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SUBMISSION ON CHILDREN'S AMENDMENT BILL
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PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT

NATIONAL ASSEMBLY

INTRODUCTION

Child Welfare South Africa (CWSA) is the national coordinating body of 169 affiliate and branch members and 54 developing child welfare organisations working in urban, peri-urban and rural areas. CWSA member organisations render social services to thousands of children within the context of their families and communities, with the core purpose of protecting children against abuse, neglect and maltreatment. In doing this our members provide statutory interventions, alternative care that includes foster care, adoption, residential care, early childhood development, early intervention and prevention services as well as programmes for the care of children affected by HIV/AIDS. During 2005, members rendered services to 1.5 million children. On a monthly basis more than 108 000 children received social work intervention, of which 69 214 required statutory intervention in terms of the Child Care Act. These figures illustrate CWSA's strong position in rendering comments on the present Children's Bill.



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COMMENTS, CONCERNS AND RECOMMENDATIONS OF SPECIFIC CLAUSES

CHAPTER 7: CHILD PROTECTION

Provisioning Sections

Clause 106 (1)

Discussion

The Government of South Africa through our Constitution has made strides to ensure that the rights of all are protected. Society today faces a complexity of challenges that call for multi-pronged solutions that must be underpinned by the involvement of civil society. To this end it must be ensured that in determining legislation, that impacts on the most vulnerable in our society namely children, that civil society has full and active participation. This rights needs to be solidified in the Children's Bill. The development of norms and standards covering services to children need to include civil society partners who carry the majority of responsibility in implementing services

Clause 106 (1) reads:

*The Minister must determine national norms and standards by regulations after consultation with **interested persons**.*

The term "interested persons" is broad and could be perceived as interested persons within a specific sector only e.g. government. It is essential that the importance of inputs by civil society is openly acknowledged in the Bill, so to remain in line with the strides already made by the SA Government.

Recommendation

It is recommended that the clause read:

*The Minister must determine national norms and standards by regulations after consultation **within the government sector and civil society**.*

It is strongly felt that civil society must be included and mentioned specifically in the clause. The assumption that civil society would be involved in such processes should not be made.

Clause 106 (2)

Discussion

Norms and standards must be developed to include the full spectrum of child protection services. This would include prevention and early intervention, through statutory services including alternate care to rehabilitation and community based programmes. The service areas identified however in this clause do not include placement/statutory procedures.

Recommendation

It is recommended that an additional point be added to the present list – ***statutory procedures***

Clause 106 (3)

Discussion

In order to provide protection to the children of our country it is imperative that the child protection net be broadened especially within rural communities. At present the Department of Social Development in conjunction with NPOs such as CWSA member organisations are providing statutory (court) services aimed at the protection of children. The registration of additional child protection services is welcomed however cognizance needs to be taken regarding the standard of care provided by such services. We would not like to see a repeat of the open legislation of the Non Profit Organisations Act, which has resulted in many organisations being registered who are unable to offer the necessary care and protection to our children due to lack of experience and knowledge within the field as well as many which have developed due to personal incentives contradictory to the best interest of children. This section of the Children's Bill needs to ensure that the principle of the best interest of children is upheld by all organisations seeking designation as a child protection service.

This clause refers to the funding of designated child protection organisations and states:

Child protection services only qualifies for funding for money appropriated by a provincial legislature if it complies with the prescribed norms and standards contemplated in sub sections determined by the Minister in regulations.

It is agreed that in order to receive funding an organisation should be providing a service of a suitable standard. However it needs to be considered that in order to provide a high standard of service delivery adequate, effective and efficient financial and human resources are needed, hence the need for more funding.

Recommendation

The Constitution of South Africa Section 28 (1) (b) obligates the state not only to preserve families but to provide alternate care for children who do not live in a family environment; while Section 28 (1) (d) emphasizes the state's obligation to protect children from maltreatment, neglect, abuse or degradation. It is therefore evident that the overarching responsibility to protect children lies with the state. However, the NPO sector has plays a pivotal role in providing child protection services and therefore should be subsidized at a 100% rate for the rendering of statutory services.

