

Children's Bill Working Group workshop on the draft Children's Amendment Bill

(Held on 28 - 29 March 2006)

Workshop report



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Compiled by the Children's Institute, University of Cape Town, 1 June 2006



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Workshop report

Acknowledgements

Thank you to all the participants for taking time out of their busy schedules to attend the workshop, and for their continued commitment to ensuring a Children's Bill that will improve the lives of children in South Africa.

In particular we would like to acknowledge the presenters for their hard work: Nokuku Sipuka (SASPCAN and UCARC), Daksha Kassan (Community Law Centre), Sam Waterhouse (RAPCAN), Zeni Thumbadoo (NACCW), Thulani Nzimande (NASC), July Nkutha (DICAG,) Sue Philpott (DART), Megan Briedé (Child Welfare South Africa), Eric Atmore (CECD and NECDA), Wanjirū Mūkoma (Children's Institute), Mira Dutschke (Children's Institute), Prinslean Mahery (Children's Institute) and Kashifa Abrahams (Children's Institute).

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Abbreviations

ACCESS	Alliance for Children's Entitlement to Social Security
ALP	Aids Law Project
CECD	Centre for Early Childhood Development
CHAI	Children's HIV/AIDS Network
CI	Children's Institute, University of Cape Town
CINDI	Children in Distress
CPLO	Catholic Parliamentary Liaison Office
CRC	Children's Rights Centre
DART	Disability Action Research Team
DFID	Department for International Development
DICAG	Disabled Children's Action Group
CSG	Child Support Grant
ECD	Early Childhood Development
GASC	Gauteng Alliance for Street Children
HSRC	Human Sciences Research Council
LHR	Lawyers for Human Rights
NACCW	National Association of Child and Youth Care Workers
NACOSA	Networking Aids Council of South Africa
NASC	National Alliance for Street Children
NECDA	National Early Childhood Development Alliance
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
SACC	South African Council of Churches
SACECD	South African Congress for Early Childhood Development
SAHRC	South Africa Human Rights Commission
SALC	South African Law Commission (now SALRC)
SALRC	South African Law Reform Commission
SASPCAN	South African Society for the Prevention of Child Abuse
SAPS	South African Police Services
UCARC	Umtata Child Abuse Resource Centre

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1. Introduction

1.1 Update on the Parliamentary process

Before the Children's Bill was tabled in Parliament back in 2003, it was split into two Bills for technical reasons. The first Bill (Children's Bill [B70D-2003]) was passed by Parliament in December 2005 and it is now with the President for signing. Once he signs it, the Bill will become an Act. However, the Act is unlikely to come into force until 2008 when the second Bill (Children's Amendment Bill) has also been passed.

The sections of the Bill that affect the provinces were put into the second Bill, the Children's Amendment Bill, because these sections must go through an extended parliamentary process to allow for proper consultation with the provinces.

The Department of Social Development is now busy getting the Children's Amendment Bill ready for tabling in Parliament. It is therefore important for civil society groups to start formulating their responses to the Bill in order to be ready for participation when Parliament calls for submissions.

1.2. The Children's Bill Working Group description and structure

The Children's Bill Working Group is a network of networks. It has representatives from most of the child sector umbrella bodies and representatives from the churches, trade unions, and academic institutions. The Working Group was established in March 2003 with the aim of promoting debate and decision-making on the Children's Bill that is informed by:

- child rights,
- evidence, and
- consultation with the children's sector.

We are all committed to this aim in order to ensure that the new law is drafted in a way that will provide workable solutions to the major challenges facing children in the areas of social services and protection from abuse and neglect.

The Working Group is divided into smaller sub-groups. Each sub-group has representatives sitting on the Working Group, and additional members from sectors affected by the issues covered. The sub-group structure and methodology was used for the campaign on the first Bill. When implemented in full, it worked impressively (e.g. disability sub-sector) and achieved tangible benefits for the sub-group. The model is being recorded and written up as a research report by the CI and the Disability Sub-group and is already being replicated with the street children sector and used to develop the new sub-sectors. The Working Group has recently been re-organised so that the sub-groups correspond to the issues in the second part of the Bill.

The sub-groups primarily focus on the following issues:

Early childhood development: provisioning, registration, funding and management of partial care (crèches) and early childhood development centres and programmes.

Protection: reporting of abuse and neglect, services for children who have been abused and neglected, foster care, designated child protection organisations.

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Prevention and early intervention services: Services and programmes aimed at assisting families to prevent abuse, neglect and disability; drop in centres for vulnerable children.

Child and youth care workers and centres: integrating child and youth care workers into the Bill and the protection system's registration, funding, provision and management of children's homes, places of safety, secure care facilities, schools of industry and reform schools, shelters and drop-in centres.

Children on the streets: shelters and services for children living, begging or working on the streets.

Corporal punishment: preventing the use of corporal punishment in homes and within alternative care settings.

Disability: ensuring an inclusive approach in all sections of the Bill to enable children with disabilities to access all the protection and services provided by the Bill.

HIV/AIDS: services for children with HIV/AIDS with a particular focus on children living with sick adults, orphans and children in process of being orphaned, children with HIV, and children living in child-headed households.

The above list provides a snap shot of what each sub-sector's primary area of focus is. All the sub-sectors overlap with each other and it therefore essential that there is constant communication between the sub-groups to ensure that we develop a cohesive and comprehensive response.

1.3 The Children's Bill Working Group Workshop, 28 – 29 March 2006

The Children's Bill Working Group met at the end of March 2006 to discuss the second Bill (Children's Amendment Bill). Before the workshop, all presenters were asked to review the Bill and the previous Working Group submissions on the Bill.

On the first day of the workshop a representative from each sub-group gave a presentation to the Working Group by:

- summarising the provisions in the Bill;
- summarising key demands and areas for discussion.

The Working Group discussed the issues in the plenary session and put forward key questions for consideration by the small groups.

On the second day of the workshop the Working Group was split into the sub-groups mentioned above to discuss the key issues, to get agreement on key areas of contention, and draft a framework for the submissions to Parliament. The sub-group representatives took note of the recommendations, and fed this back to the larger group.

This report contains the presentations made, and a summary of the debate and the key recommendations put forward by each group. **Please note that these recommendations are not yet final as further debate and consultation within each sub-sector is needed before they can be finalised.**

Draft submissions and discussion documents covering each sub-group's area are being written by the sub-group co-ordinators and will be circulated broadly for comment and endorsements by mid-June.

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Further submissions that provide illustration of the key points will also be collected.

1.4. Further information

Copies of the Bills, updates, discussion documents and submissions are available on the Children's Institute website: <http://web.uct.ac.za/depts/ci/plr/cbill.htm>

For general information on the Bill or the way forward, please contact:

Lucy Jamieson on 021 – 689 8303 or lucy@rmh.uct.ac.za

Paula Proudlock on 021 – 685 1583 or paula@rmh.uct.ac.za

2. Workshop report


2.1 Rights analysis of the Children's Amendment Bill


2.1.1 Presentation by Mira Dutschke and Prinslean Mahery (Children's Institute, University of Cape Town)

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Children's Amendment
Bill (s76 Bill)

Identifying the relevant rights:
Presented by Prinslean Mahery and Mira Dutschke



 children's
institute
child rights in focus
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Slide 2

Introduction

- Identify the rights that the Chapters speak to from the following instruments:
 - The Constitution of South Africa Act 108 of 1996
 - The United Nations Convention on the Rights of the Child (UNCRC)
 - The African Charter on the Rights and Welfare of the Child (ACRWC)
- Why?
 - For your information
 - For your submissions



 

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What must legislation include to realise a right?

- Define entitlements
 - Must say what rights are being realised
- Define obligations of the State and different State actors.
 - Are the relevant actors bound?
 - Maximum available resources assigned i.t.o. clause 4(2) of [B70D-2003]?
 - Is there coordination i.t.o. clause 5 of [B70D-2003]?
- Remedies





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Rights that the Children's Bill aims to realise

Section 28 - Every child has the right to:



- 28 (1) (b) family care or parental care, or to appropriate alternative care when removed from the family environment;
- 28(1)(c) social services;
- 28(1)(d) be protected from maltreatment, neglect, abuse or degradation;
- 28 (2) A child's best interests are of paramount importance in every matter concerning the child.



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Obligation to implement

- Duty to assign maximum extent of available resources
 - Article 4 of the UNCRC states that State Parties must enact legislation to realise the rights in the UNCRC. States must assign the **maximum extent of their available resources** towards the realisation of economic social and cultural rights.
 - Article 1 of the ACRWC states that States must undertake all the necessary steps to adopt legislative and other measures to give effect to the Charter.



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General Principles from International Law	
UNCRC <ul style="list-style-type: none"> □ Art 2: right to non-discrimination □ Art 6: right to maximum survival and development □ Art 12: child's right to participate □ Art 3: best interest of the child is 'a primary consideration' 	ACRWC <ul style="list-style-type: none"> □ Art 3: right to non-discrimination □ Art 5: Right to maximum survival, protection and development □ Art 4(2): right to participate in judicial or administrative proceedings □ Art 4 (1): best interest is 'the primary consideration'

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S 28(1) (b) the right to family care, parental care or appropriate alternative care

- Not purely a socio-economic right.
- International law:
 - Art 18 (UNCRC)/ Art 20 (ACRWC): Parents have the duty to care for their child. State must assist parents through institutions and services to care for children.
 - Art 19(2) (UNCRC): State must establish social programmes to support families to prevent abuse and neglect of the child.
 - Art 20 (UNCRC)/ Art 25 (ACRWC): Children without family care are entitled to special protection and assistance: eg. refugee children (see Art 22 (UNCRC)/ 23 (ACRWC)) and street children. Example of such care is foster placements (Art 20(3)(UNCRC)/ Art 25(2) (ACRWC))
 - Art 3(3) (UNCRC) norms and standards for facilities.

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S 28(1) (b) the right to family care, parental care or appropriate alternative care



- Obligations on the State:
 - State must assist and protect families: prevent family breakdown and disintegration.
 - Encourage the reunification of the family and the child.
 - State must provide alternative care for the child if the child does not live in a family environment.

