," 2004, although still in draft form confirms that such a Policy Framework is possible. This document is the result of a collaborative effort of Government and civil society. The benefits of this Policy Framework are the same as the proposed National Policy Framework and are the promotion of

- An accessible, integrated, coordinated, multidisciplinary and intersectoral approach – child protection is not only the responsibility of the Department of Social Development but also the responsibility of sectors such as Correctional Services, Safety and Security, Foreign Affairs, Health, Education, Justice and Constitutional Development, Home Affairs, Finance, Housing, Environment, etc. Civil society is acknowledged as a pivotal partner in our country's child protection efforts. If roles and responsibilities are not clear, defined and described in a policy, how will integration, coordination and uniformity of this proposed Act be realised?

- Mandatory budget provision for child protection in each sector and adequate financing made available to child protection organisations. We recommended to the drafters of this framework that budgetary provision for child protection should be reflected in national, provincial and local budgets. This should be transparent and public knowledge. The same applies to the proposed National Policy Framework.

We prevail on Government to include the National Policy Framework in the Children’s Bill, the details of which can be spelt out in the Regulations. We strongly endorse and support the recommendations of the Children’s Bill Working Group in this regard.

We also use this opportunity to recommend and urge Government to approve the “National Policy Framework for the Prevention and Management of Child Abuse, Neglect and Exploitation” and mandate its implementation as a matter of urgency. This Policy will be an integral part of the National Policy Framework and must be enforced.

4 (2)

This Bill states, “recognising that competing social and economic needs exist, the state must, take reasonable measures within its available resources to achieve the progressive realisation of the objects of this Act.” No other policy or legislation seeks excuses not to realise the intentions of such policy or legislation. In a country where we are confronted with high poverty rates, an HIV/AIDS pandemic and a national child abuse emergency and where we boast with a “children first” principle we should demonstrate to our country’s children our commitment to their protection, safety, well being and healthy development. This should override all fears of possible litigation.

We recommend

- **that 4 (2) read, “The State must take all reasonable measures to achieve the progressive realisation of the objectives of the Act”.**

CHAPTER 3 – CHILDREN’S RIGHTS

Underpinning all our child protection work is the actualisation of our children’s rights. Bound by international and national children’s rights

conventions our strategies, programmes and projects are driven by the principles contained in these instruments. This Act, when implemented, will guide and direct child protection, and should at least reflect the full set of children's rights. It should not be taken for granted that the implementers of this Act would make cross-references to other documents. By deleting some rights, as was done in the 2nd draft Government is demonstrating that some groups of children and the issues affecting them are not important. Again, it seems to be those issues and specific groups of vulnerable children that will require additional resources!

Our rationale for this Bill to contain the full set of rights is that although these rights are included in many policies and legislation they are still violated. Notwithstanding our good intentions we are still confronted with children suffering. Children go hungry because they have no access to social security, their property is seized because their caregivers have died or are ill. Children are still barred from education because they cannot afford school fees or schools uniforms. They are still humiliated and discriminated against because of their poverty and their HIV/AIDS status. Refugee children fall through the cracks in the system and are moved from pillar to post. Children with disabilities and chronic illnesses are not allowed to develop to their full potential, as the necessary resources are not available to ensure that their rights are met.

To reinforce the adherence to children's rights with the implementers of this Act, we recommend that the children's rights be reinstated as they were in the October 2002 draft in Chapter 3 under the section Rights of Children (11) (1). We support and endorse the recommendations of the Children's Bill Working Group in this regard.

CHAPTER 5 – CHILDREN'S COURTS

Children's Courts and Presiding Officers

The 1st draft Bill made provision for an improved judicial system that would more effectively cater to the needs of children. It would have ensured sensitised, trained and qualified Court personnel, additional human resources and streamlined processes and procedures. It is a well-known fact that children could be exposed to secondary abuse when they are in the unfortunate position to become involved in the justice system. Although 42 (7) (a) (b) (c) refers to a "room" for court hearings that is more conducive to children it actually illustrates no

improvement in a system that should minimise and eliminate children's trauma. It seems that the system would look the same as it is now.