Reporting of Child in Need of Care and Protection

Clause 110 (1)

Discussion

Clause 110 (1) of the Bill focuses on the reporting of suspected child abuse as well as procedures to be followed when reports are received. The section states that only specific categories of people are mandated to report child abuse. Within the context of South Africa where incidents of child abuse are high it may be argued that the reporting of child abuse should be a community responsibility and not limited to specific categories of people. Mandatory reporting however is not a straightforward legal solution to child abuse and needs to be considered carefully. The issue of reporting protocols between civil society and significant role players, the response system to reports, the resources available to the system and the services presently available to children and families before and after reporting are equally as important. Further across the board mandatory reporting would divert scarce resources away from programmes delivering assistance to families and "at risk" children. In considering the present South African context CWSA supports mandatory reporting for specific categories of people only.

Clause 110 (1) of the Bill identifies these specific categories of people mandated to report child abuse. The section provides an extensive list of people most likely to come into regular contact with children and states:

Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health

*practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on reasonable grounds **concludes** that a child has been abused in a manner causing physical injury, sexual abused or deliberately neglected, **if it is in the best interest of the child concerned**, must report that conclusion to a designated child protection organisation or the department of social development.*

Concerns arise regarding the term '**reasonable grounds concludes**'. This term implies that before reporting child abuse the above category of people would have conducted their own investigation into a child's situation and drawn a particular conclusion. The majority of the people identified in this clause do not have the necessary knowledge or experience to conduct such investigations, but should rather be encouraged to report suspected child abuse to those professionals working within this specialised field. It is therefore proposed that terms such as on "reasonable grounds **suspects**" be used.

This clause is further problematic due to the insertion of the phrase "**if it is in the best interest of the child concerned**". Again this clause assumes that the aforementioned people all have the necessary knowledge and skills to make such a judgment. Further, this phrase is contradictory to mandatory report and the use of the word "must" as it allows for the aforementioned persons to not report based on their personal view that it may not be in the best interest of the child. A rudimentary example of this would be a person becoming aware that a father is sexually abusing his child. The father is the sole breadwinner. Reporting the matter creates a moral dilemma as the father would be arrested and his ability to provide for the family compromised. It could be reasoned that to report would throw the family into poverty and possibly result in mother and child being destitute. Under these circumstances it could be argued that reporting would not be in the best interest of the child.

We would therefore propose that this statement be reworded and that all suspicions of abuse should be reported to a professional with the necessary skills and experience to make a conclusion as to the best interest of the child.

Recommendation

Clause 110 (1) should therefore read:

*Any teacher, medical practitioner, labour inspector or police official who on reasonable grounds **suspects** that a child has been abused in a manner causing physical injury, sexual abused or deliberately neglected, must report that conclusion to a designated child protection organisation or the department of social development.*

Clause 110 (5) (d)

Discussion

Clause 110 (5) of the Bill focuses on the procedure to be followed on receiving a report of suspected child abuse, neglect or exploitation. Concern however is present with regards to (5) (d) which identifies the role of the social workers once it has been established that a child is in need of protection. The clause reads:

(d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of the Act for the protection of the child.

It is important, that in holding up the best interest of the child standard a Social Worker investigating a report of abuse need to have the scope to decide if statutory proceedings are necessary. A Social Worker must investigate and assess all reports of suspected abuse and together with the child and family concerned develop plans and interventions that would best provide for the long term care and protection. Not all cases of child abuse should be taken through the court. For example a social worker may receive a report of physical abuse. Upon investigation it becomes evident that the child has been inappropriately beaten. The investigation further reveals that the child lives alone with his mother and appears to have attention deficit disorder, resulting in unmanageable behaviours. Further, the mother who appears highly stressed and to be misusing alcohol as a means to deal with high stress levels. As the clause stands this mother should be taken through the court system. This is a punitive approach and would serve to alienate the mother, possibly resulting in a child being placed in alternate care. Alternatively, the Social Worker could counsel the family and using possible statutory intervention as leverage aid the mother in seeking treatment. She could further assist the mother in having the child assessed and if necessary the child could receive medication. These interventions would reduce the stress within the home and empower the mother to care appropriately for her child. The family unit would be maintained and the best interest of the child standard upheld.

