



Submission to the Portfolio Committee for Social Development

on the

Children's Act Amendment Bill (B19b-2006)

1. Introduction

The South African Catholic Bishops Conference welcomes this opportunity to engage with the Parliamentary Portfolio Committee on Social Development regarding the Children's Amendment Bill. The Bill in its present form is the product of a broad consultative process with many stakeholders in an effort to create legislation that is indeed in the 'Best Interests of the Child'. We note that many of the amendments recommended during the Public Hearings conducted by the National Council of Provinces have been incorporated in this revised Bill and we welcome this. However, we would like to make some additional comments believing that "The child should not only be placed high on the political agenda but at the centre of concern: The future of society depends on children and on how they are prepared for it, and their vulnerability calls for special protection".¹

The Family is of especial concern to the Catholic Church and we are pleased to see that the family and support for the family are the driving focus of this Bill. We are acutely aware that families face enormous challenges and pressures. Parenting is an increasingly difficult responsibility. Parents need encouragement, support and information. Families need help in nurturing children who will grow up to be healthy and productive adults. Children are vulnerable to physical abuse, domestic violence, substance abuse, breakdown of relationships, neglect, unsafe environments, food insecurity, gang activity, illness, stunting, low birth weight...all of which compromise the child's right to dignity, education, equality and safety. The Church believes that "Families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever".²

2. Partial Care

We note that Clause 78 (1) providing for the establishment and funding of partial care facilities is discretionary and recommend that the provision of such important services should be mandatory.

¹ Address by Archbishop Silvana Tomasi, the Holy See's permanent observer to the United Nations, delivered to the fourth session of the Human Rights Council, 23rd March 2007

² 'Charter of the Rights of the Family', Presented by the Holy See to All Persons, Institutions and Authorities Concerned with the Mission of the Family in Today's World, 22nd October 1983

While we welcome the norms and standards pertaining to partial care we note that Clause 79 (3) (a), while stating that partial care facilities for children with disabilities or chronic illnesses must be accessible to such children, does not make provision for the transportation of such children to and from these facilities. The lack of provision for transport seriously compromises the availability of these services to children in need of them. A further concern is that Clause 80 of the Bill relating to the registration of partial care facilities does not provide for alternative arrangements to be made for the children in the event of the closure of unregistered partial care facilities.

3. Early Childhood Development

While we welcome the provisions of Clause 91, the Catholic Church is concerned with the child from the moment of conception. “Children, both before and after birth, have the right to special protection and assistance, as do their mothers during pregnancy and for a reasonable period of time after childbirth”.³ Consequently we would urge the inclusion of a range of services for expectant mothers. These services could include nutritional support⁴, pre-natal education for parenting – including the effects of substance abuse, foetal alcohol syndrome, HIV/AIDS and post-natal care. Some disabilities and illnesses can be prevented if the necessary precautions and timely interventions take place.

Furthermore, these services must include appropriate services for those children with disabilities and special needs whatever these may be. “Children who are handicapped have the right to find in the home and the school an environment suitable to their human development”.⁵ We note that children with disabilities, chronic illnesses and special needs, who may experience developmental delays, may benefit considerably from extended enrolment at an Early Childhood Education Centre. We would therefore recommend that the definition of ECD be extended from conception to the age of nine. Clearly, the support and cooperation of the Department of Health is crucial.

Accordingly we particularly welcome Clause 94 (3) of Norms and Standards for Early Childhood Development which states that “Early childhood development programmes must be appropriate to the needs of the children to whom the services are provided, including children with disabilities, chronic illness and other special needs”. Disabled and chronically ill children are children first and have the right to equality and so have the right to the necessary services to realize these rights. “Inclusivity means that children are not identified by their problems but by their status as children”.⁶

We note that the provisioning clause, Clause 93 (1), is discretionary. We urge that it should be mandatory as these services are a critical component of comprehensive services for children. Furthermore, these programmes must be as accessible as possible and must be able to qualify for registration in terms of Clause 95.⁷

³ ‘Charter of the Rights of the Family’, Presented by the Holy See to All Persons, Institutions and Authorities Concerned with the Mission of the Family in Today’s World, 22nd October 1983.

⁴ During a recent visit to an Eastern Cape Hospital the Deputy Minister of Health, Nozizwe Madlala Routledge, expressed concern over the increasing number of underweight newborn babies-victims of HIV/AIDS, poverty and substance abuse. Christian Family Life, 22nd July 2007.

⁵ Charter of the Rights of the Family

⁶ ‘To Live a Decent Life: Bridging the Gaps’, a study of SACBC programmes in support of Orphans and Vulnerable Children in South Africa and Swaziland. Tessa Marcus for the SACBC, September 2004.

⁷ The requirements for registration must be realistic and take into account the community the centre serves and the appropriateness of the facilities for that community.

