

Children's Bill Update

23 April 2005

1. Children's Bill Working Group's response to the Minister of Social Development's concerns about delays in the passage of the Children's Bill

The Minister of Social Development recently issued a press release (11 April) where he expressed concern over the delay in the passage of the Children's Bill. We share the Minister's frustration with the length of time that has elapsed (8 years) since the Children's Bill drafting process began in 1997. And we agree that all parties involved in the passage of the Bill should work hard to prioritise the Bill.

However, we do not agree with him that the delays have been caused by "protracted consultations with NGOs" or that the Bill should be rushed by Parliament now and "any shortcomings.....can always be amended later".

The Children's Bill Working Group was formed in January 2003 to provide a co-ordinated and informed response from civil society to the Children's Bill reform process. The Working Group consists of 40 representatives from key child sector networks, umbrella bodies and organisations. These 40 people represent approximately 2500 civil society organisations across the country. Since our establishment we have been contributing our expertise and experience to the Children's Bill drafting process.

We are doing this because we believe that it is essential that the law making process involves consultation with the people who will be involved in implementing the law and who are involved with the daily survival, development and protection needs of vulnerable children. Our members represent key child sector umbrella bodies whose affiliates are working with vulnerable children such as street children, children with disabilities, orphans, children caring for sick adults, child headed households, refugee children, abandoned children, abused children and foreign unaccompanied children.

The Children's Bill is all about preventing child abuse and neglect, protecting children from further abuse and neglect, and providing care and support for children who have been abused, neglected or otherwise made vulnerable. NGOs, CBOs and FBOs provide over 80% of the services to these groups of children and their families. These organisations therefore represent the labour force that keeps the system ticking over every day. Their ongoing input into the primary law aimed at protecting children from abuse and neglect should be considered both essential and desirable in order to draft a law that can provide workable solutions to the challenges faced by vulnerable children.

Besides being essential and desirable, consultation with the public during a law making process is a constitutional imperative in terms of section 59 and 195 (e) of the Constitution. The opportunities we have used to consult with the Department and Parliament have been the usual opportunities that are provided by government to civil society to ensure public participation in the law making process. These have included written submissions to the Department of Social Development in September 2003, two meetings with the Department in July 2004, written and oral submissions

to Parliament in August 2004, and attendance at an expert advice workshop with Parliament in April 2005.

We celebrated South Africa's third democratic election and the subsequent formulation of our third parliament in April last year, an event that gave rise to a new Portfolio Committee on Social Development with many new members who required orientation on the 300 clause Children's Bill. Since August 2004, when Parliament began discussing the Bill, we have been working with Parliament in prioritising the Children's Bill. We have been contributing to the process by giving expert information on children to Parliament thereby assisting Members of Parliament in making decisions on this important legislation.

If our expert information and Parliament's dedication to make the right decisions causes the process to take a little longer, we are of the opinion that the extra time will be well worth the wait because the final law will be a better law.

In a democracy, Parliament does not simply rubber stamp legislation that it receives from the Executive. Our Constitution vests the law making authority in Parliament and requires Parliament to consider, debate, amend and pass laws. Members of Parliament perform this function by listening to the Department's policy behind the law, listening to submissions from the public, asking for expert advice where clarification is needed, and applying their minds before making final decisions. This process needs to be thorough and complete and Parliament should not be asked to pass a Bill with "shortcomings" that "can always be amended later". Such an approach will only result in uncertainty and delays later on in the process.

The length of time that has elapsed since the drafting process began in 1997 can be attributed to a range of factors. These include the length of the Bill (300 clauses), the complex nature of the subject matter that the Bill is regulating, the fact that the drafting team has had 4 leaders over an 8 year period, the fact that the Bill is about making child protection "everyone's business" requiring absolute clarity of the roles that need to be played by a range of different government departments and spheres of government, the splitting of the Bill into two Bills due to the Constitution providing for different parliamentary processes for different types of Bills, the delays in finalising the costing of the Bill, and the complex nature of the problems faced by children due to the high levels of poverty, HIV, and violence.

No one person, department, Member of Parliament or civil society organisation can be blamed for the length of time that the Bill has taken so far. The apportioning of blame for "delays" in the Bill at this stage would be counterproductive to the processes that have undoubtedly led to progress, slow as it has been, for this significant piece of legislation. We support the Minister's call for a responsive and responsible approach by everyone involved in the Children's Bill making process and pledge our continued support to making a valuable contribution to the process. We believe that a constructive approach for the way forward would be to continue to harness the collective energy and expertise of everyone from government and civil society and to continue to work together towards the best possible Children's Bill for our children.

2. Update on the Parliamentary process since August 2004

In August last year, over a three day period, 30 children's sector organisations, including two groups of children, presented submissions on the Children's Bill to Parliament. After listening to the submissions, which highlighted a number of concerning gaps in delivery of service to children, the Portfolio Committee on Social Development spent the next three months gathering information that it needed before it could start making decisions on the Bill.

The information gathering exercise included a study tour to the provinces to observe service delivery in action, and briefings from all the national government departments involved in the Bill. The study tour, held in October, confirmed the information that the public hearings had raised and also raised further concerns about the state of service delivery to children.

Nine national departments were called to Parliament to provide input on their plans for addressing challenges facing children, and to confirm their department's commitment to the role envisaged for their department in the Bill. The Departments called included Home Affairs, Social Development, Education, Health, Housing, Justice, South African Police Services, Correctional Services, and the Office on the Rights of the Child in the Presidency.

