Advocating for Children's Rights

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The Chairperson
Parliamentary Portfolio Committee for Social Development
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SUBMISSION ON THE CHILDREN'S ACT AMENDMENT BILL [13 – 2015]

I have worked in the field of child rights and child protection for the past 28 years, 23 years of this period serving children and families in South Africa through the Childline network of services. I have also trained in child protection in a number of African countries including Mozambique, Namibia, Lesotho, Zimbabwe, Uganda, Kenya, Zambia and Morocco.

I was appointed by the (then) Minister of Justice and Constitutional Development, the Honourable Dullah Omar, to the SA Law Reform Commission Project Committee on Sexual Offences in 1998, and then by the Honourable Minister of Justice and Correctional Services, the Honourable Minister T M Masutha to the SA Law Reform Commission Advisory Group on Child Pornography. I also worked with the Project Committees on the Children's Act and the Children's Bill Working Group (1998 to 2005) and with the Child Justice Alliance on the development and parliamentary processes relating to the Child Justice Act.

I presently train extensively in multi-sector settings on the Children's Act, the Child Justice Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, and developed training materials on these pieces of legislation for Childline South Africa and other organisations working in the Child Protection field.

I sit on several boards of child protection organisations, such as the Mzamo Child Guidance Clinic, Umlazi, and serve in a voluntary capacity.

At present I am the President of the International Society for the Prevention of Child Abuse and Neglect, and work internationally in a voluntary capacity.

Thank you for the opportunity to address this Committee on the Amendment Bills. It is indeed an honour.

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Comments on the Amendment Bill [13 – 2015]

1. **Definitions**: The extension of the understanding of sexual abuse by the definition of *"sexual offence" means sexual offence as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No.32 of 2007).*

   The extension of this definition is supported. However further sexual offences relating to child pornography and the access of children to adult pornography are listed in the Films and Publications Act as well as the Prevention and Combatting of Human Trafficking Act and these offences should be included via the inclusion of (as defined) In the Films and Publications Act 1996 (Act 65 of 1996) and S10 of the Prevention and Combatting of Trafficking in Persons Act 2013 (Act 7 of 2013)

2. **Amendments to Section 120 4 (A) 9 (a):**

   i. The word "deemed" is confusing and open to various interpretations. Clarification is required. If this word is retained it is unlikely to be consistently interpreted in the Children's Courts.

   ii. The inclusion of a wider range of sexual offences as defined by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) as well as offences as contemplated in the Films and Publications Act 1996 (Act No. 65 of 1996) is applauded.

   However I suggest that crimes committed against children as defined in the Prevention and Combatting of Trafficking in Persons Act 2013 (Act 7 of 2013) are also included in this section.

The inclusion of orders and crimes related to Domestic Violence

Exposing a child to violence, particularly violence within the home of the child, is considered to compromise the best interests of the child according to (S 7 (1) (l) (i) and (ii) of the Children's Act no 38 of 2005 which states that when considering the child's best interests, one has to consider "the need to protect the child from any physical or psychological harm that may be caused by …..

(i) Subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or

(ii) Exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;"

Furthermore S150 (1) regards "a child in need of care and protection if, the child

(f) lives in or is exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;"

The harm children suffer when exposed to domestic violence is well documented in the literature on child development and the exposure of children to adverse circumstances. The harm includes damage to the developing brain of the child (research by De Bellis 2008, van As, 2006, Glaser 2010, and others) as well as the child's psycho-social functioning.

It is therefore recommended that persons subject to Protection Orders relating to domestic violence confirmed either by the Domestic Violence or Children's Courts be specifically included in S120.

iii. **The proposed new subsection to S120 after subsection (4)**

This presently reads:

''(4A) Before making an order contemplated in subsection (1), in respect of a child who was under the age of 18 years when he or she committed the offence, the court must—
(a) afford the child offender an opportunity to make representations as to why such an order should not be made;
(b) have the best interest of the child offender considered of paramount importance; and
(c) on good cause shown, make an order that the particulars of the child offender not be included in the Register.''

It is appropriate that children should not automatically be included on Part B of the Child Protection Register, as directed by the Constitutional Court judgment J v the National Director of Public Prosecutions and Others [2014] ZACC 13, which found that "placing the child on the National Register for Sex Offenders is contrary to the "best interest of the child" principle and not justified in an open and just society."

This proposed section appears to have been adopted from the original version of the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill. However when the Amendment Bill was passed into law, this section was redrafted as it was recognised that children may themselves find it impossible to make representations as to why the order should not be made.

