



Children's Institute
University of Cape Town

Progress Report on the Children's Bill

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Paula Proudlock, Children's Institute, UCT

Introduction

The Minister of Social Development is calling for Parliament to fast-track the Children's Bill so that it is passed before the April 2004 elections. However, the Children's Bill Working Group is adamant that children's needs would be better served if the Bill was tabled and processed by Parliament after the elections when Parliamentarians have more time and are under less pressure.

If the Bill is dealt with by Parliament in 2003 or early 2004, it will effectively receive a maximum of 3 weeks of Parliament's time. A Bill of this size (300 sections) and complexity, would normally take 6 months to a year to go through the Parliamentary process.

Members of Parliament, as the elected representatives of the people, are primarily responsible for making the laws. In a normal parliamentary process, Parliament consults with civil society and legal experts and conducts research. Then each political party and the relevant parliamentary committees deliberate each issue at length before making decisions. This process is necessarily long and thorough in order to ensure that informed decisions are taken. However, in a fast-tracked process, Parliament's law making role can be severely undermined with the Executive arm of government, effectively departmental officials, becoming the law makers. This is contrary to the principle of separation of powers and section 44 of the Constitution.

Furthermore, if the Children's Bill is fast-tracked, it would mean that civil society's right to participate in the law making process will also be undermined. Civil society organisations have invaluable information and advice to contribute to the law making process due to their experience of the daily problems that children face and how the law

and child protection is presently failing them. In the children's sector, with NGOs performing the majority of child care and protection social work services, this information and experience is particularly valuable and should be afforded priority attention in the decision making process.

The Children's Bill Working Group, is concerned that a fast-tracked process will not allow for the Bill to be restored to the January 2003 version, the version of the Bill that was welcomed and supported by the sector. A fast-tracked procedure would force Parliament to have to defer to the departmental officials who are supportive of the excisions that have been made to the January 2003 version and would result in the Department's preferred version of the Bill (a severely diluted version dated August 2003) becoming the country's new Children's Act.

The law making process so far

The South African Law Reform Commission (SALRC) researched, consulted and developed a draft bill over a period of 6 years (1997 – 2002). The drafting committee consisted of representatives from various government departments and representatives of civil society with expertise in children's rights and needs. In January 2002, the SALRC handed the draft Bill to the Department of Social Development. The SALC Draft Bill was welcomed by the children's sector.

However, the lead Department, Social Development, then entered into a process of negotiations with other affected Departments and produced a new version of the Draft Bill which removed a number of key chapters and provisions from the SALRC Draft Bill. This new version was submitted to Cabinet and Cabinet requested more excisions. The next version was then drafted by the Department and is dated the 12 August 2003. This version of the draft Bill was published for public comment in the Government Gazette in August and comment had to be sent to the Department by 7 September 2003. This deadline was extended to 30 September 2003.

Before comment from the public was read or incorporated, the 12 August 2003 Draft Bill was sent to the State Law Advisors for certification. It is still in the process of being certified to get it ready for tabling in Parliament.

Where are we now in the law reform pipeline?

The draft Bill is nearly ready to be tabled in Parliament and the Minister of Social Development is putting pressure on all involved to table and pass the bill before February 2004.

Parliament is reluctant to process the Bill due to lack of time (Parliament sits for two weeks in November 2003 and will sit for a short time in February 2004 to deal with the Budget) and because the members of parliament are busy with campaigning for the 2003 elections and need to be in their constituencies.

Civil Society's response so far

In January 2003, the Children's Institute and RAPCAN organised a workshop that brought together representatives of national child sector organisations that were already working on the Children's Bill, to discuss and plan a way of working together. An interim working group was established and this group helped to plan a National Workshop on the Bill that was aimed at giving civil society an opportunity to engage with the SALRC drafters and discuss content and strategy issues. At the March 2003 National Workshop on the Children's Bill, attended by 80 representative of the children's sector, the Children's Bill Working Group was formerly constituted with the members from the interim working group and new volunteers. Extra members have also been co-opted to ensure that all sub-sectors are represented. The Working Group meets every three months and communicates daily via e-mail to ensure a co-ordinated and strong response from the children's sector.

The Working Group consists of the following organisations: Alliance for Children's Entitlement to Social Security (ACCESS), South African Society for the Prevention of Child Abuse and Neglect (SASPCAN), Childline SA, Children First, Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), National Association of Child Care Workers (NACCW), Children's Institute (UCT), Network Against Child Labour, Lawyers for Human Rights (LHR), Community Law Centre (UWC), South African Catholic Bishops Conference Parliamentary Office (SACBC), National Street Children's Forum, Early Learning Resource Unit (ELRU), Disability Action Research Team (DART), Disabled Children's Action Group (DICAG), Children's HIV/AIDS Network (CHAIN), National Council of Child and Family Welfare (NCCFW), Johannesburg Child Welfare Society, and the Pietemartitzburg Child Welfare Society.