In summary, Social Workers must be given the allowance to use creative methods to assist children and families and not be restricted to the statutory system.

Additional Clause

Discussion

In the previous draft of the Children's Amendment Bill a clause was inserted concerning the reporting of sexual abuse by professionals conducting termination of pregnancy on a child. This section stated:

A medical practitioner or a registered midwife performing a termination of pregnancy on a child must, despite any provisions of the Choice on Termination of Pregnancy Act, 1996 requiring confidentiality, comply with subsection (1) if the pregnancy was due to sexual abuse of the child.

As the clause stands it raises the question regarding the reporting of statutory rape. Remaining in line with present law any child under the age of 16 years who undergoes a termination of pregnancy regardless of whether or not the pregnancy is a result of sexual abuse needs to be reported. Poverty and the effects of the HIV/AIDS pandemic have exposed children in South Africa to exploitation. Exploitation occurs not only in terms of survival sex (sex for money to buy basic necessities) by girl children but there is also an increased trend in the “sugar daddy” syndrome in many poor areas. This sees older men taking sexual advantage of young children in exchange for material goods. It is the responsibility of government and those involved in the child protection system to protect children against such violations. The need for reporting and investigating statutory rape is evident.

It should further be reported if a pregnancy is **suspected** to be the result of sexual abuse. All suspicions need to be reported for further investigation as often children who have been sexually abused are coerced by their abusers to deny abuse.

Recommendation

It is recommended that the clause be reinserted into the Bill. The presence of such a clause alerts medical professionals to the need to look more deeply into a child’s situation if they approach them for a termination. This would provide added protection to child victims of abuse and exploitation. It is however recommended that the clause be rephrased as such:

*A medical practitioner or a registered midwife performing a termination of pregnancy on a child must, despite any provisions of the Choice on Termination of Pregnancy Act, 1996 requiring confidentiality, comply with subsection (1) if the pregnancy is **suspected** to be due to sexual abuse of the child or statutory rape.*

Applications to Terminate or Suspend Parental Responsibilities and Rights

Clause 135

Introduction

The emotional and psychological well being of a child is rooted within a stable, safe and secure home environment. Key to any child protection legislation is establishing

permanency for children. Clause 135 places this need ahead of parental rights and confirms the rights of the child as paramount.

Discussion

CWSA strongly supports Clauses 135 (1) (2) (3) and (4) as they seek to place children first, as guided by the principles of the best interest of the child.

Recommendation

Clause 135 (1) (2) (3) and (4) remain unaltered.

Child Headed Households

Introduction

Child headed households are not a new phenomenon in South Africa but reports of such households has escalated due to the HIV/AIDS pandemic. It is evident that not all children heading households should be dealt with through traditional child protection practices such as foster care and that each specific family needs to receive a more individualistic approach. This has lead to **community based care options** in which community members or volunteers/employees of community-based organisations provide regular supervision and guidance to these households. This approach however is not without pitfalls. It can be argued that it is a grave injustice to burden a minor child with the responsibility of caring for siblings and is counter-productive to the aims of this Bill. With this stance it can be argued that we are compounding the abuse of children. By accepting the concept of “child headed households” we can be accused of giving up on children and not eliminating this phenomenon. Children and their needs are expected to adapt to the system and not visa versa. “The “**parentification process**” which refers to creating a parent out of a child to care for a parent or siblings, is associated with social isolation. Children assuming adult responsibility are deprived of nurturing, experience trauma, guilt and grief and terrible uncertainty about the future. They usually struggle without services and/or support systems in impoverished communities.

