



Submission to the

Parliamentary Portfolio Committee

on Social Development

on

the Children's Amendment Bill

[B 13-2015]

19th August 2015

1. Introduction

The Catholic Parliamentary Liaison Office has followed the development of the Children's Act closely since its inception, and has made various submissions throughout its progress. We would like to make some general comments on this Amendment Bill.

In general, these amendments to the Children's Act are to be welcomed. They tighten up definitions, add clarity, provide further protections for children, promise greater accountability, and emphasise the primacy of a contextual approach. We note the extensive degree of consultation with various stakeholders, and we welcome the emphasis on family preservation, strengthening and reintegration, and the shift away from custodial placements. This articulates well with the White Paper on the Family, which is in the process of implementation. However, the efficacy of this approach depends on the provision of parenting training and support programmes which are not included in this Amendment Bill.

2. The Importance of Context and the 'Best Interests of the Child'

Recent years have seen a movement away from custodial care of children and towards keeping families, whatever their structure, together. The recognition and support given to child-headed households are an example of this policy.

A study conducted by Makoae, Dawes, Loffell and Ward found that,

“although poverty is commonly considered to be an underlying risk factor for children's emotional and developmental needs not being adequately met, there are several additional dynamics of families and communities which constitute risk for child survival and safety in their homes. Intervention by external agencies also, although usually done primarily to meet the needs of the child, may have negative consequences if not based on a thorough understanding of the context of abuse and neglect. The predominant philosophy guiding child protection in South Africa emphasises maintaining families together. This renders prevention of removal of children from their biological parents a priority in statutory care services. Removal is an option that is implemented mainly in high-risk situations which have serious implications for child well-being. Therefore, it is important that investigation into the children's situation is comprehensive. When placement of a child is identified as a reasonable form of intervention following formal investigation by social workers, it is critical that the process is done with minimal disruption of the emotional and social relationships of the children and their families; that it leads to the children's safety being improved while their emotional stability is also enhanced by providing

suitable alternative care which takes their long-term needs into consideration. The circumstances which the practitioners consider when they decide on statutory removal and placement of children in need of care, and how children's well-being is addressed within the statutory system, are critical in terms of good placement decisions" [emphasis added].¹

3. Language and Definitions

The change in language in Clause 2 (affecting section 120 of the principal Act) from 'found' to 'deemed' is to be welcomed as it does indeed strengthen child protection to those potentially at immediate risk. Furthermore, it does make it easier to identify those unsuitable to work with children.

We welcome the expansion of the definition of sexual offences against children (Clause 1(b) of the Bill). However, the Bill does not make provision for offenders whose names have been added to the National Child Protection Register (NCPR) retrospectively. This means that the name of an offender may be placed on the Register without his/her knowledge as there is no obligation to inform the offender. This is out of step with the Sexual Offences Act. This is concerning as it reflects a continuing muddle regarding the various registers, which undermines the effectiveness of thereof.

4. Removal of Names from Register

While we welcome the amendment of section 128(1) of the principal Act (which allows child offenders to apply to have their names removed from the NCPR) it is not clear what interventions/services are available to such young offenders, and how this articulates with the 'diversion' process set out in the Child Justice Act.

We also have ongoing concerns regarding the long delay regarding establishment and synchronization of the various registers pertaining to the protection of children. The Children's Act is multi-sectoral and the co-ordination of the responsibilities of associated departments remains a challenge; this is to the detriment of children.

5. Child Protection Services and Foster Care

The proposed amendments regarding section 150(1)(a) regarding care and protection of children are confusing. These amendments do not address the issue the need of 'kinship' foster care. In the 2000s, there was a proposal by the SALRC (SALC) to distinctly separate kinship care from foster care and in so doing reduce the burden on the Child Protection Services using three options/alternatives: Via

3 models: foster care, court-ordered kinship care² and informal kinship care. This would be in line with the UN Guidelines and the Africa Charter on the Rights and Welfare of the Child.³ As a recent proposal from the Johannesburg Child Welfare Society argues there is an urgent need for sustainable alternatives to the present crisis in the foster system arguing that “overall, introducing a Kinship Care Grant system is the most practicable way of doing so and stakeholders are urged to lobby for its introduction”⁴ Kinship foster care placements remain within the statutory foster care system. This is to the detriment of children in need of care and protection as a consequence of abuse and neglect.

6. Conclusion

The challenges in the implementation of the Children’s Act are enormous and these amendments add some clarity to the matter. We look forward to further developments in response to the submissions received by the Portfolio Committee.

¹ Makoae, M., Dawes, A., Loffell, J., & Ward, C.L. (2008). Children’s Court Inquiries in the Western Cape. Final report to the Research Directorate, Department of Social Development, Provincial Government of the Western Cape. Cape Town: Human Sciences Research Council.

² Court ordered foster care would be appropriate when a child is found in need of care as a consequence of abuse, neglect and members of the child’s extended family are able and willing to foster the child.

³ Presentation by Dr Usang Maria Assim at the Roundtable on 6th March 2015

⁴ Johannesburg Child Welfare Society Position Paper on Foster Care, March 2015.

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