We recommend that the Ministry of Justice and Constitutional Development review its stance on this section. This Ministry showed its commitment to South African women by the promulgation of the Maintenance and Domestic Violence Acts, it should now do the same for children. This Ministry should put an effective and efficient Children's Court system in place, irrespective of how much financial and human resources may be needed to do so.

ORDERS CHILDREN'S COURTS MAY MAKE

46 (1) (b)

Keeping in line with our position on child-headed households (see our comments on 1 (1) Care-giver under Interpretation and Chapter 10) we cannot accept that children can be placed in the care of a child even if it is under the supervision of an adult person designated by the Court.

We recommend that 46 (1) (b) reads "an order placing a child/children of a children's household under the supervision of a child protection organisation and/or the supervision of an adult designated by the court."

46 (1) (g) (i) early intervention services and (ii) – a family preservation programme.

These concepts are not defined under interpretation. "Early Intervention" and "Family Preservation" could be perceived as self-explanatory but could have many meanings and there is not a common understanding of these concepts in our country. **We recommend that these concepts be defined in Chapter 1 under Interpretation.**

The same applies to the concepts of "Family Group Conference" 46 h (iii) and 70 (i) This concept should be defined to ensure common understanding of all those involved in the implementation of this Act.

We must take into account that the above concepts were "born" with the development of the policy on the transformation of the child and youth care system. Although used in the social work and child and youth care professions, it should not be taken for granted that others will understand these concepts.

CHAPTER 10 – CHILD IN NEED OF CARE AND PROTECTION

Identification of child in need of care and protection

150

We support the definition of a child in need of care and protection as detailed in 150 (a) – (i)

Nevertheless our concern centres on child-headed households and their hardship. For purposes of clarification, please note that we do not refer to a head of a child-headed household as someone who is over the age of 18 - that is not a child and should rather be referred to as a sibling headed household. Aggravating our concern is that national information on the characteristics of these households i.e. the number of these households and the age of the children affected are not available. Data is scattered and we tend to use projected figures and estimates. The only national data we could find was in the 1996 Census of Statistics S.A.² that indicated that there were a total of 95963 child-headed households with 4483 child headed households where the “head” was 10 years old, 4518 where the “head” was 11, 10453 where the “head” was 14 and an alarmingly 21 389 where the head” was 16 and 28 149 where the “head” was only 17. Thus the children were all under the age of 18.

Although often referred to as a South African reality these shocking statistics and the many children already in the child protection system should prompt us not to ignore their plight. They may not be orphaned but within the context of our country’s HIV/AIDS pandemic, be caring for an ill parent/s or caregiver/s. There may even be financial support but who takes responsibility for their care so eloquently listed in the Bill under Interpretation? It should not be taken for granted that extended family or concerned community members care them for. At present some of these children are caught in safety nets provided by NGOs and their community based initiatives. The identification of these households and implementation of projects is frequently ad hoc and arise as an emotional response to an observed need.³ From these experiences we can confirm that these children need more than financial support, they need care and protection. Even where they are integrated with extended family members such as grandmothers, these substitute parents, although providing in their basic care, find it extremely difficult to parent these children. Intensive intervention is necessary.

2. Children in 2001 Report on the State of the Nation’s Children. NPA.

3. Children living with HIV/AIDS in South Africa. A Rapid Appraisal. A NACTT Project. Rose Smart. Undated

It seems that policy makers, legislators, decision makers, and social service delivery systems have become blasé about these children's future. We define them as "caregivers" in this Bill, we assign parental responsibilities to parent-substitutes in this Bill, thinking that this would be a solution; some go as far as to recommend that children have direct access to grants and some

say that we cannot burden our dysfunctional systems with any more administrative and legislative procedures.

We think differently. This group of children is particularly vulnerable and should be defined as children in need of care and protection. We already know that they live in poverty with a lack of supervision and care. They experience hunger and stunting, lack adequate medical care and suffer from severe psychological problems. Their normal childhood and adolescence is disrupted and results in educational failure, exploitation, early marriage, discrimination, poor housing and child labour.⁴ To condone and accept this phenomenon without making specific mention of their needs to protection in this Bill is unacceptable. We need to find ways to preserve these families, keep siblings together, if possible in the home they own but not with the adult responsibility of care and with an essential safety net in place. This group of children is and will remain the responsibility of Government in partnership with civil society. If we are serious about child protection in this country, we have to make a significant effort to demonstrate our abhorrence to children having to take responsibility for their own future.