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Chapters that speak to S28(1)(b)



- **Family care or parental care:**
 - Chapter 5: Partial Care
 - Chapter 6: ECD
 - Chapter 8: Prevention and Early Intervention Services
- **Appropriate alternative care:**
 - Chapter 11: Alternative Care (see also Art 25, UNCRC: review of placement)
 - Chapter 12: Foster Care and Kinship Care
 - Chapter 13: Child and Youth Care Centers (see also Art 40: juvenile justice; Art 39: measures to promote recovery)
 - Chapter 14: Shelters and drop-in centers (see also Art 31, UNCRC: the right to leisure and play)



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Section 28(1)(c) right to social services



- Services to protect and promote the welfare of children.
- Includes preventative, protective, curative services and services for children with special needs.
- **International law:**
 - All articles under section family care, parental care and alternative care
 - Art 19 (UNCRC)/ Art 21 (ACRWC): protection from violence, abuse, neglect or degradation
 - Art 23 (UNCRC): children with disabilities
 - Art 33 (UNCRC)/ Art 28 (ACRWC): protection against the use of drugs
 - Art 34, 35,36 (UNCRC)/ Art 27, 29 (ACRWC): protection against all forms of exploitation
 - Art 39: Right physical, psychological and social recovery (UNCRC)



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Chapters that address 'social services'

- **Preventative Services:**
 - Chapter 5: Partial Care
 - Chapter 6: ECD
 - Chapter 8: Prevention and Early Intervention
- **Protective Services:**
 - Chapter 7: Protection of Children
 - Chapter 11: Alternative Care
 - Chapter 12: Foster care and Kinship care
- **Curative Services:**
 - Chapter 11: Alternative Care
 - Chapter 13: Child and Youth Care Centres
 - Chapter 14: Shelters and drop-in centres
- **Special needs:**
 - Chapter 11: Alternative Care
 - Chapter 13: Child and Youth Care Centres





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S 28(1)(d) protection from maltreatment, neglect, abuse or degradation



- The State has the duty to protect children.
- International law:
 - Preamble UNCRC: Child should be brought up in the spirit of peace, dignity and tolerance.
 - Art 19 (UNCRC)/ 16 (ACRWC): protection from all forms of violence, abuse and neglect
 - Art 20 (ACRWC): Domestic discipline must be administered with humanity and consistent with dignity.



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Chapters that speak to S 28(1)(d)



- Protection from neglect
 - Chapter 5: Partial Care
 - Chapter 6: ECD
- Protection from abuse
 - Chapter 7: Protection of Children
 - Chapter 8: Prevention and Early Intervention
 - Chapter 11: Children in Alternative Care
 - Chapter 12: Foster Care
 - Chapter 13: Child and Youth Care Centres
 - Chapter 14: Shelters and drop-in centres



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Summary

- All the Chapters aim to realise:
 - Right to family care, parental care or alternative care
 - Right to social services
 - Right to protection against abuse and neglect
- Importance of international law
- Binding obligations on the State



2.2 Early Childhood Development and Partial Care

2.2.1 Presentation by Eric Atmore (Centre for Early Childhood Development and National Early Childhood Development Alliance)

Eric acknowledged the assistance of sub-group members Oumie Zungu (Early Childhood Resource and Training Forum) and Yvonne Mokgotshane (Makhputhamata) in formulating the presentation.

Definition of ECD (s91)

- The definition in the Bill is inconsistent with the ECD White Paper. It should be changed to be birth to nine years.
- The definition in the Bill does include grade R. A question to consider is whether we should recommend that Grade R be made mandatory/compulsory, like schooling.

Strategy concerning ECD (s92)

- The Minister of Health should also be consulted and not only the Minister of Education.

Provision of ECD services (s93)

- The section says that only designated child protection organisations qualify for funding. However, thousands of ordinary “undesigned” NGOs currently provide ECD services. The use of the words “designated child protection organisation” must be a mistake. The Partial Care chapter does not refer to designated child protection organisation.

Minimum standards for ECD services (s94)

- The requirement that all employees at ECD centres must be screened against the child protection register is a good provision. At the moment there is no screening.

Conditional registration (s 97)

- Centres should be financially supported to reach full registration. There should be developmental subsidies and centres should be given a timeframe to meet the general standards and any specific conditions, whereafter they can get full funding.

Notice of enforcement (s99)

- The Bill gives the State the authority to instruct a partial care facility to provide ECD but does not place an express obligation on Government to provide the necessary funding that the centre would need in order to obey the instruction. Developmental subsidies should therefore be provided.

Assistance (s100)

- This section is good in principle because it provides that the department may assist a partial care facility to comply with the minimum norms and standards applicable to

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ECD. However, the type of assistance is restricted to advice and should expressly include financial assistance as well.

2.2.2 Report back from group discussion

Present: Eric Atmore (CECD), Prinslean Mahery (Children's Institute), Oumie Zungu (Early Childhood Resource and Training Forum), Yvonne Mokgotshane (Makhputhamata), Sue Philpott (DART), Mary Newman (ELRU), and Sandra Ambrose (DICAG).

Others who are part of the sub-group but who were not able to attend the small group discussion: Leonard Saul (SACECD), Annie Leatt (Children's Institute), Norma Rudolph (Children's Institute), Linda Biersteker (ELRU), and Sharon September (ACCESS).

General discussion

- Is there a need for separate chapters on partial care and early childhood development or should they rather be amalgamated into one chapter? Partial care is described as a service, while ECD is described as a process, but the average centre falls under both categories. Why do we therefore need two chapters? What are the unnecessary repetitions between the two chapters that could be eliminated? This needs to be further explored.

Jackie Loffell¹ described the South African Law Reform Commission's rationale for dividing the two chapters: Partial care includes after-school centres and many others that are not early childhood development centres. Partial care is about the premises while ECD is about the service or programme offered at the centre.

- ECD needs to be presented as a range of programmes and services all requiring certain norms and standards. It is important to emphasise that ECD is not just the ECD programme provided at the centre or the centre itself but includes for instance outreach programmes such as pre- and post-birth counselling of mothers, family support services and home-based care. We need to ensure that the definition clause is comprehensive enough to include these programmes.

Programmes should be offered to parents to aid birth preparation and support programmes should be offered to parents and caregivers of infants, toddlers, pre-schoolers and children in their first years at school, based on developmental age not chronological age.

Integrated ECD should therefore be provided at clinic or some other basic intervention level (which would mean home-based services around home births). Early prevention for example starts with good monitoring programmes that assist parents to build parental confidence and skills and pick up on developmental patterns (and possible developmental challenges and disabilities) in the first year.

¹ Dr Jackie Loffell was on the SALRC project committee that initiated the Children's Bill drafting and consultation process.

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- The provisions in the ECD chapter are not very contentious; however, there are a number of omissions related to disability and prevention, early intervention and protection. Training and support is also missing from the ECD chapter.
- ECD centres should get nutritional support from Government (at present children 0 – 5 do not get nutritional support from Government). Question: Where would this fit in the Bill?
- ECD centres should also be provided with government-subsidised transport. Some provinces are currently providing such services for school children. This should be extended to ECD centres. Question: Where would this fit in the Bill?
- ECD centres and partial care centres should cater for children with physical and intellectual disabilities.

Definition of ECD (s91)

- Age cut-off should not be determined chronologically but developmentally. Many children with disabilities who are above “school going age” need ECD programmes and services. Where would the organisations and centres providing such services fit into the Bill and the ECD chapter if the children are older than school-going age?

Provision of ECD services (s93)

- ECD should be universally available to all children from birth. ECD services play a vital role in preventing drop-outs in schools; therefore Grade R should be compulsory. To facilitate more children being able to access ECD it is important that the Bill includes a definitive provisioning clause which places a clear and express obligation on Government to provide and fund ECD programmes and services. This is lacking in s93. Without this, the *status quo* will remain.
- The funding and resourcing of ECD centres and resources is a major issue. ECD is also focused on prevention and ECD programmes should therefore also be able to get funding for providing prevention and early intervention services.

Minimum standards for ECD (s94)

- There is currently an inconsistency between school-based and community-based norms and standards. Furthermore, the Department of Education does not have to meet the standards that civil society is obliged to. Clarity is needed as to whether the norms and standards apply to government-run facilities and Grade R programmes run by the government.
- It is important that norms and standards are stipulated for the programmes, and not just for the premises.

ECD programme must be registered (s95)

- The registration process is problematic. A centre providing services for 0 – 9-year olds needs to go through at least three application procedures:
 - (a) A local authority certificate
 - (b) Provincial Social Development registration for the partial care centre *and* for the ECD programme; and
 - (c) Provincial Department of Education registration for the Grade R component.

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The local government certificate needs to be discussed. At the moment it is issued under municipal by-laws. This should be changed so that it is regulated under the Children's Bill.

With regards to partial care and ECD registration, if you run an ECD service, the two registration processes should be amalgamated.

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2.3 Protection from Abuse and Neglect

2.3.1 Presentation by Megan Briedé (Child Welfare South Africa)


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Children's Bill, Section 76

Chapter 7: Protection of Children

S105 provisions: Reporting of children in need of care and protection

- Mandatory reporting by specific categories of people.
- Report of child abuse by any person.
- Reporting to Provincial DSD, designated child protection organisation, police officer, clerk of the court.
- Reporting sexual abuse by professionals involved in the termination of pregnancy on a child.
- Procedures to follow on receiving a report.
- Removal of the offender from the child's environment



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Matters to be Discussed

Mandatory Reporting

- Terminology Section 105(1) - "concludes"
- Clerk of the Children's Court
- Immunity
- False Reporting
- Confidentiality
- Reporting abuse in cases of under-age girls and termination of pregnancy

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Slide 3

Provision of designated child protection services

Designation of child protection organisations

Existing child welfare organisations

Designation of powers and duties to designated child protection organisations

Withdrawal of designation

Matters to be Discussed

- National Norms and Standards - civil society
- Vague
- Acknowledgement of good standing and expertise

Slide 4

Applications to terminate or suspend parental Responsibilities and Rights

- Suspending for a period, terminating or transferring any or all parental responsibilities and rights.
- Application without consent of parent or care-giver
 - * older than 7, in alternate care for more than 2 years
 - * older than 3, younger than 7, in alternate care for more than one year
 - * three years and younger, in alternate care for more than 6 months
- Guidelines in considering an application: permanency, success of attempts to reunite, relationships etc.

Matters to be Discussed

- Clarity in the roles of each specific court

Slide 5

Child-headed households

- Recognising a household as a child-headed household
 - * parent/primary care-giver terminally or deceased
 - * no adult family member available
 - * child assumed the role of care-giver in respect of children within the household
- CHH function under general supervision of an adult designated by:
 - * children's court
 - * state/NPO
- Responsibilities
 - * State/NPO collect and administer grant
 - * Placement in cluster foster care
 - * Accountable to DSD or court
- Adult designated, state, NPO not take decisions without:
 - * child at head of household
 - * other children depending age/maturity
- Day-to-day decision-making
- Included in all programmes

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Matters to be Discussed

- Clause to monitor adult designated by the court
- Definition of child-headed household

Unlawful removal or detention of children

- causes a child to be detained
- Induces the child to remain with him or her or any other person

Unlawful taking or sending of children out of the Republic

Corporal punishment

Slide 7

Child safety at places of entertainment

- Premises where the majority of people attending are children
- Number of people including children exceeds 50
- Must determine the number
- Station sufficient adult attendants
- Control movement of people
- Reasonable precautions for safety of children
- No alcohol or tobacco
- Local municipality to inspect

Matters to be Discussed

- Reasonable Precautions/Steps

Slide 8

Worst forms of child labour prohibited

- No person may employ a child under age of 15 years
- Commercial sexual exploitation
- Illicit activities, drug production/trafficking
- Forced labour
- Encourage, induce or force - activities place health, safety, morals or education, physical, mental health, spiritual, moral, social development
- Accepted work in advertisements, sport, cultural, within framework of a programme registered in terms NPO Act.
- Minister to taken reasonable steps to ensure enforcement of prohibition on worst forms of labour.

