



## **SUBMISSION TO THE PARLIAMENTARY PORFOLIO COMMITTEE ON SOCIAL DEVELOPMENT**

### **THE CHILDREN'S BILL – PREVENTION IS BETTER THAN CURE**

Carol Bower, Executive Director, July 2004

#### **Endorsements:**

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**Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)** is a child rights NGO which works in various ways to combat child abuse and neglect. We are a registered Section 21 Company and NPO, and have been in existence since 1989. We engage in a range of activities:

1. We develop and implement training interventions to raise awareness and build capacity and knowledge about child abuse and neglect and how to respond to it.
2. We develop and disseminate a range of materials and reinforcement materials dealing with abuse and neglect, socialisation and gender issues, and alternatives to corporal punishment.
3. We develop and disseminate a range of posters, pamphlets, fact sheets and children's books aimed at abuse and neglect prevention.
4. We offer court preparation and support services to child witnesses and their care-givers at local Sexual Offences Courts.
5. We engage in advocacy work to assist in putting in place a statutory and policy framework that protects and promotes the rights of children.
6. We participate actively in a number of key networks at local, national, regional and international levels.

The Children's Bill is a critical piece of legislation in which we have a particular interest as it will govern the environment in which South African children are born and raised for the next 20 to 30 years. While we have an interest in most sections of this long and complex Bill, we confine this written submission to dealing with the need for a comprehensive and effective prevention and early intervention focus.

## **THE CHILDREN'S BILL – BRIEF COMPARISON BETWEEN THE SALRC DRAFT BILL AND THE TABLED BILL (TOGETHER WITH THE PROPOSED S.76 BILL)**

The deliberation, consultation and research undertaken by the South African Law Reform Commission (SALRC) were evident in the Draft Children's Bill released late in 2002. It was clear that careful thought and planning had gone into formulating a Bill which articulated our international treaty obligations and domestic Constitution, and which acknowledged and accommodated the multi-faceted context which renders children vulnerable to abuse and neglect, and out of which abuse and neglect arise. The Draft Bill was strongly focused on protection and early intervention, with a range of inter-sectoral mechanisms to prevent vulnerable children from falling through the cracks, and to catch them if they did. It is of deep concern to RAPCAN that most of these prevention and early intervention mechanisms, and the overarching inter-sectoral framework, have been removed from the Bill in its current form. This leaves us with a Bill with many of the inherent problems of the present Child Care Act which does little to ameliorate the reality of many millions of South Africa children, and which focuses solely on tertiary-level interventions.

### **Childhood in South Africa**

The context in which many South Africa children spend their childhood has a number of characteristics:

- It is physically violent, with high levels of violence within communities and families (at least 1 in 6 intimate relationships in South Africa is a physically violent one). Children are literally caught in the crossfire. In 2001, there were over 1,800 reports of cruelty towards and ill-treatment of children (excluding sexual offences, assault and murder). Children are murdered (276 cases reported in the first three months of 2001), assaulted (6,094 cases reported for the same period) and kidnapped. Paediatricians at Red Cross Children's Hospital have said that they are increasingly treating children injured when one of their parents (usually the mother) uses the child as a shield against the abusive partner. Corporal punishment is still seen as a parental right.
- It is sexually violent. Interpol states that South Africa has the highest rate of reported rape per capita in the world. The number of reported rapes in South Africa has varied around 50,000 for the last few years. That rape is a seriously under-reported crime is a truism globally, and estimates of the true figure in South Africa range from 1 in 20 to 1 in 35 being reported. Conservatively, then, the true incidence of rape in

South Africa is estimated to be around 1 million per annum, or around 2 rapes every minute, which figure has been alarmingly consistent over the past several years. Over half of all rape victims are under 18, and 15% of all rape involved children under the age of 11, according to the Child Protection Unit.