We recommend

- ▶ that legislators review the definition of "care-giver" as not to allow children to be defined as such
- ▶ that section 150 be expanded to include the care and protection of these children, even when they are not orphaned or without visible means of support
- ▶ that Government put mechanisms and systems in place to ensure their care and protection. Government's role in mitigating the impact of HIV/AIDS on children is vital. They must provide policy and strategic direction and fulfill their mandate to realise the legal rights of children. Within a collaborative effort Government should allocate national resources and national budgets to cater for the needs of these households.⁵

4. Children living with HIV/AIDS in South Africa. A Rapid Appraisal. Rose Smart. A NACTT project. Undated.

5. Southern Africa HIV/AIDS Action Issue 60 June 2004

- ▶ that the overburdened and dysfunctional systems be adequately resourced to effectively deal with these children's needs. Government should make use of and resource the social service delivery system, especially the NGO sector, to target these households, to strengthen the community based responses and to fund specially targeted programmes.⁵

CHAPTER 16 – ADOPTION

Persons who may adopt

231 (4)

Although this is a great improvement on previous legislation to make provision for a person who adopts to apply for means-tested social assistance, what happens to a child who is over the age of 14? Because children over 14 years of age do not qualify for the Child Support Grant; we will again be confronted with children who could have been adopted remaining in foster care so that their caregivers can qualify for financial support in the form of the Foster Care Grant.

The solution for this dilemma is to

- extend the Child Support Grant to all children under the age of 18 or to
- institute a special adoption grant to those adopters who qualify

Consideration of adoption applications

238 (1) (a) – Although the religious and cultural background of the child, the child's parent/s and the adoptive parent/s are taken into consideration, **we would recommend that the following be added to this clause “the report of the social worker should indicate what effort was made to recruit an adoptive parent/s from the child's extended family, and from the child's own cultural background”**. This is imperative as Child Welfare policy has always prescribed that a child should first be placed within extended family, if this is not possible then within own cultural context, with transcultural and international adoption as the last resorts.

No consideration in respect of adoptions

249 (2) (a) – We are very concerned with this clause with biological mothers receiving compensation for loss of earnings, medical expenses,

counselling and any other expenses. This compensation is usually paid by the prospective adopter/s and could amount to large figures. This could be considered unethical as the mother could withdraw her consent within the 60-day period, resulting in legal battles.

We recommend that this be scrapped from the Bill.

The same applies to (b) “a lawyer receiving reasonable fees and expenses for legal services provided in connection with an adoption”. Adoption work in S.A. is primarily undertaken by the social work profession and legally finalised by the Children’s Court. **We recommend that lawyers should have no role in any services provided in connection with an adoption until the final adoption court order is made. We recommend that this be scrapped from the Bill.**

Subsection (1) should also not apply to a designated child protection organisation accredited for the provision of adoption services. It has been standard practice for existing child protection organisations like us to charge an administrative fee for our adoption work. This is, however, not applicable to prospective adopter/s who cannot afford such fee and in those cases the service is rendered free of charge. **This should be included in (2)**

Accreditation to perform adoption work

251 (1)

We support a process of accreditation for persons and organisations to provide adoption services. It should, however, be taken into consideration that an existing accreditation system exists where the S.A. Council for Social Service Professions accredit social workers in private practice and national bodies, like ourselves, accredit their members to do adoption work.

As the development of the Regulations in this regard will only happen at a later stage, will the present status quo remain? The same applies to accreditation of organisations for inter-country adoption 258 (1)? **This should be specified in this Bill.**

Regulations

253 (d) – We would recommend that this be changed to read, “determining a uniform structure for payment of adoption services undertaken by persons or organisations”. It is not enough to

“determine the procedure for payment”, as it will not address this burning issue. A uniform fee structure would solve many existing problems within adoption practice and can be developed in consultation with the experts.

CHAPTER 17 – INTER-COUNTRY ADOPTIONS

Accreditation of child protection organisations for inter-country adoption

258 (1)

See our comment on section 251 (1)

We interpret this section that only child protection organisations will be accredited for inter-country adoption and not social workers in private practice? Although section 250 and 251 refer to accreditation of both for adoption work, it may have to be specified that 250 (1) (a) (b) and 251 (a) (b) (c) apply to domestic adoption or 258 (1) must specify that social workers in private practice may not/will not be accredited for inter-country adoption.