Matters to be Discussed

- Steps, activities, programmes to prevent as well as intervene

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2.3.2 Report back from group discussion

Present: Megan Briedé (Child Welfare South Africa), Mira Dutschke (Children's Institute), Nyari Machingambi (Lawyers for Human Rights), Nthathi Mangoloba (Naledi), Debora Mobilyn (Trafficking Task Team and Molo Songololo); Karen Allen (ACCESS), Michelle Govender (Aids Law Project), Menaka Jayakody (CHAiN – WC NACOSA), Jackie Loffell (Johannesburg Child Welfare), Lois Law (Catholic Parliamentary Liaison Office), July Nkutha (DICAG), Nokuku Sipuka (SASPCAN – UCARC).

Others who are part of the sub-group but who were not able to attend the small group discussion: Nthathi Mangoloba (Naledi), Andy Dawes (HSRC), Judith Streak (HSRC), Chance Changunda (CPLD).

Reporting of children in need of care and protection (s105)

The matter of mandatory reporting for all was debated and discussed in detail. The discussion explored not only mandatory reporting by all, but also specific categories of people presently mandated to report, as well as reporting procedures. Decisions that emerged out of this debate were as follows:

- To support mandatory reporting only by the specific categories of people presently identified in s105(1).
- To explore the boundaries of mandatory reporting for legal practitioners, taking into account client confidentiality.
- To motivate for the training of clerks of the court as well as police officers who are identified as people to whom child abuse reports can be made.
- To review the use of the term “personal observation concludes”, with the assistance of a legal professional, to determine the scope of this term and its relevance to the clause.
- To insert an immunity clause to protect people reporting suspected child abuse in “good faith” from legal proceedings.
- To explore the possibility of a clause dealing with anonymity and confidentiality for those reporting child abuse. Determining the limitations within this with regard to the ‘best interest of the child’ standard.
- Not to pursue the insertion of a clause dealing with false reporting as it was felt that this matter was dealt with in other laws.
- To collect additional information and views regarding how reporting should be dealt with in relation to young girls having abortions where the health practitioner suspects rape or statutory rape.

Provision of designated child protection services (s106)

The need for these services to be broadened was discussed. In line with this discussion it was agreed however that these services needed to be professional and people providing the services need to be equipped with the necessary knowledge and skills to deal with the specific needs of children affected by all forms of abuse, neglect, abandonment, etc.

The section, as it presently stands, appeared unstructured. It was agreed that this section needed to be explored in more detail in a position paper.

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Child-headed households (s136)

Group members reflected concerns regarding provisions pertaining to child-headed households, particularly monitoring the care provided by “adults designated” to oversee these households.

The debate pertaining to ‘parentification’ of children and the adult responsibilities placed on them did arise, however focus was placed on developing the best protective measures for these children, acknowledging that child-headed households were not the ideal situation for orphaned children.

(Please see the section on HIV/AIDS for more discussion on child-headed households)

Child safety at places of entertainment (s140)

The use of the term “reasonable steps” was discussed. It was agreed that this needed to be looked at by a legal professional to determine the legal system’s understanding and use of such terms.

Further, the section needed to be looked at in more detail to ensure that the best interest of the child was paramount.

Tasks to be completed by the sub-group

1. Megan Briedé will prepare a position paper on Section 105 (Reporting of children in need of Care and Protection). Due end of May 2006.
2. Jackie Loffell to prepare a position paper on Provision of Designated Child Protection Services. Due end May 2006.
3. Lois to prepare a position paper on child safety at places of entertainment. Due end May 2006.
4. All members of the Working Group to submit comments and concerns to Megan relating to child protection issues especially those dealing with alternative care. Due by end April 2006.
5. Megan Briedé to liaise with HIV/AIDS working group regarding concerns pertaining to child-headed households.
6. With the aid of Joan van Niekerk, the group needs to develop a position paper regarding the insertion of psychosocial support services into this section of the Bill.

Workshop report

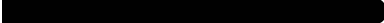
2.4 Primary Prevention and Early Intervention

2.4.1 Presentation by Nokuku Sipuka (SASPCAN) and Kashifa Abrahams (Children's Institute, University of Cape Town)

Slide 1


Primary Prevention & Early Intervention

Nokuku Sipuka
(UCARC/SASPCAN)
Kashifa Abrahams (CI)



Slide 2

Summary of provisions in Bill



- Chapter 8
- Defines early intervention (social development services, families with children, vulnerability, at risk of harm, alternative care)
- Defines prevention services “means social development services” (s144, families with children, strengthen & capacity building, self-reliant, statutory intervention)

Workshop report

Slide 3

Summary cont.

- Purpose set out (prevention and early intervention services or programmes)
 - Preserving a child's family structure
 - Parenting skills
 - Interpersonal Relationships
 - Promote wellbeing, realisation of full potential
 - Prevent neglect, abuse or inadequate supervision
 - Divert away - child & youth care system & criminal justice
 - Avoid removal
 - Assist families - basic necessities of life
 - Participation- families, parents, caregivers & children

Slide 4

Summary (cont)

- Provision of prevention & early intervention services
 - Organ of state, designated child protection organisation, NGO – qualify for funding (national norms and standards)
 - Money from provincial legislature
 - Minister – norms & standards
 - Prioritise families – lack means of providing shelter, food, other basic necessities

Slide 5

Summary (cont)

- Strategies – securing provision
 - Minister – comprehensive national strategy
- Assignment of functions to municipalities
 - Provincial head assign services (145) to municipality (capacity)
- Court may order
 - Temporary or permanent removal
 - Provincial Dept. of Soc. Dev., designated child protection organisation, any other relevant organ of state, or any other person or organisation – child, family, parent, caregiver
 - Family preservation programme
 - Not exceeding 6 months – social worker report, court decides based on outcome of report
- Report – include summary (designated social worker)

Workshop report

Slide 6

Gaps

- Definition – inadequate/limited in terms of
 - Health promotion
 - Children in especially difficult circumstances
 - Disability
 - Nutrition
 - Social security
 - Children without families
 - Mechanism for intersectoral collaboration to ensure sustainability
 - Other areas of intervention where children may not end up in alternative care or statutory care

Slide 7

Gaps (cont)

- Purpose (what is the difference between services and/or programmes)
 - Too many feel-good sentences and “nice” words
 - what do they mean?
 - Actual treatment
 - Limited involvement and participation of other role players, e.g. schools, local government

Slide 8

Key discussion areas

- S75, SALC
- Definition – In Bill, In CBWG
- Role of NGOs & other key government departments
- Role of local government (municipalities)
- Actual treatment/intervention
- Financing

Workshop report

Slide 9

Key discussion areas

- **Definition – In Bill, In CBWG**
 - “social development services” what does this mean?
 - is the current adequate?
 - what are the limitations?
 - what do we, the CBWG, mean by prevention and early intervention?
 - need to look at a system and structure for making prevention and early intervention work
 - what are the various functions of the relevant government departments and civil society bodies?
 - how do they communicate to each other on these issues?

Slide 10

Key discussion areas

- **Role of NGOs & other key government departments**
 - who's doing what (including government departments)?
 - where are the gaps?
 - what are the gaps?
 - issues re capacity building and training at local level to sustain the service provision and improve on it

Slide 11

Key discussion areas

- **Role of local government (municipalities)**
 - what is its role (municipalities)
 - how can they contribute

Workshop report

Slide 12

Key discussion areas

- Actual treatment/intervention
 - what is being delivered?
 - is it adequate?
 - what are the gaps?
 - includes early intervention (health education and promotion) to secondary and tertiary prevention (rehabilitation) to ongoing therapy

Slide 13

Way forward

- Consolidating areas for discussion
- Establishing sub-group
- Discussion paper
- Workshop
- Submission

Slide 14

Key discussion areas

- Financing
 - what are the costs incurred in delivering these services?
 - how can the costing team contribute in this regard?
 - assumption: these services are inadequately funded

Workshop report

2.4.2 Report back from group discussion

Present: Nokuku Sipuka (SASPCAN and UCARC), Kashifa Abrahams (Children's Institute), Keith Vermeulen (South Africa Council of Churches), Mira Dutschke (Children's Institute), Joan van Niekerk (Childline South Africa), Carol Bower (RAPCAN), Sam Waterhouse (RAPCAN), Prometheus Mabusa (Save the Children Sweden), Jackie Loffell (Johannesburg Child Welfare), Lois Law (Catholic Parliamentary Liaison Office), Sandra Ambrose (DICAG), Eric Atmore (NECDA), Deborah Mobelin (Molo Songololo).

Others who are part of the sub-group but who were not able to attend the small group discussion: Helen Meintjes (Children's Institute), Merle Allsopp (NACCW).

General

- What about the role of the schools? Previous versions of the Bill specifically referred to the role of schools in relation to identifying and referring vulnerable children to services and programmes. This section needs to be re-incorporated.
- The first Bill amended the general principles section so that there needs to be equal opportunity for children with disabilities. How do we ensure that Chapter 8 follows through on this principle?
- Is there still space to shift the Bill and the chapter back to the comprehensive approach – i.e. less in the protection paradigm?
- Where in the Bill are curative (e.g. counselling) and rehabilitative services listed and regulated? They do not appear in this chapter or the protection chapter.
- What role should be assigned to local government?
- Informal children's homes are a symptom of a lack of primary prevention and early intervention services. We need to incorporate this into our submissions and strategy.
- There is nothing on recreation facilities in this chapter; nor anywhere else in the Bill.

Definition and purpose of primary prevention and early intervention services (s143 and 144)

- There is no mention of health services (e.g. developmental and disability screening and post-abuse/trauma rehabilitation). Do these types of services fall under the Health Act umbrella and Department of Health funding or do they belong under the Chapter 8 umbrella?
- What about programmes aimed at preventing foetal alcohol syndrome? Would these programmes fall under the ambit of Chapter 8?
- What is the difference between services and programmes?
- What do we mean by "prevention"? Different disciplines and departments define prevention differently. We need further discussions on this.
- The definition is restricted to "social development services". Does this exclude prevention and early intervention services delivered by other departments? Maybe we should change the wording to "social services" to broaden it?
- S144b should be expanded to include programmes aimed at positive discipline.

Workshop report

Provision of prevention and early intervention services (s145)

- The wording used, i.e. “from money appropriated by a provincial legislature” implies that funding comes from the provincial budget. However, will the funding come via national government in the equitable share or will provinces have to find extra money elsewhere?
- The norms and standards are to be set by the national minister in consultation with the Members of the Executive Councils (MECs) and this implies that there will be a national mandate. The funding therefore should come via equitable share.

Strategies for securing provision of prevention and early intervention services (s146)

- The section does not specify the need to consult other ministers. This is a problem as it does not recognise that many other departments provide prevention and early intervention services (e.g. Health, Justice, Education). In particular the role of schools in the provision of prevention and early intervention services needs to be considered in the development of the strategy.
- Civil society should also be consulted as they deliver the majority of prevention and early intervention services.

Assignment of functions to municipalities (s 147)

- Local Government IDPs (Integrated Development Plans) should be obliged by the Bill to include something specific on children and prevention.