It is recommended that onus on the child to make representations to the Court be removed and that a more appropriate way of bringing evidence before the court as to whether a child's name should be placed on the register should be contained in this provision.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No 5 of 2015 therefore changed the wording to the following:

''*(c)* If a court has, in terms of this Act or any other law, convicted a person ('A') of a sexual offence referred to in paragraph *(a)*(i) and A was a child at the time of the

commission of such offence, or if a court has made a finding and given a direction referred to in paragraph *(a)*(ii) in respect of A who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in paragraph *(a)* unless—

(i) the prosecutor has made an application to the court for such an order;
(ii) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of A committing another sexual offence against a child or a person who is mentally disabled, as the case may be, in future;
(iii) A has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and
(iv) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.
(d) In the event that a court finds that substantial and compelling circumstances exist which justify the making of an order as contemplated in paragraph *(a)*, the court must enter such circumstances on the record of the proceedings.'';

It is therefore recommended that similar changes be made to the proposed insertion to S120 in order to

- Remove the onus from the child, who may not understand the process or purpose of this provision;
- Ensure that the child is appropriately assessed for risk of reoffending;
- Bring this provision in line with the similar provision in the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No 5 of 2015.

However it is further recommended that children who commit sexual offences are given the opportunity of participating in a rehabilitation programme before the assessment of risk is finalised. Children's sexual behaviour is usually more malleable and open to change than that of adults and therefore the opportunity to develop pro-social and socially acceptable patterns of sexual behaviour is afforded the child.

I developed and established Childline South Africa's programmes for the rehabilitation of children who commit sexual offences in 1989. I have continued updating training manuals and training staff on this programme. Many children have benefitted from these programmes over the past 25 years and it is clear that treatment contributes to the lowered or the absence of risk.

Therefore it is proposed that a further addition is made and ii reads as follows:

(ii) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which, *after the child has been afforded the opportunity to participate in a rehabilitation programme*, deals with the probability of A committing another sexual offence against a child or a person who is mentally disabled, as the case may be, in future;

Further note on the Registers of Persons unfit to work with children.

It is of great concern and a cause of great confusion that South Africa continues to run two such similar registers, one provided for in the Children's Act (No 38 of 2005) and the Register of Sexual Offenders, provided for in the Criminal Law (Sexual Offences and Related Matters) Amendment Act (No 32 of 2007).

This causes confusion among organisations that work with children as to which register should they screen staff and volunteers against – to screen against both is a duplication of activity, and therefore time consuming. The Presiding Officers in the Children's Courts are also inconsistent as to which register they consider appropriate when considering the placements of children in care, or for adoption.

This duplication is illogical and expensive. It is unconscionable that in a country that cannot afford to feed all its children should waste resources via this duplication.

The consolidation of the two registers into one register is therefore strongly recommended to enable:

- Cost saving for child protection organisations
- Clarity as screening staff, volunteers etc is against only one register
- The consolidation of resources from both registers which would result in one more functional register of persons unfit to work with children (and those with disability).

3. Section 150: Child in need of care

The word "ostensibly" is unclear and open to variable interpretations. It is suggested that the word be omitted and that this reads "has been abandoned or orphaned and does not have the ability to support himself or herself."

SUBMISSION ON CHILDREN'S SECOND AMENDMENT BILL [B14 – 2015]

1. Definition: Adoption Social Worker:

The intention of this change is laudable and relates to increasing access to the provision of adoption services. However adoption is a complex process which has lifelong consequences for the child who is adopted or the subject of adoption services, the biological parents and the adopting parents. It is therefore essential that this service is of high quality, hence the decision by the Professional Board of Social Work that this be considered a specialised area of practice and that those social workers providing adoption services be registered specialised or working for a specialised accredited adoption agency.

Under South Africa's equality legislation, and reinforced by the principles of the Children's Act no 38 of 2005, and in particular S6 (2) (c) which emphasises equal treatment of children, it is essential that those social workers in the employ of the

Department of Social Development, both at national and provincial level, if enabled to provide adoption services, should also be eligible for registration as a specialised in adoption work, or work under the supervision of a specialised adoption social worker. Children served by social workers from the Department of Social Development should not receive a lesser professional service than children served by Non-profit Child Protection Organisations and Private Practitioners.

As adoption processes may take an extended period of time to finalise, it is also recommended that part time or contract social workers be excluded from this definition, unless the contract social workers are contracted to complete the adoption cases which are allocated to them.

Furthermore, it is of note, that as a member of the Professional Board of Social Work, the Board was not consulted on the provisions of this Bill.

2. The Amendment of Section 176

This amendment enabling children to remain in alternative care to complete training after reaching 18 years of age is applauded, as are the new definitions of "further education and Training and Grade 12.

The provision will assist many children. It is well known that children who are in some form of care have often started school late due to parental absence or neglect or have lost years of schooling due to removal, trauma, or other factors and therefore they need the opportunity to "catch up" with their peers.

I thank the Committee for enabling the public hearings and attending to this submission.

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