Discussion

Clause 136 (1) (c)

This clause seeks to define a household, which may be recognized as child headed and reads:

A child over the age of 15 years has assumed the role of caregiver in respect of the children in the household.

Considering the negative impact of the parentification process previously discussed it would be a great injustice to burden a minor child with this responsibility and counter-productive to the aims of this Bill as well as the standard of the best interest of the child. The most noticeable violation of this standard is the ability of a child to provide for the emotional and intellectual needs of their siblings. Regardless of a child's economic or cultural background, adolescence is a time complicated with physiological as well as emotional changes. This time of transition is further compounded when a child is placed in the role of a care-giver. It appears that by placing a child at the head of a household, regardless of age or maturity, the result is the sacrificing of that child's rights and needs ahead of the other children in the household. The question to ask then, is can a child who themselves is going through many changes accommodate the needs of their siblings. This is further compounded when we consider that in 2004 the General Household Survey indicated that 70% of orphans are 9 years and older. This indicates that these children are pre-teen and as time proceeds will need support and guidance to successfully navigate this delicate stage of development. For these purposes CWSA strongly supports the age limitation of 15 years for a child who may head a household.

Additional concerns are present regarding the pressure placed on a child heading a household in relation to financial sustainability. Although the Bill will assist these children in accessing Child Support Grants through the designation of an adult to assist the child, this grant is often inadequate to meet the needs of a household. This leads to children dropping out of school and seeking alternate sources of income. A study conducted by ECPAT International, 2006 reflected that there is a close link between HIV/AIDS and commercial sexual exploitation. Children at the head of a household are often drawn into prostitution as a means to provide for the family. We should be weary of viewing child headed households as a norm and rather see them as an exception, a situation that should ideally be avoided. All children have the right to the protection, care and love that can be provided within a family unit.

Recommendation

It is recommended that the age limit of 15 years as presently stated in this clause be maintained if we are to uphold the rights of children as stipulated in the Constitution.

Clause 136 (7)

Discussion

Clause 136 (7) states that:

*The child heading the household may take all day-to-day decisions relating to the household and the children in the household **as if that child was an adult care-giver.***

At no time should we be viewing a child at the head of a household in the same light as an adult care-giver. The Children's Act No.38 of 2005 has clear objects that focus on the end goal of child protection. The key objects of this act (Section 2) are to

(d) make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children, and/to

(f) strengthen and develop community structures which assist in providing care and protection for children and/to

(i) promote the protection, development and well-being of children.

The implementation of these objectives is the responsibility of government as stated in Section 4 (1) of the aforementioned Act. The above, points to the responsibility of our country through the government, with the assistance of civil society role players to make provision for the protection and care of children, not for children to take responsibility for caring for children.

Recommendation

It is recommended that the clause read:

The child heading the household may take all day-to-day decisions relating to the household and the children in the household.

CHAPTER 8: PREVENTION AND EARLY INTERVENTION SERVICES

Purpose of prevention and early intervention services or programmes

Introduction

Early intervention and prevention services are central to providing for the protection of children. Section 28(2) of the South African Constitution highlights that a child's best interests are of paramount importance in every matter concerning the child. To ensure that this obligation is met a comprehensive care package needs to be established in the Children's Bill. This does not only refer to statutory interventions to protect children but programmes and services that can prevent children at risk from moving further into the child protection system.

Clause 144 (1)

Discussion

This clause identifies the services or programmes that prevention and early intervention services must focus on. A detailed and comprehensive list is provided. The list however does not take cognizance of the need for emotional and psychological care and counseling for children and families traumatized due to violence, abuse or loss. In order to aid children in developing into emotionally healthy adults, the trauma needs to be dealt with. The impact of trauma is evident in many ways during childhood and adult life. One possible result of trauma is post traumatic stress disorder. Other results may include depression, substance abuse, generalized anxiety and bipolar disorder.