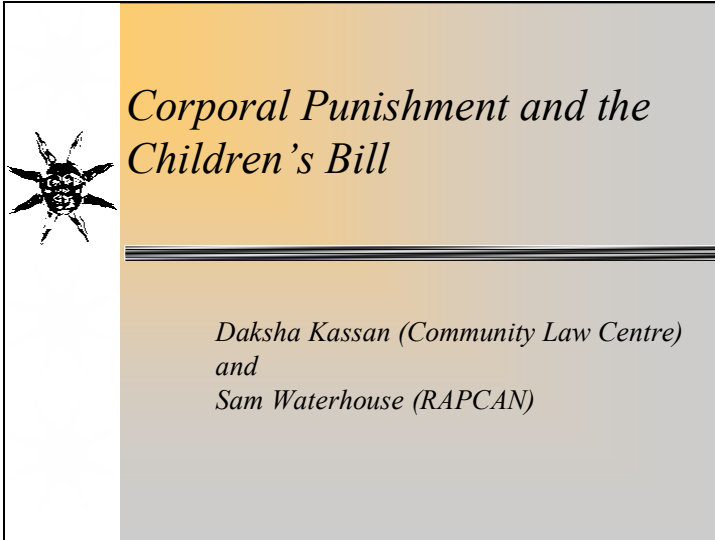
Way forward for the sub-group

- A content workshop needs to be organised.
- Mira will circulate her paper on definition of “social services”

2.5 Corporal Punishment

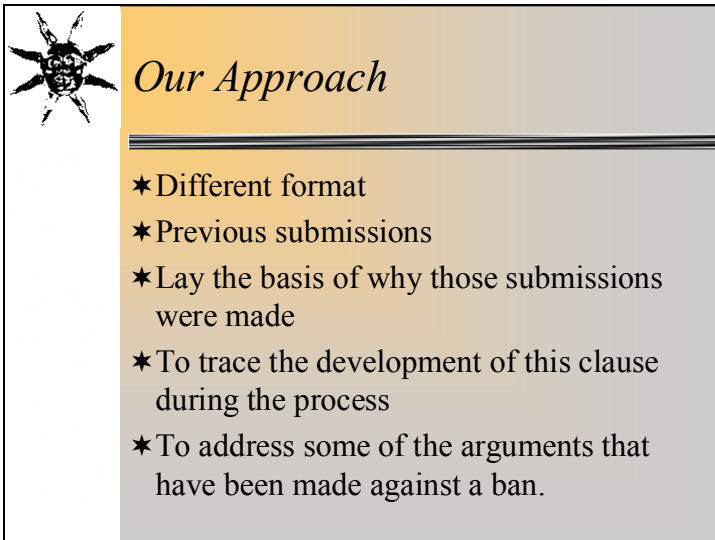
2.5.1 Presentation by Sam Waterhouse (RAPCAN) and Daksha Kassan (Community Law Centre, University of the Western Cape)

Slide 1



Slide 1 is a presentation slide with a white background on the left and a grey background on the right. On the left side, there is a black silhouette of a spider. The title "Corporal Punishment and the Children's Bill" is written in a black serif font across the top of the grey area. Below the title, there are two horizontal lines. The presenters' names, "Daksha Kassan (Community Law Centre) and Sam Waterhouse (RAPCAN)", are listed in a smaller black serif font at the bottom of the slide.

Slide 2




Slide 2 is a presentation slide with a white background on the left and a grey background on the right. On the left side, there is a black silhouette of a spider. The title "Our Approach" is written in a black serif font across the top of the grey area. Below the title, there are two horizontal lines. A bulleted list of five points is presented in a black serif font, detailing the approach to the presentation.

- ★ Different format
- ★ Previous submissions
- ★ Lay the basis of why those submissions were made
- ★ To trace the development of this clause during the process
- ★ To address some of the arguments that have been made against a ban.

Workshop report


Slide 3



Intro and background

- ★ UNCRC – ratified by SA in 1995
- ★ Article 19(1) and 37(a)
- ★ Protection extends to all forms of corporal punishment
- ★ UNCRC – recommends that corporal punishment of children within family be prohibited
- ★ Calls for total prohibition coupled with education campaign


Slide 4



South African Constitution

- ★ Section 28(1)(d) – protection from maltreatment, neglect, abuse or degradation
- ★ Section 12(1)(c) – right to be free from all forms of violence from either public or private sources
- ★ Section 12(1)(e) – right not to be treated or punished in cruel, inhuman or degrading way
- ★ Section 10 – human dignity
- ★ Section 9 – equality
- ★ Constitutional court cases to date: *S v Williams and Christian Education Schools v Minister of Education*

Slide 5




Current situation in South Africa

- ★ Abolished in child's public life
- ★ Private life – general rule i.t.o. common law: parents may inflict moderate and reasonable chastisement on a child provided it is not done in manner offensive to good morals or for objects other than correction.
- ★ Chastisement includes corporal punishment, which must be restrained and tenable.

Workshop report


Slide 6



SA Law Reform Proposals

- ★ SALRC – Section 142: referred to issue of CP
- ★ W.r.t. CP in family – abolished common law defence of reasonable chastisement
Reasons: no clear mandate for outright ban – public opinion divided but recommended educative and awareness-campaign to prevent physical punishment of children
- ★ 12 Aug 2003 version – status quo unchanged
- ★ Oct 2003 – Bill split – S75 version – silent
- ★ Dec 2005 – S 75 Bill – passed by NA – silent


Slide 7



Advocacy efforts

- ★ Submissions to Dept and Parliament
 - Called for total prohibition
 - Reinsertion of clause abolishing reasonable chastisement defence
 - Education and awareness-raising campaigns
 - Include explicit prohibition in Children's Bill – to send out clear message and change mindsets

Slide 8




S 76 Bill

- ★ Section 139
- ★ Addresses issue of corporal punishment in public life. Either reiterate all existing provisions or none of them (Education)
- ★ Education and awareness-raising programmes promoting appropriate discipline at home and at school
- ★ No reference to corporal punishment by parents
- ★ Leaves status quo unchanged

Workshop report


Slide 9



Contextual issues relating to advocating for a ban on corporal punishment

- ★ These issues have been developed from:
 - Workshops and debate (local, national and regional) on the ban in January 2006
 - Legal strategy meeting Feb 2006
 - SALRC concerns and common resistance
- ★ Should CP be defined specifically in the Bill?
- ★ Should other forms of humiliating and degrading punishment be addressed? How?


Slide 10



Context – “SA is not ready to ban CP”

- ★ We reject this
- ★ HR imperative
- ★ (Capital punishment and ToP)
- ★ The aim of the ban is to develop public support for effective positive parenting strategies – that’s why we need the ban
- ★ Negative effects of CP on children and society
- ★ Links between CP and abuse

Slide 11




Context – “Do we want to criminalise parents?”

- ★ We want children to enjoy “equal protection under the law” from assault
- ★ We want to improve responses to child abuse (including early intervention)
- ★ We want to avoid prosecution of parents and we want to prevent ‘minor’ acts from being prosecuted.
- ★ We want the legislation to strengthen support systems for parents

Workshop report


Slide 12



Context – Strengthening the Child Protection System

- * We don't believe CPS will be overwhelmed by ban
- * Context of increased reporting of child abuse
- * In the long term there will be additional call i.t.o. prevention, early intervention and support
- * This should lower the demand for more expensive interventions
- * The CPS needs to be resourced and strengthened in general, not just in relation to CP
- * Cannot ignore the issue due to lack of resources; must redouble our advocacy i.t.o. resourcing


Slide 13



Context – Awareness and Education

- * What education and support measures do we recommend? Feasibility?
- * Suggested measures
 - Public Service Announcements: National and local media
 - National information pamphlet
 - Development of specific curriculum for schools
 - Mainstreamed into other curricula
 - Use family planning clinics and community health care facilities
 - Incorporate into the curriculum of social workers, teachers and health care workers

Slide 14

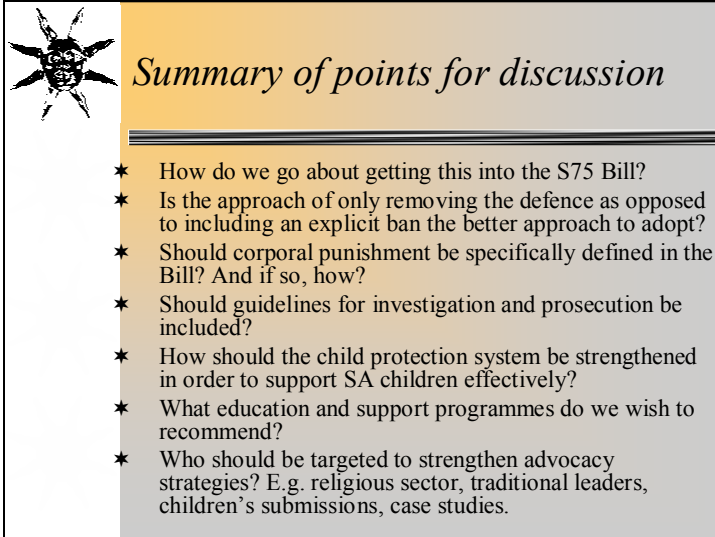


Context – Input from other sectors

- * We need religious institutions to make submissions supporting a ban
- * Traditional leaders who are in support of a ban?
- * Practitioners and families must make submissions based on the effectiveness of positive parenting (including case studies).
- * Children's groups must be asked to make submissions

Workshop report

Slide 15



Summary of points for discussion

- * How do we go about getting this into the S75 Bill?
- * Is the approach of only removing the defence as opposed to including an explicit ban the better approach to adopt?
- * Should corporal punishment be specifically defined in the Bill? And if so, how?
- * Should guidelines for investigation and prosecution be included?
- * How should the child protection system be strengthened in order to support SA children effectively?
- * What education and support programmes do we wish to recommend?
- * Who should be targeted to strengthen advocacy strategies? E.g. religious sector, traditional leaders, children's submissions, case studies.

2.5.2 Report back from group discussion

Present: Sam Waterhouse (RAPCAN), Joan Van Niekerk (Childline South Africa), Nokuku Sipuka (SASPCAN and UCARC), Judith Cohen (SAHRC), Prometheus Mabusa (Save the Children Sweden), Lucy Jamieson (Children's Institute), Nonceba Meyiwa (DICAG)

Others who are part of the sub-group but who were not able to attend the small group discussion: Daksha Kassan (CLC), Ulrika Sonesson (Save the Children Sweden), Keith Vermeulen (SACC), Ann Skelton (Child Litigation Project, University of Pretoria).

It was noted that many of the individuals mentioned above had met in a discussion on the legal position regarding corporal punishment earlier in the year.

Amendment to first Children's Bill (s75)

- Removing the common law defence of reasonable chastisement is a "national competency" amendment that should follow a s75 route in Parliament. How do we go about getting an amendment to the Bill that has already been passed by Parliament [B70D-2003]?

This was not discussed completely by the group and was briefly discussed by some members of the group at the end of the session. More discussion is needed.