The Working Group's role is to co-ordinate awareness raising, education and advocacy around the Bill in the general public sector, relevant government decision maker sector and children's sector in particular. The Working Group is co-ordinated by a Secretariate which is led by the Children's Institute and SASPCAN and each sub-sector has a Co-ordinator who is responsible for a defined topic.

The list of co-ordinators and their contact details is provided below for anyone who wants to contact them:

Sub-group	Co-ordinator	Tel no.	Fax no.
Prevention, early intervention and protection from abuse and neglect	Jackie Lofell	011-298 8500	011-298 8590 011-643 8537(h)
Primary prevention of abuse and neglect	Carol Bower	021-448 9034/5	021-448 9042
International Issues	Raygaanah Barday	021-959 2950	021-959 2411
Local Government	Raygaanah Barday	021-959 2950	021-959 2411
Children's Protector	Joan van Niekerk	031-312 0904	031-312 6008
National Policy Framework (Inter-departmental planning, budgeting and service delivery)	Joan van Niekerk	031-312 0904	031-312 6008
Child rights chapter	Paula Proudlock	021-685 1583	021-689 8330
Health and nutrition	Kashifa Lagerdien	021-689 5404	021-689 8330

Social security (grants and subsidies)	Solange Rosa	021-685 7441 x104	021-689 8330
Corporal punishment	Daksha Kassan	021-959 2950	021-959 2411
Courts	Jacqui Gallinetti	021-959 2950/1	021-959 2411
Street children	Annette Cockburn	021-788 1472	
Children with disabilities and chronic illnesses	Sue Philpott Sandra Ambrose	033-386 4796	033-386 4796
Early childhood development	Mary Newman	021-762 7500	021-320 2949
Foreign children (refugee and undocumented foreign children)	Claudia Serra	012-320 2943	021-320 2949
Child and youth care centres	Merle Allsopp	021-762 6076	021-762 5352
Child labour	Karen Allan	011-836 9942	011-836 9944
Trafficking	Carol Bower	021-448 9034/5	021-448 9042
Parenting rights and responsibilities	Raygaanah Barday	021-959 2950	021-959 2411
Children affected by HIV/AIDS	Sonja Giese	021-689 5404	021-689 8330
Foster care	Jackie Lofell	011-298 8500	011-298 8590 011-643 8537(h)

Each sub-group co-ordinator is responsible for producing a discussion document, two submissions, engaging the executive and legislative decision makers, consulting with the affected sectors and conducting advocacy activities.

Over the past three months, Discussion Papers on most of the topics listed above have been drafted and circulated for input. These then formed the basis for submissions that were sent to the Department of Social Development in September. This edition of ChildrenFIRST provides summaries of the main issues raised in the various submissions.

Besides writing discussion papers and submissions the Working Group has been engaging in extensive media advocacy to popularise the Bill to the general public. A major part of the media advocacy has been aimed at preventing the Bill from being tabled until after the 2004 elections to prevent it being compromised through a fast-tracked parliamentary process.

The Working Group has also sent letters to Parliament, and the Minister and has had discussions with key Parliamentary decision makers.

Possible scenarios and the way forward

There are a few possible scenarios with regards to the future of the Children's Bill.

(a) It could be tabled in October or November and public hearings may then be called for middle November, giving us a maximum of two week's notice.

(b) It could be tabled in November and public hearings called for in December or January 2004

(c) It could be tabled after the elections in June 2004

Taking these various scenarios into account, advocacy efforts of the Working Group are currently focussed on:

- Advocating for the Bill to be tabled in Parliament for debate and passage after and not before the April 2004 elections
- Ensuring that parliament has sufficient information when it starts to deliberate on the Bill
- Conducting awareness raising and workshops to popularise the bill and the parts that have been excised and why this is problematic
- Initiating a constructive dialogue with the Minister and Department of Social Development and other Social Cluster Departments regarding the excised sections

Despite a dedicated intention to do so, the pace at which the process has been moving over the past year, has prevented the Working Group from dedicating sufficient time to popular awareness raising on the Bill and broad consultation with everyone who may be interested in the issues that the Bill is addressing. However, all the national umbrella bodies have been consulted and are actively participating in the process.

If the Bill is not fast-tracked, the Working Group is planning a number of workshops and discussion opportunities to facilitate broader consultation. Please contact Elizabeth Myburgh at the Children's Institute if you want to be added to the Children's Bill list for updates on progress, new documents and invites to workshops (emyburgh@rmh.uct.ac.za or tel. 021 – 689 5404).

If you feel that your views have not yet been heard by the Co-ordinator in charge of an area that you are particularly interested in, please contact them. Your interest, views and participation will be greatly valued by the Working Group and will help ensure that the final Children's Act is in the best interests of children.