This first round of departmental briefings showed that the different government departments did not yet have one position on a number of policy areas where inter-sectoral co-operation was needed. These areas included early childhood development, disability, inter-sectoral co-ordination, social security, child protection register, guardianship, cultural practices such as circumcision and virginity testing, foster care, and child headed households.

This lack of consensus between the 9 government departments involved in the Children's Bill placed Parliament in a difficult position of having to deliberate on a Bill that affected various government departments who had not all yet agreed to their roles in the Bill. Parliament therefore asked the Inter-Departmental Executive Steering Committee on the Bill (led by the Department of Social Development) to convene an inter-departmental meeting to discuss these areas where consensus was still needed and to take collective policy decisions. This inter-departmental policy workshop was held in early December.

In January 2005, when Parliament re-convened after recess, the Executive Steering Committee came back unified and well prepared with a matrix that clearly allocated roles and responsibilities to the different government departments and indicated which issues belonged in the Children's Bill and which needed to be addressed via other legislation such as the Schools Act or the Social Assistance Act.

The Portfolio Committee then devoted a number of meetings to discuss the matrix, the various departments' proposed solutions for addressing the many challenges facing children, the departments' feedback on their roles in terms of the Children's Bill, and the submissions made during the public hearings in August 2004.

At this stage, a technical problem arose when it became apparent that when the Bill was split into two in 2003, some of the sections of the Bill had been wrongly classified as s76 provisions and as a result they were not present in the s75 Bill that the Portfolio Committee was busy considering. It was decided that these sections would need to be moved from the s76 Bill into the s75 Bill. The procedure for this was not clear and the State Law Advisors were called in to give advice. The sections concerned were then sent to Parliament's "Joint Tagging Mechanism" committee (JTM) for a final decision on what process should be followed. A decision is still pending on this matter. These sections include sections in chapter 10 and 11 that relate to the police and the courts, the child protection register in chapter 8, and consent for health matters in chapter 8.

In late February, Parliament began to work through the Bill on a clause by clause basis. Amendments were discussed but very few clear decisions were made and the minutes of the meetings reveal very few clear drafting instructions being issued to the Executive drafting team.

On 12 and 13 April Parliament held a workshop to discuss a few areas that remained contentious. Experts from academia, the Children's Bill Working Group, Justice Department, Traditional Leaders and provincial departments were asked to give expert advice on how these contentious areas could be resolved. The issues discussed included parenting rights and responsibilities, child headed households, foster care, corporal punishment, child protection register, children's courts, cultural practices of circumcision and virginity testing, customary law, children's rights to inherit property when their parent's die and the role of the Master's Office and Magistrate's Courts in protecting their rights, inter-sectoral co-ordination, children's rights, disability, reporting abuse, consent for medical treatment and testing; and strengthening the role of social workers, auxiliary social workers and child and youth care workers.

The workshop was facilitated by an outside facilitator commissioned by Parliament. The workshop facilitator brought the room to a number of decisions on some of these areas while others remained unresolved.

3. Way forward – where to from now?

Parliament has now gone into recess until 16 May. The executive drafting team has been instructed to draft amendments and bring them to Parliament in mid May for the Portfolio Committee to discuss.

The Bill is on Parliament's agenda for passage in the National Assembly in early June, however this may be technically impossible under the circumstances. The normal procedure in Parliament is for Parliament to go through the first set of amendments carefully, make choices and instruct the drafters to draft a second set of amendments. If the Portfolio Committee is satisfied with the second draft, then they can vote on the Bill and pass it on to the National Assembly for its second reading debate and passage. The Bill has approximately 120 clauses and it is therefore unlikely that it will be able to be amended and voted on within two weeks.

If it is not passed in June, we will have to wait until August for its passage through the National Assembly. It will then be sent to the National Council of Provinces and could be passed by December 2005. The second bill with the s76 clauses will then be tabled for passage in early 2006.

There is still a long way ahead but the foundations have been laid, and the walls built. We are still missing doors, windows, a roof, water and electricity. If we continue to work together and harness everyone's skills and expertise to prioritise the building process, we could have the house completed and ready for occupation by the end of 2006.

Written by Paula Proudlock from the Children's Institute, UCT on behalf of the Children's Bill Working Group

For more information on the Bill or the Working Group, please consult www.uct.ac.za/depts/ci or contact Paula on 021 - 689 5404 or paula@rmh.uct.ac.za

Organisations represented on the Children's Bill Working Group

Alliance for Children's Entitlement to Social Security (ACCESS)
Network Against Child Labour (NACL)
National Alliance for Street Children
National Association of Child and Youth Care Workers (NACCW)
South African Society for the Prevention of Child Abuse and Neglect(SASPCAN)
SA Child Welfare
National Welfare and Social Development Forum
Disabled Children's Action Group (DICAG)
Children's HIV/AIDS Network WC (CHAIN)
SA Congress for Early Childhood Development
South African Council of Churches (SACC)
Southern African Catholic Bishops Congress (SACBC)
Community Law Centre, UWC
Children's Institute, UCT
Children's Litigation Project, University of Pretoria
Aids Law Project, University of Witwatersrand
Childline SA
Disability Action Research Team
Trafficking Task Team
Lawyers for Human Rights
Early Learning Resources Unit (ELRU)
Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)
Johannesburg Child Welfare Society
ChildrenFIRST
Naledi life skills and training centre
Molo Songololo
Dikwankwetlas