Removing the common law defence of reasonable chastisement

- Is the approach of only removing the "defence of reasonable chastisement", as opposed to including an explicit ban, the better approach to adopt?

A decision was taken to remove the defence: "*The Common Law Defence of reasonable chastisement available to persons referred to in subsection (1) is hereby abolished*".

Workshop report

The placing of the clause was questioned, it was suggested that instead of inserting this as a sub-section (3) it should be at the end of this section.

Definition of corporal punishment

- Should corporal punishment be defined in the Bill – if so, how?

It was agreed not to get too specific in the definition. Lists are also not fully inclusive and thus there will be some interventions that fall outside of the definition. We agreed to use a broad definition with a lot of space for inclusivity. The words “humiliating” and “degrading” and “inhuman” should be used as these are in line with the Constitution.

Guidelines for prosecutors and social workers

- Should guidelines for investigation and prosecution be included to prevent unnecessary prosecution of parents?

We wish to prevent blocking the system with cases that do not require intervention but at the same time we need to ensure that children are protected from corporal punishment. A balance needs to be found.

Prosecution of parents should be considered as a last resort and only instituted when early intervention and prevention strategies have been tried and have failed. Perhaps guidelines will be placed in the regulations. Should routine referrals be to social workers and not to police or courts? This could help prevent cases being dealt with in the criminal justice system.

With regard to cases that do get to criminal court, conversions to children’s court inquiries should be encouraged in cases that warrant this.

Guidelines should be developed for the South African Police Services, the National Prosecuting Authority, and the Department of Social Development and should extend to all forms of humiliating and degrading punishment.

Psychological and emotional abuse is not referred to in the Protection chapter except in this clause. It should be stated that inappropriate forms of punishment are an abuse of children’s rights and should be dealt with as per the Protection chapter. We must also refer to the objectives of the Act that relate to the preservation of the family. So reports of inappropriate discipline of children must follow the normal child protection route, as any abuse of children’s rights. This will ensure that qualified and experienced persons will make decisions about which cases require further investigation.

Reports should be made to a social worker who can make decisions about the best course of action – referral to a programme and/or a criminal prosecution. It is essential not to trigger a court process automatically. As a first resort in appropriate cases, referral to prevention and early intervention services should be integrated into the section on appropriate discipline.

Workshop report

General

We must accept that the people who make decisions about the legislation may support the use of corporal punishment. We must appeal to those people in our submissions.

We should focus on the promotion of positive discipline as the overall objective of this section and focus on all forms of degrading and humiliating punishment rather than focus just on corporal punishment.

Recommendation for the new clause

Corporal punishment relates primarily to the prevention of and early intervention in physical and emotional abuse of children. We therefore feel that this section will be best housed within the chapter on Primary Prevention and Early Intervention.

In order to state the intention of the provision clearly, the heading should be changed from "Corporal Punishment" to "Promoting Appropriate Discipline of Children".

The current clause which states that: "...must respect to the fullest extent possible the child's right to physical integrity as conferred by section 12(1)(c) (d) and (e) of the Constitution", actually represents a limitation on the rights enshrined in the Constitution. Clauses 12(1)(d) and (e) are non-derogable rights; thus "the fullest extent possible" does not apply. This phrase must be removed from the clause.

Remove "who has control of a child" in 139 (1) and add "All" to person(s).

Change wording: "Every person must respect, promote and protect the child's right to..... (use the wording from the African Charter article 20 on domestic discipline)".

New wording suggested:

The insertion of a new clause; subsection (1)(c) to section 144 of the Bill to read:

Purpose of prevention and early intervention services or programmes

144. (1) Prevention and early intervention services or programmes must focus on:

- (a) Preserving a child's family structure;
- (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the wellbeing and best interests of their children;
- (c) promoting positive forms of discipline of children
- (d) establishing appropriate interpersonal relationships within the family;
- (e) promoting the well-being of children and the realisation of their full potential
- (f) etc.

Promotion of appropriate discipline of children

SXX. (1) Any persons, including a person who has parental responsibilities and rights in respect of a child must respect, promote and protect the child's right to physical and psychological integrity as conferred by section 12(1)(c),(d) and (e)

Workshop report

- and 12(2) of the Constitution in that no person shall infringe the child's right to be protected from all forms of violence from either public or private sources, torture and cruel, inhuman or degrading treatment of punishment.
- (2) Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.
 - (3) (a) No person may administer corporal punishment to a child at any school; child and youth care centre, partial care facility or shelter or drop-in centre.
(b) No foster parent may administer corporal punishment to a foster child/children within their care.
 - (4) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceeding is hereby abolished.
 - (5) The department must take all reasonable steps to ensure that –
 - (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country, and
 - (b) programmes promoting appropriate discipline at home and at school are available across the country
 - (6) Reports of persons referred to in subsection (1) who subject children to inappropriate forms of punishment must be dealt with as per section 155 of this Act in order to establish if the child is in need of care and protection.
 - (7) In light of section 2(a) of this Act which states that the objects of this Act are to promote the preservation and strengthening of families, persons referred to in subsection (6) must be referred to an early intervention programme contained within section 144(1) of this Act irrespective of the child being declared in need of care and protection.
 - (8) In cases of persons referred to in subsection (6) that are referred to criminal or children's court, the court must take cognisance of section 148 of this Act which allows for the court to order early intervention services.

Sub-group tasks and commitments

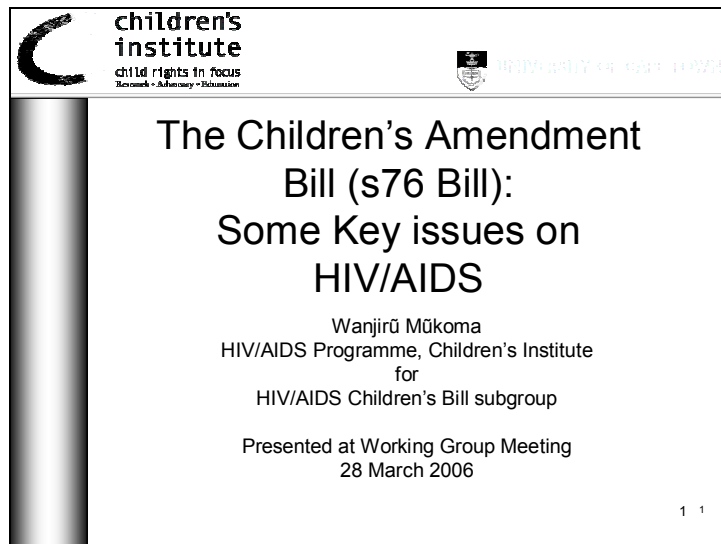
- Sam will pull the content of the discussion together and send out as an email.
- This discussion is ongoing and will continue. Please note that the above new clause is a first draft and comments for changes should be sent to Sam@rapcan.org.za by end of May 2006.
- The group must still develop a strategy to enlist supportive groups such as traditional leaders, religious leaders, parents and children.
- There will be a follow-up teleconference for the sub-group members in May.

Workshop report

2.6 HIV/AIDS

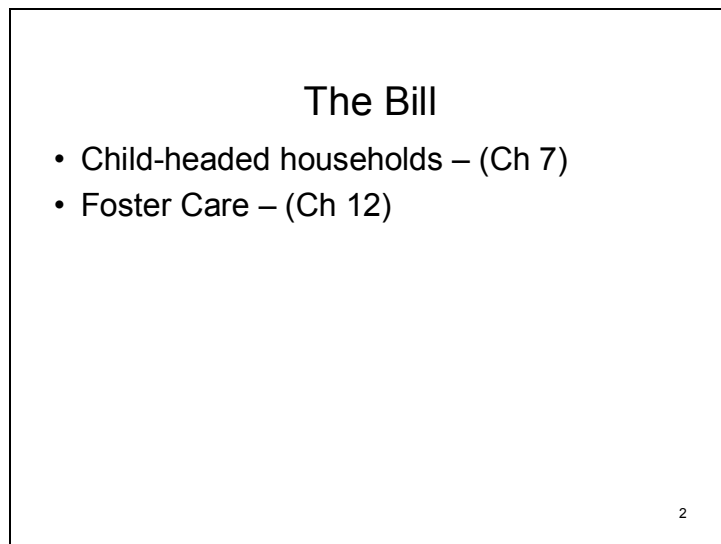
2.6.1 Presentation by Wanjirũ Mũkoma (Children's Institute, University of Cape Town)

Slide 1



The slide features a header with the 'children's institute' logo (a stylized 'C') and the text 'child rights in focus' and 'Research • Advocacy • Education'. To the right is the 'UNIVERSITY OF CAPE TOWN' logo. The main title is 'The Children's Amendment Bill (s76 Bill): Some Key issues on HIV/AIDS'. Below the title, it lists 'Wanjirũ Mũkoma', 'HIV/AIDS Programme, Children's Institute for HIV/AIDS Children's Bill subgroup', and 'Presented at Working Group Meeting 28 March 2006'. A small '1 1' is in the bottom right corner.

Slide 2



The slide is titled 'The Bill' and contains a bulleted list: '• Child-headed households – (Ch 7)' and '• Foster Care – (Ch 12)'. A small '2' is in the bottom right corner.

Workshop report

Slide 3

CHH provisions

- A provincial head of social development may recognise a household as child headed
- A CHH must function under general adult supervision designated by the children's court, NGO or an organ of the State determined by the provincial head of social development
- The organ of the state or NGO may collect, administer and be accountable for grants or other assistance for the CHH; may place a CHH in a cluster of foster care scheme; is accountable to the provincial DSD, but
- May not take any decisions without consulting the child at the head of the CHH and the children in the household, given age and maturity
- CHH may not be excluded from any aid, relief or other programme for poor households

3

Slide 4

CHH, the issues

- Unclear whether the provisions for CHH are only applicable to those households recognised as such by a provincial head of social development. Procedures for this need to be spelt out
- Definition of CHH?
 - Households in transition
 - Households headed by youth 18 – 21
- The provisions are limited to facilitating access to social assistance grants with no mention of other forms of support
- Responsibilities and accountability of supervising adults or NGOs
- Inclusion in a national policy framework or equivalent of intersectoral strategy for identifying, assisting and promoting the best interests of children in CHH

4

Slide 5

Foster Care: the provisions

- A child is in foster care if placed in the care of a person other than the parent or guardian
- Excludes the placement of a child in court-ordered kinship care; temporary safe care; in the care of a child/youth centre
- Purpose
 - Protect, nurture, support children

5

Workshop report

Slide 6

Foster care, the issues (1)

- **Inequity**
 - Foster Care Grant (FCG) is > Child Support Grant (CSG)
 - Inequitable for the State to provide greater financial support to poor relatives or other adults to care for children without providing adequate and equal support to biological parents living in poverty

6

Slide 7

Foster Care, the issues (2)

- **Foster care vs. poverty alleviation**
 - Children and caregivers are tied into a labour-intensive, surveillance and costly child protection system – every two years.

