



Submission on the Children's Amendment Bill

**Submitted to the Committee Coordinator
Western Cape Legislature
Provincial Committee on Social Development**

Date 20th September 2006

Submitted by Pamela Silolo - Tel: 762 5420 – email: traffick@molo.org.za

1. Introduction:

We welcome the opportunity afforded to ourselves to make this submission into one of the most important pieces of legislation dealing with regulations and proceedings concerning the rights, welfare, protection and care in the Children's Bill.

We note that this draft legislation will become one of the most important pieces of legislation addressing the needs of children in South Africa and elsewhere.

We see this Act as material in protecting the constitutional and universal rights of children, including Section 28 of the Bill of Rights. Thus the South African Constitution aims to protect children from neglect, maltreatment, abuse and degradation, provides for the right not to be treated or punished in a cruel, inhuman and degrading way, the right to be free from all forms of violence from either public or private sources, the right not to be tortured in any way and

provides that everyone has an inherent dignity and the right to have their dignity respected and protected.

Whilst we are concerned with all rights pertaining to children, for the purposes of this submission we wish to focus on the issue of **Protection of Children, Children in Alternative care and Foster Care.**

PROTECTION OF CHILDREN

The exploitation of children takes many forms and is not essentially included in the definition of abuse. We therefore propose the inclusion of "sexual exploited" in clause **105 (1)** where on personal observation, a person concludes that a child has been abused, to report the matter to the relevant authorities.

There is the underlying notion that people make the most frivolous reports to the authorities and these reports generally are not investigated as they, in terms of the relevant authorities, did not take place or are unfounded. We request that all reports made to the relevant authorities be assessed and investigated and the necessary steps be taken to eradicate the problem. We therefore propose the exclusion of clause **105 (5) (b)** as all reports made to the relevant authorities must be seen as truthful and a concern.

We, as the organization, do not condone corporal punishment. Currently in South Africa corporal punishment is banned as a punishment in the court system, in schools, in foster care settings and in other places of safety but may be used by parents only if the punishment is deemed to be reasonable and moderate chastisement. Reasonable and moderate chastisement will differ from family to family. We propose that the parent or household be included in clause **139 (3)** as part of people who should not administer corporal punishment in order that corporal punishment be abolished everywhere in South Africa as means of punishment. We also request the inclusion of a definition of corporal punishment in the Definition Clause in order that everyone is aware as to what corporal punishment is.

We commend the prohibition of the worst forms of child labor in terms of clause 141. Due to the experience of being a child laborer, these children are deprived of the most fundamental elements for their physical, psychological, and social well being and development and are not able to seek the support needed due to their poverty background. We therefore propose that the seizure of assets acquired through the use of labor in terms of clause **141 (3)** be disbursed to ensure compensation, restitution and recovery of the child labor victim.

CHILDREN IN ALTERNATIVE CARE

A child may abscond from the alternative care that he/she has been placed in. When such occurs, we second the notion that an inquiry as to why the child has absconded be held. The inquiry at present requires questioning the child to obtain reasons for his/her absconding as requested by clause **170 (6)**. We request that the relevant care giver also be questioned in order to obtain and understand the reasons for the child's behavior and absence from the alternative care. Once the Presiding Officer has listened to both consultations, he/she will then be able to make a conclusive decision as to the future placement of the specific child. This will prevent the child from being returned to the same institute while the problem that had caused the child to abscond, still persists or has not been addressed.

We further propose the inclusion of subsection 4 (e) in clause **171 (4)** which shall read "any child protection organization that may be working with the child". These are people who may have further insight on the child's problem and needs and may therefore be able to assist in the placement of the child.

FOSTER CARE

With regard to duration of kinship care orders and stable foster care placements we propose that the court issues an order which is a maximum of two years. Our motivation for this proposal is that there must be a continuous follow up on the child's well being. We therefore commend the provisions of clause 159 (1) (a) and propose the inclusion of the proposal stated above in clause **186 (1)**. We further propose that social worker supervision and assessment reports continue until the child attains majority. A number of elements may occur within the immediate placement that may change the lifestyle of the child concerned, therefore requiring a further placement. We therefore propose the exclusion of clause **186 (2)** in its entirety.

In general, a number of duties are imposed on the social workers as to the implementation of the Bill and we as an organization that works hand in hand with social workers are concerned about the implementation of such duties. From previous experiences, we are concerned that some of these duties will not be executed by the social workers and request that regulations be placed that enforce the social workers to perform their duties timeously and action that will occur should such duties not be performed. We are aware that, at present, there is a shortage of social workers to implement all the duties that they are required to perform but we at least request that social workers give their outmost best to the duties that they are able to perform in order to give effect to the laws of this country and to provide a positive change within our communities.

CONCLUSION

We acknowledge all International Laws and our Constitution regarding the rights of children and would appreciate it if our laws would conform to them regarding this issue in order to ensure a proper well being for our children.

We thank the Portfolio Committee on Social Development and hope that our recommendations shall be considered and incorporated into the Children's Bill to address the needs of children and protect their rights.