The General Household Survey, 2005 states that of the 3.4 million orphaned children in the world, 18% of these live in South Africa. Within this context, early intervention and prevention services need to place specific focus on this vulnerable group of children. This would include children living with terminally ill parents, children who themselves are terminally ill, orphans and children living in child headed households. Children affected by HIV/AIDS are at increased risk of losing opportunities for school, health care, growth, development, nutrition, shelter. Services and programmes need to be prioritized for this vulnerable group.

Recommendation

It is recommended that the following clauses be inserted in 144(1)

(i) assistance and support for families and children who have experienced trauma due to violence, abuse or loss.

(j) assistance and support for families and children who have experienced bereavement, as well as children residing within child headed households.

(k) assistance and support for families and children living with chronic illnesses.

Additional Discussion

A key object of the Children's Act No.38 of 2005 states that the law is to:

(f) protect children from discrimination, exploitation and any other physical, emotional, or moral harm or hazard.

The core aspects of this objective are covered in the prevention and early intervention purposes identified in the Bill, except for that of moral harm. Considering the recent debate about children of 12 years accessing contraception the issue of moral development comes to the forefront. Prevention services should therefore make provision for programmes focusing on moral growth and sexuality.

Recommendation

It is recommended that the following clause be inserted in 144(1)

(l) providing programmes focusing on moral growth and development

Provision of prevention and early intervention services

Clause 146 (1)

Discussion

Prevention and Early Intervention services should not be seen as a secondary service but as an essential service in ensuring the protection of children. Strong Prevention and Early Intervention services reduce the need for more costly statutory interventions. Once again the Children's Act 38 of 2005 values the importance of family care and of preserving family life. Prevention and Early Intervention services are key in ensuring that children are not separated from parents and drawn into the formal child protection system. For these reasons the government should ensure that

all necessary resources are provided for these services. They should be seen as a “must”, essential and not as a “maybe”.

Recommendation

It is recommended that the clause read as follow:

*The MEC for social development of a province **must**, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.*

Discussion

Schools as protection systems

In ensuring that children are protected through the use of prevention and early intervention it is essential that children at risk be identified. The education system through schools provides the optimal opportunity to identify these children, as it is often the environment in which most time is spent. Furthermore, the education system has an obligation to report suspicions of abuse as emphasized in Chapter 7, Clause 110 (1). The importance of this sector was highlighted in the SALRC draft of the Children’s Bill and now needs to be included in Section 76.

Recommendation

The insertion of following clause:

The principle of a public or private school must on a confidential basis –

(a) identify children who are frequently absent from school, where this may be due to their becoming involved in exploitative child labour or excessive household responsibilities, or to lack of appropriate family care;

(b) take all reasonable steps to assist them in returning to school or to discourage them from leaving school;

(c) submit the names and addresses of those children to an appropriate prevention or early intervention programme or alternative support service, or to the nearest office of the Department of Social Development for assistance.

CHAPTER 10: FOSTER CARE

Introduction

CWSA statistical data reflects that the number of children assisted between 2004 and 2005 increased by 16%. This increase was further reflected in a 33% increase in Children's Court Enquiries. Of the additional 33% of children dealt with through the Children's Court the majority was committed to family foster care placements. Poverty and HIV/AIDS appeared to play the largest role in the increase in children needing assistance. This was evident from the increase in reports of child neglect (35%), child abandonment (60%), children orphaned (35%), children affected by HIV/AIDS (45%) as well as a 220% increase in the provision of material assistance to destitute families and children. Alarming a decrease in the number of new reports of physical and sexual abuse was recorded. It is strongly felt that the decrease in reports was not due to a decrease in incidents of abuse but rather reflects the shifting of the needs of orphaned children to the forefront of the child protection system.