7

Slide 8

Foster Care, the issues (3)

- **Dilution of child protection**
- **Heavy social worker case loads**
 - No. of children newly orphaned in 2004 ≈ 250 000.
 - No. of children in foster care by Sept 2004 ≈ 236 000, i.e. less than number of newly orphaned children who would have qualified in 2004
 - **An poverty alleviation approach relying on FCG limits number of beneficiaries who benefit**
 - **Foster care system is intended for child protection. Using it as poverty alleviation detracts from this**

8

Workshop report

Slide 9

Foster Care, the issues (4)

- **Inaccurate assumptions about the situation of orphans**
 - Majority of orphaned children have some form of adult care without State intervention/ incentives
 - Foster care challenges normalised child care practice for majority of the children in SA, where they move between caregivers

9

Slide 10

Foster Care, the issues (5)

- **Putting children at risk**
 - Because FCG > CSG, increases the vulnerability of orphaned children by directly linking them to scarce resources
 - Distinguish between 'social services' and 'poverty alleviation' so as not to create a situation where services are used as a source of income. Strengthen foster care to address protection of children

10

Slide 11

Foster Care, the issues (6)

- Retain provisions for foster care as a placement option for children legally 'in need of care'
- Remove provisions for court-ordered kinship care as a placement option for children legally 'in need of care'

11

Workshop report

Slide 12

Foster Care, the issues (7)

- Implement a universal non-means tested CSG:
 - up to 18 yrs – in progress
 - To every child
 - Adjust amount with inflation
 - Tax the grant to those who can afford to maintain their own children

12

Slide 13

Other issues

- CHH where children inherit house with rates, debts
- CHH where child(ren) are themselves sick
- Support for children living with sick parents/guardians
- Children in alternate care

13

Slide 14

Acknowledgements

- Sonja Giese (ARK)
- Helen Meintjes (CI)
- Joan van Niekerk (Childline)
- Menaka Jayakody (CHain)
- Other members of the HIV/AIDS subgroup

14

Workshop report

2.6.2 Report back from group discussion

Present: Wanjirũ Mũkoma (Children's Institute), Megan Briedé (Child Welfare South Africa), Mira Dutschke (Children's Institute), Nyari Machingambi (Lawyers for Human Rights), Nthathi Mangologa (Naledi), Karen Allen (ACCESS), Michelle Govender (Aids Law Project), Menaka Jayakody (CHAiN – WC NACOSA), Oumie Zungu (Early Childhood Resource and Training Forum), and Yvonne Mokgotshane (Makhputhamata).

Others who are part of the sub-group but who were not able to attend the small group discussion: Yvonne Spain (CINDI), Helen Meintjes (Children's Institute), Namhla Mniki (Children's Institute), Michelle Govender (ALP), Cati Vadwa (CRC), Meera Levine (CRC).

Child-headed households (s136)

- It is unclear whether the provisions (and the support and services provided by the provisions) all apply to child-headed households, who are not recognised by the MEC for social development. If the provision of support and services is tied to a “recognition” process it is important that this recognition process is properly resourced, otherwise many child-headed households will not receive support because the department does not have the people power needed to recognise and assist child-headed households. We therefore need more detail on the process of “recognition”.
- The definition of child-headed households is quite rigid and does not relate to service responses on the ground. For instance, what about households in transition and households headed by 18 – 21-year olds? While a parent may be terminally ill, it does not mean they are not still holding parental rights and responsibilities. Child-headed households also exist for reasons other than HIV/AIDS.
- The responsibilities and accountability of supervising adults or NGOs need more discussion.
- The provisions appear limited to facilitating access to social assistance and grants with no mention of other forms of support such as counselling, property protection, and accessing water and electricity services. Designated adults should do more than just social assistance but also provide other elements of care.

Foster Care (s180 – 190) and other forms of support for children who have been orphaned or are in process of being orphaned, or who are caring for sick adults.

The small group was asked to consider the following questions during its deliberations:

- If the Child Support Grant (CSG) is increased to age 18 – how does this affect the debate about foster care and kinship care?
- Older siblings may be able to access Foster Child Grants (FCG). With age of majority going down from 21 to 18, 18 – 21-year-olds heading up households can become foster parents. They would need support. How do we support them?
- Should the court-ordered kinship care option be removed or retained?
- What are the linkages between the Bill and the Orphans and Vulnerable Children (OVC) policy?
- How can we provide support to grandparent-headed households and households with HIV-positive parents?

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Recommendations:

- Supportive measures for children living with sick parents or adults: the Bill needs to focus on preserving parenthood in the prevention chapter by adding a range of home-based care services in Chapter 8 - Primary Prevention and Early Intervention.
- Due to inequity between the amount of the FCG and CSG, families are using foster care as a poverty alleviation measure. Children and caregivers needing income support get locked into a system of expensive child protection. The use of FCG as poverty alleviation detracts from foster care as a provision for child protection, it is not reaching the need (236 000 new orphans in 2004 and total number of FCG beneficiaries in 2004 is 250 000). The government needs to distinguish between “social services and protection services” and “poverty alleviation”.

Not all orphans are children in need to care and protection. The FCG should be reserved for children in need of care and protection and who have been placed in foster care by the courts. A universal CSG should be used to support relatives looking after children.

Kinship care should not be administered by social workers but by other social service professionals such as child and youth care workers.

There needs to be a range of options for orphans and vulnerable children that enable OVCs to be dealt with outside of the court system and social work services. Poverty alleviation needs to be de-linked from the court system. Court-ordered kinship care is still relevant for children who have had to be removed from home and a family member has taken responsibility for that child.

It is essential to link children to a range of services – a more comprehensive package.

Different types of foster care options:

- Treatment options
- Kinship
- Young parents
- Cluster foster care

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Child and Youth Care Workers and Centres

2.7.1 Presentation by Zeni Thumbadoo (NACCW)

- Child and youth care services should be considered an essential service in an integrated system.
- Child and youth care work and child and youth care workers should be defined in the Bill.
- Shelters (for street children) should be re-classified as specialist child and youth care centres offering services to children on the streets.
- Drop-in centres will be offered by child and youth care centres as add-on services, or can be registered as stand-alone partial care facilities offering primary prevention and early intervention services.
- MECs should be obliged to do a regular analysis of the need for, and provision of services in their province.
- There should be a range of specialist care in general facilities. Provision should be made for children with disabilities by creating an enabling environment in all centres.
- Clarity is needed on funding obligations for children with psychiatric illnesses and mental impairments.
- Funding should be changed from a per capita allocation to a programme-based allocation.
- More models of primary prevention and early intervention services should be incorporated, including outreach programmes.
- Child and youth care centre managers must be skilled social service professionals with child and youth care training.
- Procedural guidelines should be drafted to assist centres to meet norms and standards.
- The Bill should improve integrated service delivery in the sector, and the uniqueness of child and youth care workers to these integration efforts needs to be brought out more.
- Concerns were raised that child and youth care workers might not be taken into account enough in the costing process. This should be checked when the report is released.

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2.7.2 Report back from group discussion

Present: Zeni Thumbadoo (NACCW), Petronella Linders (National Youth Commission), Wendy Linders (National Youth Commission), Thulani Nzimande (NASC), Paula Proudlock (Children's Institute, University of Cape Town).

Others who are part of the sub-group but who were not able to attend the small group discussion: Merle Allsopp (NACCW); Donald Nghonyama (NACCW); Ann Skelton (Centre for Child Law, Wits).

Definitions (s1)

The Bill needs a definition of “child and youth care worker” and “child and youth care work”.

Definition of child and youth care centre (s191)

- It is important that centres be obliged to include a therapeutic programme *and* an outreach programmes (e.g. holiday programmes and week-end programmes).

Furthermore, to ensure the provision of therapeutic and outreach programmes at centres, funding should be on a programmatic basis, not a per capita basis as is currently happening.

The definition should reflect these two points. Is the definition section inclusive enough or too focused on the residential care component?

- What about children leaving care at age 18 – is definition inclusive enough to place an obligation on centres to plan for and provide “leaving care programmes” and an obligation on the Department of Social Development to fund “leaving care programmes”? (e.g. after-care programmes/independent living programmes). In order to create clarity on this issue, we recommend that “leaving care” programmes should be included in the list in sub-section 2.²
- We recommend that the chapter should include shelters as one of the categories of child and youth care centres. Shelters should not be relegated to a separate chapter.

We therefore need to recommend that in section 191(1)(b), the exclusion of shelters from the definition of Child and Youth Care Centres is deleted and that a sub-category of programme is added to sub-section (2), namely programmes for “*the reception and temporary safe care of children of the street*”. Sub-category 2(a) will cover the centres and programmes which provide for permanent (as opposed to temporary) care for children off the street. If the Department of Social Development does not agree with adding this category, then category (f) should cover it.

² The National Youth Commission is developing a “Youth Service” programme (Youth Development Framework). NACCW should liaise with Youth Commission to see whether the Youth Service programme and Leaving Care programmes could be better linked.

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- The way the definition is currently structured, it creates the impression that children with disabilities need residential care because of their disabilities. The definition needs to reflect that children with disabilities need care because they are found to be “children in need of care and protection”, not because they are disabled. The specific listing in sub-section (3) in relation to children with disabilities creates this latter impression. This sparked off a discussion as to whether all centres should be obliged to ensure an enabling environment for the care of children with disabilities. The same question applies to children with HIV or children with specific therapeutic needs, e.g. children with drug dependency. The debate was not resolved. One option would be to remove sub-section 3(a) completely, and place a general obligation on all centres (or a sufficient number per province, with an imperative to scale up to all centres) to provide an enabling environment.
- We also need to remove “physical and mental” in 3(a) as this terminology is outdated and does not relate to the terminology used in the s75 Bill.
- Children with psychiatric disabilities/illnesses and traumatised children verging on psychiatric illness: A discussion arose as to which department is responsible for providing residential care for children who have been found to be “children in need of care and protection” and who suffer from a mental health problem. Sometimes these children end up in mental institutions under the Department of Health and sometimes in Child and Youth Care Centres under the Department of Social Development. The Department of Health institutions are adult-oriented and children do not always receive appropriate care as a result. Programmes providing for children with mental illnesses are costly and we need to obtain clarity as to which Department is going to provide and fund such programmes and centres. The same question arises for centres providing care for children who are HIV positive. These centres are sometimes considered as hospices and funded by Department of Health. Others are considered as Child and Youth Care Centres and funded by Department of Social Development.

We need to promote the inter-departmental approach and other departments contributing on an economical basis. Check whether the Mental Health Act or the Health Act specifies whether the Department of Health is responsible for this area. If not, then there is a legislative gap which the Children’s Bill needs to fill. If there is a gap, we could recommend that sub-category 2(h) be amended to read: “The reception of children with behavioural, emotional and psychiatric difficulties.”

- It is also not clear why the provision of programmes for children with drug dependency is listed in sub-category 3 as a “may”. We recommend that it be included in the list in sub-section 2 as one of the programmes that a centre can offer and get funding for. We need to explore here the interaction with the Mental Health Act and the Drug Dependency Act to see how they relate to the Children’s Bill.

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Strategies to ensure sufficient provision of child and youth care centres (s192)

- We need a provision which places an obligation on Department of Social Development to ensure adequate provision for children with disabilities and chronic illnesses by progressively³ creating enabling environments in all child and youth care centres.