We furthermore urge Government to

- ♣ give effect to the Hague Convention on Inter-Country Adoption as a matter of urgency. This implies that the necessary infra-structure and resources be put in place to regulate inter-country adoption. The Central Authority must be resourced with human and financial capacity and the process to accredit child protection organisations must be implemented. The latter is of extreme importance as existing organisations are already involved in inter-country adoption and need policy and guidelines in this regard.
- ♣ Ensure that the spirit of the Hague Convention that prescribes the best interest of the child, non-profit and monitoring prevails. We strongly recommend that no other profession than social work be allowed to practice adoption work and more specifically inter-country adoption. The knowledge, expertise and sound practice regarding adoption work lies within the social work profession and existing child protection organisations.

- ♣ **Honour the Children’s Rights Convention that states that a child has a right to a family. There have always been two sets of thoughts regarding inter-country adoption, one that believes it should be allowed and another that believes that children should remain in their country of origin. We recommend that if all efforts have been made to find adoptive parent/s within a child’s extended family, own cultural group and within a child’s own country and if these efforts were unsuccessful, inter-country adoption should be considered as a permanent alternative care option.**

GENERAL

CHILDREN’S PROTECTOR

The creation of a special office to act as the “Children’s Protector” was contained in the October 2002 draft but left out in the August 2003 draft. At present our country lacks an objective monitoring system to oversee the implementation of child protection legislation, investigate complaints and to ensure quality services. Some present systems of monitoring in child protection include

- The S.A. Council for Social Service Professions that regulate the registration of social work and child and youth care professionals. They usually deal with unprofessional conduct, investigations and disciplinary procedures;
- Internal disciplinary procedures of Government Departments and organisations in relation to staff and policy implementation;
- National bodies, like ourselves and the Ministry for Social Development that investigate public complaints regarding professional conduct and the rights of children;
- Inspections by Government Departments;
- Standard setting by National bodies;
- The Public Protector that deals with complaints regarding Government officials;
- The Human Rights Commission that deal with human rights violations;

- Parliamentary monitoring committees;
- The NPA in the Presidency that oversees Government's implementation and realisation of children's rights. The NPA reports to the UN every 5 years on our country's achievements in this arena. This body is not mandated to oversee civil society's children's rights obligations.

This is not enough. We need an independent body to oversee child protection structures, to ensure an effective child protection system and to guarantee the safety of children within this system. The principles and structures of the independent bodies in S.A. that are already in existence such as the Office of the Inspecting Judge, the Independent Complaints body of the SAPS and the Ombudsman for the Insurance Industry can be used to develop a model for the Office of the Child Protector. Similar international models can also be consulted.

It does not need to be an elaborate and expensive resource. It can start on a small scale and if found workable adapted accordingly.

We recommend that Government consider the proposed establishment of an Office of the Child Protector.

FINANCIAL IMPLICATIONS FOR STATE

In the Memorandum on the Objects of the Children's Bill, 2003 the financial implications for the state are mentioned. They include fiscal risks, administrative costs, institutional arrangements, transfer of functions by provinces to national government and delegations of functions to provinces and municipalities. Child Protection is primarily the responsibility of Government but we have a long history of these responsibilities delegated to the NGO sector. Presently the NGO sector carries the burden of statutory intervention i.e. investigation of child abuse and neglect, reports to the Children's Court, the counselling and therapy of abused children, finding alternative care, supervising alternative care and family reunification. We are a major and formidable stakeholder in child protection. Partnership should be formalised and NGOs adequately financed to effectively undertake this mammoth task. This delegated function should be 100% financed by Government.

We trust that this would be considered in the costing of this Bill. We can assist in such a costing exercise. If not, the eventual implementation of this Bill will fail due to a lack of resources.

CONCLUSION

- We trust that with the necessary amendments to the Sec 75 Bill and subsequently to the Sec 76 Bill, we will have a Children's Act that reflect and enforce an effective child protection system in South Africa.

**S.A. NATIONAL COUNCIL FOR CHILD AND WELFARE
JULY 2004**