4. Child Protection System

We welcome the norms and standards concerning child protection as set out in Clause 106. While we note the provision for therapeutic programmes and support groups, we suggest that the provision of counselling services to provide for the emotional well-being of children should be included as well.

5. Child-headed Households

The plight of children in Child-Headed Households is of particular concern to the SACBC. Accordingly we welcome the recognition given to Child-headed Households and the need to support and protect the children in these households. The SACBC through its AIDS Office helps to support a number of initiatives in South Africa, Swaziland and Botswana addressing the needs of children infected and affected by the ravages of the HIV/AIDS pandemic.⁸ “Children, who are orphaned, by definition, have lost the person or people who are their protectors. In such a context, the challenge for any society is to find a way of replacing the loss of a ‘natural adult authority’ with a guardian or system of protection that secures the rights, entitlements and needs of children affected in this way”.⁹ Furthermore, “Orphans or children who are deprived of the assistance of their parents or guardians must receive particular protection on the part of society”.¹⁰

We welcome Clause 136 which sets out some measures to bring relief and general supervision for these vulnerable children. It is advisable that “Local communities should be involved in the identification of orphans and vulnerable children. They should also help identify appropriate caregivers and provide them with care and support”.¹¹ Caregivers should be given training in child development, financial administration and first aid. They should receive supervision, counselling and support from a designated organ of state or non-governmental organization.

The supervising adult or mentor as set out in Clause 136 (3) must assist in securing the statutory entitlements of the children in the household and serve as an adult service broker in the accessing of grants, relevant identification documentation, health care and treatment, schools, transportation. Furthermore, we feel that Clause 136 (3) (b) which stipulates that the supervising adult “may not supervise more than 12 children in child-headed households”, is unrealistically low and suggest that the number of children supervised should be determined by the supervising organ of state or non-governmental organization referred to in Clause 136 (2) (b).

We stress that Early Childhood Development Centres, Child and Youth Care Centres and ‘Drop-in centres’ must play an important role in the provision of supportive services to these households, for example, after school supervision, homework supervision, recreational education and the provision of balanced meals.¹²

⁸ In the study cited about 29 projects reflecting SACBC orphan related initiatives in seven of South Africa’s nine provinces and in one province of Swaziland.

⁹ ‘To Live a Decent Life: Bridging the Gaps’.

¹⁰ Charter of the Rights of the Family

¹¹ Guidelines for the Catholic Church’s support of orphans and vulnerable children in Southern Africa adopted by the Plenary of the Southern African Catholic Bishops Conference.

¹² Such supportive services may enable the child heading the household to continue attending school.

6. Discipline of Children

The SACBC welcomes Clause 139 (1) which states that “A person who has care of a child, including a person who has parental responsibilities and rights in respect of the 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) of the Constitution of the Republic of South Africa”. This clause flows from the Constitution and seeks to ensure that the rights of all citizens under the Constitution are indeed extended to children- our most vulnerable citizens. We further note the assertion in Clause 139 (2) that “No child may be subjected to corporal punishment or be punished in a cruel, inhuman or degrading way”.

The SACBC also notes Clause 139 (3) which abolishes the common law defence of ‘reasonable chastisement’ in any court. We suggest that programmes promoting appropriate discipline be implemented and be easily accessible throughout the country. This emphasises the importance of linking up with Prevention and Early Intervention Services as set out in Clause 139 (6) and in Clause 144 (1) (b). Early Child Development Programmes also play an important role in the identification of problem areas, the supervision of young children and provide an opportunity for parental support programmes.

Clause 139 (7) states that “Prosecution of a parent or person holding parental responsibilities and rights may be instituted if the punishment constitutes abuse of the child”. While in some instances this course of action may be appropriate we would urge that this should only happen when this is in the ‘best interests of the child’. We caution against the ‘criminalization’ of parents and emphasize the importance of Prevention and Early Intervention Programmes which seek to support and empower parents. Therefore, we concur with the submission made on behalf of the Sub-Group on Corporal Punishment and Positive Discipline, a sub-group of the Children’s Bill Working Group, that Clause 139 (7) be adjusted to read “Prosecution of a parent or person holding parental responsibilities and rights referred to in subsection (6) may be instituted if this is in the best interests of the child”.

“The target of eliminating violence against children and of providing a constructive and healthy context for their development demands that the state and society concretely support and enable the family to carry out its task. A vital way, in fact, to counteract the vulnerability of children is to strengthen the families in which they are meant to grow, to thrive, and to be formed as responsible and productive citizens in their local communities and in the wider society”.¹³

7. Prevention and Early Intervention

We welcome this section and but feel that the services provided in terms of Clause 144 (1) a-h should be extended as suggested in submissions made by the National Welfare, Social Service and Development Forum, Johannesburg Child Welfare Society and the South African Society for the Prevention of Child Abuse and Neglect (SASPCAN). These inclusions, as set out below, would insure more comprehensive services to vulnerable children and their caregivers.