We could ask for the insertion of a sub-section (3): “The Minister and MECs must include in their strategies a plan for ensuring that a sufficient number of centres take the necessary measures to enable access for children with disabilities and chronic illnesses (including HIV).”

- With regards to the problem of unregistered centres, we need to include an obligation on the MEC to do a needs-analysis in each province and an assessment of all registered and unregistered facilities in order to plan for an appropriate range, location and spread of child and youth care centres in the province. This plan should include reasonable timeframes for the assessment, transformation or closure of unregistered child and youth care centres. Its important that we promote the option of transformation and not just registration or closure. Certain unregistered centres could be supported to transform into drop-in centres or primary prevention programmes instead of being closed down. Others would need to be supported to register and some would need to be closed down.

Notices of enforcements (s198)

- This section is where we need to discuss the informal children’s home problem and ask for a process to deal with the problem. The Bill can be used as a vehicle to place an obligation on the department to deal with the problem now and continuously in future. S205 and 171 are also important here to ensure that transfers of children are properly managed if centres are to be closed.

Section 198(1)(a) should place an obligation on the MEC to deal with unregistered homes, i.e. they must either close, transform or register them but they should not be given a discretion to continue to turn a blind eye. “May” should therefore be replaced with “must”.

The section should also include timeframes and processes for assessing existing facilities and un-registered facilities and making decisions about registration, amalgamation, transformation or closure.

Insert a provision which allows the Department of Social Development to instruct centres to transform into a primary prevention programme or a drop-in centre instead of only listing the two options of closure or registration in 198(1)(a) and (b). The Bill should also place an obligation on the Department of Social Development to fund the transformation towards a different programme (non-residential) or to enable the centre to register as a child and youth care centre. At the moment the department tends to ask established centres/organisations to help unregistered centres to register or transform but then doesn’t provide any financial support to do the work but instead expects established centres/organisations to foot the bill.

³ But we don’t want this provision to give the department a permanent excuse based on availability of finances.

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We also need to provide for a possibility of immediate closure if children are at risk. Section 212(v) is too complicated for immediate closures. A procedure for emergency risk assessment and closure should be included with sufficient safeguards for the rights of the children in the centre.

Consideration of applications (s200)

S200(4) provides that a centre that wants to register needs to get a designated social worker to write a report. We should make sure that this is not any social worker but only those with expertise on the issue of child and youth care centres. We should also allow for designated child and youth care workers to write such reports.

Cancellation of registration (s203)

“May” should be changed to “must”.

Management Board (s207)

- The Bill currently does not require board members to be appropriately skilled or trained. If they are not trained and skilled then they do not have the necessary capacity to direct the home.
- State-run child and youth care centres do not have Boards of management. However, definition of child and youth care centres in s191 is inclusive of government facilities. But we should specify somewhere that state facilities need Boards of management because currently they don't have.
- We should also add a requirement in 207(3) that the Board should also be representative of the children in the home – i.e. if the home has children with disabilities or HIV-positive children, the Board needs people who can represent those interests. It should not only be about geographical representation.

Managers and staff of centres (s208)

- The Bill should specify that the manager must be a social service professional or other person with the necessary qualification and experience as specified in regulations.
- A question arose in relation to government-run homes versus NGO-run homes. How will public service regulations affect staff qualification requirements? We would need to make the Public Service Act subject to this Act.
- In s208(b), we need to specify that staff should represent the diversity of the children, e.g. amend 1(b) to read: “A sufficient number of “child and youth care” and other appropriate persons representative of the diversity of the children (language, culture, religion, disability).“

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Minimum norms and standards (s209)

Minimum standards should be translated into practice guidelines that hold facilities accountable for service delivery.

Regulations (s212)

- 212 (n)
Add subsection (vi) that the Board of Management must be trained and that this training should include diversity training.
- 212 (h)
Norms and standards must specify that homes have to operationalise the norms and standards into procedural manuals. Norms and standards must include implementation guidelines and procedures, e.g. obligations to develop codes of conduct, and plans for creating enabling environments for the disabled.

2.7 Children on the Street

2.8.1 Presentation by Thulani Nzimande (NASC) and Prinslean Mahery (Children's Institute, University of Cape Town)

- The chapter dealing with children on the streets needs to be made part of the Child and Youth Care Centre chapter.
- Children on the street are just like other children. They do not want to be called 'street children' – we should treat them the same.
- The definition of shelters is restrictive. It should reflect that shelters need to provide programmes and services – in fact they already do. Thus the definition needs to be expanded.
- Drop-in centres are not just for children living on the street but all categories of vulnerable children. Life-skills programmes, homework help, counselling, assistance with accessing grants is provided at drop-in centres. Drop-in centres should therefore be put into the Primary Prevention and Early Intervention chapter as that is the purpose of drop-in centres). Some drop-in centres are also providing ECD services. It is important that we distinguish between shelters and drop-in centres as they are quite different.
- Education for children living on the streets is a big concern, especially when the children are past school-starting age, for example they are nine already and have never been in school. Does the education policy cater for them? Does an inclusive education policy exist? The problem of over-age learners is something that needs to be addressed.
- It is important to emphasise the role of municipalities with regards to children on the streets. However, though municipalities need to be given responsibilities in this regard, municipalities do not currently care about these children. Municipalities appear mostly interested in removing the children from the streets as they view the children as a crime problem. That's why monitoring and service provisioning for children on the street should remain the responsibility of the provincial governments and should not be given to local governments.
- Important point: when children living on the street arrive at shelters, they are processed by social workers – the Form 4s procedure. This process tends to take longer but the perception that the children are not "committed" (processed through the protection system by social workers and the courts) is incorrect.

2.8.2 Report back from group discussion

Present: Thulani Nzimande (NASC), Prinslean Mahery (Children's Institute), Lucy Jamieson (Children's Institute), Judith Cohen (SAHRC), and Annette Cockburn (independent expert).

Others who are part of the sub-group but who were not able to attend the small group discussion: Lenie Galloway (Child Welfare South Africa), Jill Kruger (KZNASC), Nokuthula Magudulela (ChildrenFirst), Sam Mokgopa (Kidshaven), Darkie Mpikwa (Siyakhana Outreach programme and Girlsnet), Noreen Ramsden (CRC), Moira Simpson (GASC), Renée Rossouw (Western Cape Street Children's Forum), Beth Thomas (NASC).

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Incorporating shelters into child and youth care centres

- The whole issue of registering shelters as child and youth care centres were discussed. If shelters are moved to Child and Youth Care Centres chapter, then the provision in Chapter 13 regulating absconders should be amended to ensure that it does not apply to children on the streets who tend to attend the facility voluntarily.
- It was also noted that incorporating shelters into child and youth care centres would ensure that shelters are sufficiently funded.

Definition of 'street child' (s1)

- Defining children on the streets as 'street children' is labelling them in a negative way. It is degrading for these children and they are marginalised. The children themselves don't want to be called 'street-children'. The group considered the possibility of calling them 'children in need of care and protection'. It was recommended that all references in the Bill to 'street children' should be removed.

The following questions came up in the discussion: Why would we want a definition of street children in the first place? But how do we categories them? A child who is on the street is a child in need of care in section 150 of the Bill. Are we going to create vulnerability if we take that definition out? Realistically we will never get rid of the name 'street children'. Why are adults called "homeless" and children on the street called 'street children'? What's the international thinking on this?

It was decided that we would take the issue back to the constituency and see what they say. Furthermore, the Bill can refer to services for children who are on the street but their basic category is children in need of care. The sector universally accepts that children are categorised as children living or begging on the street. We can be pioneers for removing the label of 'street child'.

Drop-in centres

- When children go to a drop-in centre, the staff there should be able to assess them and then refer them to for example a child and youth care centre. It was noted that, in some places, drop-in centres are registered and others are not. What kind of implications does this inconsistency have?
- It was recommended that drop-in centres should also have the duty to assess children making use of the facility and programmes. On the question of what happens when a child goes in and out of the facility, it was clarified that, within three months, the child has either settled or he/she is gone for good. The three months is enough time to do the investigation and assess the child. After the assessment, the child should be referred to a more permanent residential facility like a child and youth care centre. It was felt that there should be a level of regulation.
- It was ultimately concluded that drop-in centres could also be removed from Chapter 14 and can be incorporated into chapters on Partial care or Early Intervention and Prevention, or it could be one of the adD-on services provided by the Child and Youth Care Centres chapter in terms of section 191(3)(c) of the Bill. The question is thus whether we need to redefine a drop-in centre as a partial care facility that offers primary intervention and early intervention services?

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Registration (s215)

The questions related to the issue of registration were whether one has to register the service/programme, or the centre? Furthermore do we want to define the services offered under primary intervention and have the facility registered under partial care? It was concluded that we have to make a decision on this still and that we should be moving to the community development approach. It was however noted that there will be some need for registration of the service and the facility because of the range of services that could be offered.

Children on the street in rural areas

Are there children living on the streets in rural areas? – Yes they do exist but they go to the towns. These children also require some counting and monitoring. The Bill as it stands does not effectively deal with these children.

Monitoring mechanism

The group considered whether there are sufficient monitoring mechanisms in the Child and Youth Care chapter? It was decided that there was. Another question considered was whether there are any specific programmes needed by children on the street that should be provided in the legislation? It was felt that all those programmes are covered in the chapter on Child and Youth Care Centres.

Education for children on the street

The reintegration of these children into the educational systems was seen as a matter for the Department of Education.

2.9 Children with Disabilities

2.9.1 Presentation by July Nkutha and Sue Philpott (DICAG)

To a large extent, disability is determined by the attitudes and behaviour of society, which do not take into account people with impairments. This means that children with disabilities are excluded simply because their specific needs and requirements are not considered in policy formulation and service provision. It is critical that definitions of disability take into account the barriers that are created by *environmental factors*, rather than focusing only on those resulting from an impairment.⁴ (For example, the assumption may be made that a child with an intellectual impairment "has nothing to say", and cannot contribute to a discussion on issues that affect his/her life. This assumption is based on a discriminatory attitude and prejudice, in which the ability of the child to participate meaningfully is completely under-estimated, because the focus is on the *impairment* of the child). Disability is a function of the economic, political, cultural and social barriers encountered by people with impairments. Numerous environmental factors create barriers, contributing to the exclusion and disablement of persons with impairments, thereby violating their human rights.

(a) Adopting an inclusive approach

It is sometimes argued that inclusion means "treating all children the same". The problem with this arises when one recognises that the playing fields are not level, and without certain provisions being made to ensure that all children can participate equally.

*Inclusion does not mean that disabled children should just slot into an unchanging society. This denies both disability and difference. It is about disabled children having their needs met in an equitable and culturally-sensitive manner and their rights protected in an adapting society. Most importantly, disabled people (both adults and children), should be involved in shaping an inclusive society.*⁵

Inclusion and disability-focused programmes are not mutually exclusive, they can happen together in a twin-track approach.⁶ The two elements of this strategy are:

(i) Making disability a cross-cutting issue, and by so doing remove attitudinal, environmental and institutional barriers that discriminate against disabled children, and prevent them from benefiting from a particular service. This needs to be the approach of *every government department* that works with communities, as disabled children are present in all communities. One of the key principles here is that of *universal design and universal access*.⁷ Another principle is training and

⁴ This is often described in terms of the 'medical model' (with the 'defective individual' defined as the problem) vs the 'social model' (with the problem defined as the barriers created by a 'disabling world').