- It provides many opportunities for increased vulnerability. It is estimated that 25% of children currently under 5 will grow up without adult care-givers. Growing numbers of children are living and working on the street. Trafficking of children into, out of and within South Africa is increasing. According to Statistics SA, 36% of children work three or more hours a week to supplement the family income. There is no social support for children older than 11 years (although this will be extended to 14 years in 2005). Many thousands of children are unable to access their rights to social security, education and health care because they do not have identity documents; they cannot obtain these because of the lack of services and facilities in rural areas, or they cannot afford the transport costs to the nearest site at which they can apply for these documents, or they cannot afford the costs of fees, uniforms and books.

Growing up in these circumstances and faced with many difficulties, the emotional and material future of large numbers of South African children is seriously compromised. This plays out in large numbers of unskilled employment-seekers; high levels of childhood illnesses and deaths from preventable diseases; our high levels of violence (including gender violence), and in our high levels of crime generally; special education needs; increased pressure on formal protection services and social services more broadly. It becomes clear that the ultimate price paid is high. While it is certainly true that the criminal justice system and other role-players have critical role to play in preventing crime, and addressing health, housing, poverty and educational issues, addressing the context which gives rise to these conditions is the true challenge. For if we do not do so, we end up paying more than the costs already enumerated; and we end up paying them for longer as the cycle of abuse and neglect is perpetuated.

Child protection in South Africa, if it is to fulfil international and domestic obligations and ensure that we provide an environment which can facilitate children's optimal development, must:

- provide a framework and the means of supporting families to raise physically and emotionally healthy adults;
- equip parents for parenting;
- enhance the capacity of communities to take greater responsibility for vulnerable children;

- ensure the availability of appropriate, trained and resourced early intervention services;
- maintain tertiary-level intervention services for children for whom there is no alternative within their homes and communities – which must include services to facilitate healing and rehabilitation;
- ensure the protection of the most vulnerable children – those living in poverty, those living in violent and abusive homes, those who are disabled or chronically ill, those affected by HIV, those living and working on the street.

**THE CONSEQUENCES OF THE FAILURE TO PREVENT ABUSE AND NEGLECT, OR INTERVENE AT THE POINT AT WHICH CHILDREN ARE BECOMING VULNERABLE**

While much of the detail of the mechanisms to prevent children from becoming vulnerable to abuse and neglect is best placed in the section 76 Bill which will follow the present section 75 one, it is very important that the principles upon which these mechanisms will be based are articulated in the section 75 Bill. This is necessary to ensure that inter-sectoral planning, budgeting and management are possible.

**1 *Financial cost***

A study undertaken in Michigan in 1992 found that the cost of failure to prevent child abuse and neglect was 19 times higher than the costs of prevention when a range of factors was considered – factors such as birth weight, infant mortality, special education needs, protection services, foster care, juvenile and adult criminality, and social services.<sup>1</sup> In its Discussion Paper 103 on the Draft Children’s Bill, the South African Law Reform Commission noted that there has never been a proper analysis of the services required, or the costs of delivering such services effectively in the child protection sector. This is exacerbated by the lack of clarity as to who is responsible for them or for their financing, and a lack of inter-sectoral co-operation and co-ordination. Its recommendations included the necessity to adequately resource services to children and to approach child protection from an inter-sectoral perspective.

**2 *Social fabric cost***

There is significant research evidence to support the assertion that prevention and early intervention services which address socio-economic issues and provide support to vulnerable children and their care-givers mitigate against the development of criminality

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<sup>1</sup> Caldwell, R: Child Abuse Prevention: Michigan’s Experience, 1992

and enhance the possibilities that children will go to school and remain there longer. Furthermore, support of this nature would ensure that greater numbers of children are able to remain within their families. This not only lessens the burden on the state, but ensures that greater numbers of children will have their basic needs for survival and development met within their families, which is a basic right of all children, and grow to maturity physically and emotionally healthy and able to sustain themselves.