Prevention and early intervention services would also include:

(i) providing assistance with issues of trauma and grief in families affected by illness, death, separation, violence or natural disasters;

¹³ Archbishop Silvano Tomasi, Address to the Fourth session of the Human Rights Council, 1st April 2007

- (j) providing practical assistance and guidance for older persons, children and young adults who are serving as caregivers for children;¹⁴
- (k) providing assistance to families with children with disabilities;
- (l) providing assistance to families with children with chronic illnesses;
- (m) providing assistance to children in families with sick or terminally ill caregivers and children living in child-headed households;
- (n) providing assistance to children suffering from substance abuse or children living with caregiver suffering from substance abuse; and
- (o) providing after care services and support to children when they leave residential care.

Furthermore, the provisions of Clause 144 (2), which includes assistance in accessing essential services, and providing families in desperate need with the basic necessities of life including food, clothing and shelter¹⁵, should also include the provision of appropriate assistive devices to children with disabilities.

8. Alternative Care

The Church is clear that “The State, with regard to foster-care or adoption, must provide legislation which assists suitable families to welcome into their home children who are in need of care and protection”.¹⁶ We welcome the measures in both the Children’s Act and in the Amendment Bill to address these issues. Foster care is primarily intended to cater for children who need alternative care and protection due to neglect, abandonment or abuse and are a critical component of protective services for vulnerable children. These services have been compromised by the vast numbers of orphaned vulnerable children entering the social welfare system and the need to process their placement with grandparents and other members of family or community so that these children and their caregivers can receive the Foster Care Grant. Children in need of social security and children in need of care are being processed through the same system.¹⁷ We respectfully submit that the provisions of the present Bill do not sufficiently address the demand for appropriate alternative care by the large number of OVC and the many abused and neglected children.

We endorse the Submission to the National Council of Provinces made by the ‘Alliance for Children’s Entitlement to Social Security’ ACCESS. Both groups of children are vulnerable and in need of assistance but require different levels of intervention. The ACCESS Submission explores different options and posits alternatives that allow for the alleviation of an overburdened foster care system and the redirection of services to where they are most urgently needed. There is a need to explore a continuum of options within the existing foster care system. Children in informal kinship care also require state support and family support services.

9. Caring Schools Network

The submission by the Caring Schools Network is to be welcomed as the submission focuses on strengthening the role of schools in providing assistance to vulnerable children. The Catholic Institute of Education, an associative body of the SACBC, was involved in the drafting of this

¹⁴ (i) and (j) are particularly important in the context of the HIV/AIDS pandemic which has resulted in Grandparent and Child-headed Households.

¹⁵ Submission to the Select Committee of the National Council of Provinces by the National Welfare, Social Service and Development Forum, March 2007.

¹⁶ Charter of the Rights of the Family

¹⁷ ‘Children in Need of Care or in Need of Cash’, Meinties, Budlender, Giese. Johnson, 2003.

submission and we support the recommendations therein. Schools are well placed to play an important role in the identification, referral and support of vulnerable children.

10. Social Security

We are mindful that “Many families are forced to live in situations of poverty which prevent them from carrying out their role with dignity”.¹⁸ The socio-economic environment of so many families renders children vulnerable to abuse, neglect, domestic violence, substance abuse, breakdown of relationships, teenage pregnancy and ill health. The scarcity and cost of public transport and food security are recurrent themes in need of redress.

We urge the extension of the existing Child Support Grant to children between the ages of fourteen and eighteen. The lack of the grant makes this group vulnerable to poverty and food insecurity and contributes to a high drop out rate among school learners. Furthermore, it effectively means that children, over the age of fourteen, living in a Child-headed Household will not receive social security. While we welcome the provisions of Clause 141 dealing with child labour and exploitation of children, we respectfully suggest that the lack of social security for this group of children may compel children to enter the labour market prematurely, render them vulnerable to exploitative labour practices and expose them to the temptation to become involved in criminal activity.¹⁹

11. Conclusion

The implementation of the Children’s Amendment Bill requires an interdepartmental and intersectoral strategy. “Child care in a complex context of poverty, inequality, family breakdown and a generalized HIV/AIDS pandemic requires a spectrum of responses rather than an either or approach”.²⁰ It is clear that different layers of services must intersect to ensure that the rights of children are realized and that this extremely important legislation is put to good effect. Children experience many different vulnerabilities. The set of services offered to one child may not be appropriate for a child who is vulnerable in a different way. It is necessary that a broad range of programmes and services are available so that the appropriate set of services can be provided for the individual circumstances of a particular child that is ‘In the best interests of the Child’.

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¹⁸ ‘Charter of the Rights of the Family’

¹⁹ We note that in Clause 106 of the norms and standards concerning child protection social security is included.

²⁰ ‘To Live a decent life: Bridging the Gaps’