⁵ Based on: Save the Children UK (2000) *Community based rehabilitation. Global review and seminar report*. London: SCF UK.

⁶ This is an approach advocated by the Department for International Development (DFID) (Disability, poverty and development, February 2000).

⁷ This considers the potential ability of all people, maximises the benefits of products and environments to the largest number of people who wish to participate and emphasises the creation of products and environments that everyone can use, regardless of age, physique and degree of disability (Seirlis 2002).

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awareness-raising among staff to ensure that they have the necessary skills and appropriate attitudes in dealing with people with disabilities.

This means that specific mechanisms need to be put in place to ensure that children with disabilities and chronic illnesses have equal access to services, like all other children. Aspects of accessibility include the following:

- physical accessibility (e.g. provision of ramps and lifts)
- financial accessibility (e.g. ensuring that services and the transport thereto are affordable for children with disabilities and chronic illnesses)
- attitudinal accessibility (e.g. attitudes of administration staff and service providers towards children with disabilities and chronic illnesses)
- access to information (This is especially important for children with hearing and visual impairments. In addition it is critical that all caregivers and service providers working with children with disabilities and chronic illnesses have the necessary information about different conditions.)

(ii) The second element of the strategy is to support disability-specific programmes and advocacy work that has a primary goal of promoting the rights of children with disabilities and chronic illnesses. Examples of such programmes include community-based rehabilitation, support to self-help groups of parents, disabled children and adults and inclusive education programmes.

(b) Establishing mechanisms for monitoring and evaluation

Given the history of disabled children's marginalisation and exclusion from being given consideration in service provision, it is essential that specific mechanisms to monitor the extent to which inclusion is being implemented are developed. Indicators should be child-rights based, and take into account social and economic aspects of participation and inclusion of children with disabilities and chronic illnesses. Each component of service provision to children (e.g. health, education, social security, courts) needs to be able to account for what has been done to ensure that they are also accessible for children with disabilities and chronic illnesses.

2.9.2 Report back from group discussion

Present: July Nkutha (DICAG), Sue Philpott (DART), Petronella Linders (National Youth Commission), Wendy Linders (National Youth Commission), Sandra Ambrose (DICAG), Nonceba Meyiwa (DICAG).

Chapter 5 and 6 – Partial Care and Early Childhood Development

Opportunities for ECD are critical for young children with disabilities or chronic illnesses who (more than many others) require every opportunity for stimulation in order to develop basic communication, mobility and life skills. Particular focus needs to be placed on children with visual or hearing impairments, as well as those who have multiple disabilities. Children with intellectual disabilities need intense stimulation during their early stages of development, as this is when brain development is at its greatest.

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It is essential that the principles of ECD be consistent with those of the Education White Paper 6⁸, so that an *inclusive approach* to ECD is advocated and that there is a focus on the removal of barriers to learning. It is also recommended that the ECD sector specifically plays a role in terms of:

- *Promotion* of children's well-being, including nutritional support and *prevention* of illnesses, secondary disabilities and injuries. Prevention in early childhood is particularly important, as this is a stage at which much potential damage can be averted.
- *Early identification and intervention* for children with disabilities and chronic illnesses.
- Appropriate *referral* of children identified with health or social needs.

Currently in the Children's Bill⁹, there is no reference to appropriate norms and standards for ECD facilities to cater for children with disabilities and chronic illnesses. (For example the physical adaptations that may need to be made, or specialised seating provided). There is also no reference made to the appropriate training of ECD personnel to ensure that they are suitably trained and equipped to cater for children's diverse needs (e.g. first aid training, feeding children through feeding tubes, comforting a child whose parent has passed away).

Recognition and support needs to be given to parents of children with disabilities and chronic illnesses who run home-based informal stimulation centres. These parents need to be given training and financial support so that the centres can be registered and further developed in partnership with the Department of Social Development, Health and/or Education. Given that registration fees often restrict access to ECD, fees should not be regarded as the norm in deeply impoverished communities, which are characterised by unemployment and the impact of AIDS.¹⁰ Funding policies need to include ECD sites that cater for children with a range of impairment types, as well as NGOs that provide critical support (through training and resources) to centres run by parents.

It is recommended that there be a comprehensive national strategy aimed at securing an inclusive ECD system which is properly resourced, co-ordinated and managed, as proposed by the South African Law Commission (SALC – now SALRC).¹¹

Chapter 7 – Protection of Children

Part 1 - Child protection system

Children with disabilities and chronic illnesses are particularly vulnerable to abuse of all kinds, including sexual abuse. At present many places of safety are not suitably equipped and personnel do not have the skills to care for a child with a disability or chronic illness.

Recommendations:

- Provision needs to be made for a child to report another child to be in need of care and protection.

⁸ Department of Education 2001

⁹ Children's Bill, Minister for Social Development August 2003

¹⁰ Submission to the Portfolio Committee on Social Development from the South African Congress for Early Childhood Development and Early Learning Resource Unit, 19 July 2004.

¹¹ Draft Children's Bill submitted to Minister for Social Development 2002: Chapter 7 s106A (1).

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- Regarding orders when a child is found to be in need of care and protection¹², the options for placement need to be accessible and suitable to provide the necessary support to children with disabilities and chronic illnesses. This includes foster care and temporary safe care facilities.
- Programmes that are disability-sensitive need to be developed to ensure the appropriate training of personnel working in the child protection system, so that they are able to deal effectively with disabled children who have been abused.

Chapter 8 – Prevention and Early Intervention Services

As many as 50% of disabilities are preventable and directly linked to poverty.¹³ Preventable causes of disabilities and chronic illnesses include poor nutrition, dangerous living conditions, limited access to vaccination programmes and to health and maternity care, motor vehicle accidents, poor hygiene, bad sanitation and inadequate information about the causes of different conditions. Prevention in early childhood is particularly important as this is the stage at which much potential damage can be averted and during which period the development and growth of the brain is at its greatest.

It is recommended that the Children's Bill make specific reference in Chapter 8 to programmes aimed at addressing the causes of disability and chronic illnesses among children. In addition, the use of developmental screening tools that are appropriate to the South African context and cultures need to be facilitated to ensure early detection of disability and chronic illness. Identification of a child at risk, or who already has a functional limitation, should be followed by referral to the necessary services to ensure early intervention.

It is important to emphasise that prevention and early intervention programmes need to focus on support of parents and caregivers. Parents of children with disabilities and chronic illnesses need particular support to assist them, in turn, to support their children.

There is a need for a comprehensive package of social services for children with disabilities.

An important mechanism for prevention and early identification is that of local government.

The SALC had recommended that municipalities be required to:

- keep statistics of children in the area (including children with disabilities and chronic illnesses);
- monitor their location and socio-economic conditions;
- conduct a needs analysis at least every three years;
- submit these statistics to provincial and local government; and
- use the statistics and needs analysis to budget for services, including access to basic nutrition, shelter, health care and social services.¹⁴

¹² Children's Bill, Minister for Social Development August 2003 Chapter 10 part 2: s156.

¹³ DFID (2000) Disability, Poverty and Development Issues series.

¹⁴ Draft Children's Bill submitted to Minister for Social Development 2002: Chapter 10 s 162(2).

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It is essential that data collected on service provision and up-take be disaggregated, thus indicating how particular groups (such as children with disabilities and chronic illnesses) benefit from specific interventions. (For example, it should be obligatory to report on the numbers of children with disabilities and chronic illnesses who have been immunized over a given period of time, or the number of adolescents with disabilities who have received counselling on HIV/AIDS.)

It is essential that information in available services is accessible for people with disabilities (information, physical access). It relates to the Equality Act and non-discrimination provisions in the United Nations Convention on the Rights of the Child and the Constitution.

Chapter 13 – Child and youth care centres

Recommendations are that:

- Provisions include accessibility of the environment, as well as provision of access to information (e.g. sign language interpreters) and services. (For example, children with psychiatric disabilities need to be counselled and treated by appropriately trained personnel. Particular sensitivity needs to be shown towards children with intellectual disabilities.)
- Provisions are made for the medical needs of children with chronic illnesses (such as the need for a child with epilepsy to receive regular medication).

APPENDICES

AGENDA: Children's Bill Working Group Workshop 28 – 29 March 2006

Venue: Cape Manor Sea Point

Day 1: Tuesday, 28 March 2006

Time	Topic	Presenter	Organisation
8.30 – 8.45	Welcome, introductions, expectations and agenda	Lucy Jamieson	Children's Institute, UCT
8.45 – 9.45	Update on the Section 75 and the Parliamentary Process	Lucy Jamieson and Paula Proudlock	Children's Institute, UCT
9.45 – 10.45	Will the Act give effect to children's rights? – an analytical framework	Mira Dutschke and Prinslean Mahery	Children's Institute, UCT
10.45 – 11.05	TEA		
Content Presentations and Discussion			
11.15 – 11.45	ECD	Eric Atmore	Centre for Early Childhood Development
11.45- 12.15	Primary Prevention	Nonkuku Sipuka	SASPCAN
12. 15 – 13.00	Protection (inc. foreign children)	Megan Briedé	Child Welfare SA
13.00 – 14.00	LUNCH		
14.00 – 14.30	Corporal Punishment	Sam Waterhouse	RAPCAN
14.30 -15.00	HIV/AIDS	Wanjirũ Mũkoma	Children's Institute, UCT
15.00 – 15.30	Child Youth Care	Zeni Thumbadoo	NACCW
15.30-16.00	TEA		
16.00 –16.30	Children on the Streets	Thulani Nzimande	NASC
	CLOSURE		
Evening Session 19.30	NCPR Adoption Social Work Report	Joan van Niekerk	Childline SA

Workshop report

Day 2: Wednesday, 29 March 2006

Time	Topic	Presenter	Facilitator
Content Presentations (Cont)			
8.30 – 9.00	Disability	July Nkutha	DICAG
Submission Drafting			
9.00 – 10.45	Submission drafting group: - Corporal Punishment - Protection - ECD - CYCC	-	Sam Waterhouse Megan Briedé Eric Atmore Zeni Thumbadoo
10.45 – 11.05	TEA		
11.05-12.00	Feedback		Lucy Jamieson
12.00 – 13.00	LUNCH		
13.00-14.45	Submission drafting group: - Prevention - HIV/AIDS - Disability - Children on the Streets		Nonkuku Sipuka Wanjirū Mūkoma Nonceba Meyiwa Thulani Nzimande
14.45 – 15.45	Feedback		Lucy Jamieson
15.45 – 16.30	CLOSURE and way forward	Lucy Jamieson	

Workshop report

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Children's Bill Working Group Workshop on the draft Children's Amendment Bill (s76)

Workshop report

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