### **COMMENTS ON THE BILL**

In recommendations in this section, (underlined words indicate additions to the text, while **[bold in square brackets]** indicates deletions from the text, and **bold underlined words are recommended additions to the text.**

1. We are concerned that the removal of the provisions for a National Policy Framework to which all relevant Departments had to adhere and which legislated the need to plan and budget for services to children in an inter-sectoral manner will result in the new dispensation for children not improving on the current situation. For the system to operate properly there must be close coordination between the social services, the health sector, the police, the courts and the correctional services. Other sectors such as education, labour and local government also have key roles to play. In South Africa the protective service components of all these sectors are presently under-resourced and poorly coordinated.

Our recommendation is that the chapter including the National Policy Framework is re-introduced into the Bill. We further recommend that s106A (1) of the SALRC Bill be re-introduced and replace section 92 of the Bill.

~~92 The Minister, after consultation with the Minister of Education, must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system.~~

Insert:

**(1) The Minister, in consultation with the Minister for Education, must include in the National Policy Framework a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system, which must include –**

**(a) mechanisms for the planning, development and implementation of designated early childhood development services and programmes;**  
**(b) strategies for expanding the range of early childhood development services and programmes;**  
**(c) criteria for the selection and designation of early childhood development services and programmes;**  
**(d) minimum standards for early childhood development services and programmes;**  
**(e) mechanisms to ensure impartiality in the provisions of early childhood development services and programmes; and**  
**(d) measures to ensure that budgetary requirements and procedures are complied with to secure adequate funds for the provision of early childhood development services and programmes.**

2. Much of the primary prevention capability of the dispensation developed by the SALRC lay in the chapter on financing. Its removal means the removal of guaranteed social security provisions and measures to ensure the financial viability of services to children, both critical for primary prevention. This not only reduces the Bill's ability to prevent abuse and neglect, it also, as has been shown in the current dispensation for children (the Child Care Act of 1983), increases the likelihood of secondary abuse.
3. The alterations to Chapter 3 – Children's Rights – have resulted in the removal of a range of protections available for children in especially difficult situations. There is no longer any mention of specific strategies to combat malnourishment in children; to provide in-home support for orphaned, abandoned or impoverished children or those in child-headed households; to prevent children coming onto the street and to address the needs of those already living or working there; to empower children with disabilities or chronic illnesses; and to address the situation of children caught up in commercial sexual exploitation and child labour in general.

We recommend the reinstatement of a separate chapter covering the full range of the rights of children into the Children's Bill, section 75. In particular, we make the following proposals:

**Maltreatment, abuse, neglect, degradation, exploitation and other harmful practices**

- (1) Every child has the right to be protected, through

administrative, social, educational, punitive or other suitable measures and procedures, from all forms of torture, physical violence, mental harassment, injury, maltreatment, abuse, neglect, degradation and exploitation.

(2) Every child who has been tortured, maltreated, harassed, abused, neglected, degraded or exploited has the right to have access to social services including counselling and medical treatment at state expense.

### **Social security**

**23.** (1) Every child has the right to social security, including access to social assistance if the parent or care-giver cannot or does not provide for the basic needs of a child.

(2) A child suffering from malnutrition or who is at risk of malnutrition has the right to have access to sufficient and appropriate food, including emergency measures by the state for a child whose survival is at stake.

### **Social services**

Every child has the right to social services, including services that are aimed at:

- a. Assisting the child's caregiver or parent to provide for the child's survival, development and participation needs
- b. Assisting the child and the child's parent or caregiver to address social problems within the family and community that are violating the child's rights
- c. Assisting parents and caregivers of children in especially difficult circumstances to provide adequately for their children's needs
- d. Providing adequate protection for children who have been abandoned, abused or exploited
- e. Providing adequate alternative care for children whose parent's or caregivers are unable or unwilling to care for them
- f. Providing adequate shelter and care for children living on the street or in child headed households
- g. Providing adequate protection, care and humanitarian assistance to refugee and undocumented migrant children.