The impact of the increased number of orphaned and neglected as well as children affected by HIV/AIDS in need of care on our statutory system is growing. Social Worker caseloads are rapidly increasing as the foster care system becomes a means to find alternative care for orphaned children and those affected by poverty. Concerns however arise in that not all children orphaned can be defined to be a child in need of care in terms of our Child Care Act. Social Workers however are becoming hard pressed to aid these families by providing foster care as a means to provide financially for them. The difficulty arises in that our courts become blocked with such foster care cases reducing court and Social Worker time dedicated to children who may have experienced abuse and exploitation and are clearly children in need of care and protection as outlined in our law.

The social work profession is also facing a crisis. The high staff turnover resulting in organisations being crippled by vacancies along with the inability to attract social workers, the continued disparity between Government and NGO salaries and the differential provincial subsidies are causing havoc in service delivery.

Additional concerns remain in the ability of the South African economy to continue to support orphaned children through the foster care system. Will our country be able to continue to provide this level of financial support for the estimated orphans expected due to HIV/AIDS? In order to rebalance the system, alternate means to aiding children who are orphaned yet still have family support, need to be developed.

Discussion and Recommendations

In considering the South African context it is recommended that a clear distinction be drawn between foster care and court ordered kinship care.

Foster care could arise as a result of a Children's Court enquiry due to a child being found in need of care and protection in terms of Section 150 of the Children's Act 2005. The foster parent (care-giver) assigned the care of a child found in need of protection would not be a blood relative of the child and would have been recruited, screened and trained by a designated child protection organisation. Such placements would require supervision and support by a person assigned by the organisation as well as reunification services.

Court Ordered Kinship Care could arise as a result of a Children's Court enquiry due to suspected abuse, neglect, and exploitation of a child or when a child is orphaned and it can be shown that the child has no visible means of support. This could result in a legal placement with a family member, and would require reunification services as well as supervision and monitoring. A distinction between foster care and court ordered kinship care is drawn in order to establish differing administrative procedures in the obtaining of the court order.

In order to address the aforementioned concerns, Kinship Foster pertaining to orphaned and abandoned children who are identified as having no visible means of support should be simplified. Changes would need to be made in the manner in which such placements are undertaken so to reduce the high workloads of Social Workers and open the courts to dealing with other matters such as child abuse. Two suggested solutions are apparent:

(a) Kinship foster care for reasons of a child being orphaned could be investigated, processed and taken through court by Social Auxiliary Workers. Social workers would be required to co-sign all reports but would not need to be present at the court. Social Auxiliary Workers would further assume the responsibility of monitoring and supervising all placements; alternatively

(b) Kinship foster care for reasons of a child being orphaned could be investigated and processed by Social Workers who complete the necessary report and submit it to court. No court hearing is held at which the Social Worker or family need to be present. The Commissioner of Child Welfare would review these reports and make the necessary orders. Any queries and concerns regarding a report can result in a court hearing being called.

These options would reduce blockages at court as well as social worker caseloads freeing the system to deal more effectively with children in deleterious situations. It would also continue to allow for children who have been orphaned to receive foster care grants.

Additional Comment

In the long-term South Africa should move away from using the formal child protection system as a means to care for orphaned and vulnerable children. This move however could only occur if the short falls within the Social Security System are addressed.

Firstly, the child support grant only extends to children up to the age of 14 years. A caregiver's responsibility and a child's needs do not end at age 14 years. The present system negatively impacts on the ability of children to complete schooling and opens children especially those living in poverty to exploitation and abuse. Secondly, the large gap in the amount awarded for foster care in comparison to that of the child support grant needs to be reduced. The present gap is an incentive for family members of orphaned children to seek foster care placements even in the event that the children concerned have been in their care for many years without difficulty. If this gap was significantly reduced and the age limit for the child support grant was extended to 18 years orphaned children could remain in the care of their kin and access a suitable child support grant. These matters would then not be dealt with through the Children's Court. It can be postulated that a reduction in the amount of children receiving foster care grants would increase the pool of funds available to our child support grants allowing for an increase in this grant. More South African children, be they orphaned or not could be reached through such a system.

CHILD WELFARE SOUTH AFRICA