4. The chapter in the SALRC version of the Bill which dealt with the courts played a significant role in prevention and early

intervention. The limiting of the powers of the children's court from what was envisaged will result in issues related to permanent placement of children in alternative family care continuing to be taken to the expensive and inaccessible High Court.

5. With regard to physical chastisement of children, the original Draft Bill did not, in our view, go far enough by disallowing parental rights as a defense if charged with assault and not banning corporal punishment outright. However, even this concession has been removed from the Bill in its current form. Corporal punishment of children has been shown to be related to the development of violent and abusive behaviour in adulthood, to depression and suicide, to poor social functioning, and to sexually aggressive, inappropriate and damaging behaviour. It is a fundamental child rights issue, which we are bound to uphold in terms of our ratification of the Convention on the Rights of the Child (particularly Article 19) and of section 28 (1) (d) of the South African Constitution. While we agree with the SALRC's perceptions of the need for public education and awareness-raising, as well as parental re-training, on this issue, it is our strong conviction that this issue should be dealt with firmly in the Bill.

We suggest the following wording for this section:

**139.** (1) **[A]** No person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, may administer corporal punishment to such child. [must respect to the fullest extent possible the child's right to physical integrity as conferred by section 12 (1) (c), (d) and (e) of the Constitution.]

(2) Any person who breaches the provisions of subsection 1 may be subjected to prosecution under any applicable common law or statutory offence.

~~[(2)](3)~~ Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.

~~[(3)](4)~~ No person may administer corporal punishment to a child at any child and youth care centre, partial care facility or shelter or drop-in centre.

~~[(4)](5)~~ The Department must take all reasonable steps to ensure that –

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3), ~~(4)~~ and ~~(5)~~ **[(4)]** are implemented across the country; and



(b) programmes promoting appropriate discipline at home and at school are available across the country.

6. The removal of Chapter 9 – Prevention and Early Intervention Services - of the SALRC Draft Bill in its entirety is very problematic. We are aware that there is an intention to include the provisions that were previously in this chapter in the section 76 Bill. However, the principles regarding budgetary allocations to Provincial Departments to ensure that prevention services are provided should appear in the section 75 Bill. Our recommendation is that section 160 of the SALRC Bill be reinstated into the section 75 Bill:

**160.** (1) The MEC must, from money appropriated by the relevant provincial legislature, provide prevention and early intervention services to families, parents, care-givers and children.

(2) In implementing subsection (1) families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority.

7. The removal of these elements of the Bill further results in an absence of mechanisms to address the rights of abused and neglected children to healing and therapeutic services. Given the numbers of children who are sexually abused in this country, this has serious long-term consequences for their emotional growth and development.

## **Conclusion**

Many of the challenges facing children in South Africa have their roots in our colonial and apartheid history, and our deeply patriarchal ethos in which children are viewed as owned. The formulation of a new dispensation for the children in this country provides an opportunity, unlikely to be afforded us again for the next two decades or more, to redress some of the wrongs of our past and provide a platform for the development of a more just, equitable and caring society.

If we put our resources and energy into building the capacity and wherewithal of families to raise children who can and will become self-sustaining and productive members of a peaceful, just and democratic society, we will truly fulfill the promise of our young democracy. This means they must have access to nutritious food, shelter and warm clothing, primary health care and education, irrespective of the ability of their parents to provide these things.

If we put our resources into developing and maintaining good systems for identifying children at risk or increasing vulnerability, and give additional support then, we increase the possibility that the family will be able to provide the basics for their children, thus preserving the family and decreasing negative effects of being taken into care.

If we are creative and more flexible (although no less careful) about where we place those children for whom it is impossible to remain in their family homes, the chance of them growing up in an environment conducive to future happiness is greater.

And if we put our resources into a criminal justice system focussed on restorative justice, victim empathy and rehabilitation, we reduce the number of children who grow up shattered by rape and sexual abuse, by violence in their homes and communities.

Thank you.  
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