



Submission by the

Catholic Parliamentary Liaison Office

to the

Department of Social Development

on the

Children's Amendment Draft Bill

30 November 2018

Introduction

The Catholic Parliamentary Liaison Office welcomes this opportunity to comment on the proposed amendments to the Children's Act 38 of 2005. The Draft Bill seeks to provide clarity on a number of issues which have concerned our Office. We feel that in general the amendments proposed contribute to a policy framework that improves the care and protection of children and promotes their well-being.

- The focus on partial care and on ECD centres and programmes which are pivotal to the success of the implementation of the Act is particularly welcome.
- Post adoption support, hitherto a much neglected area, is introduced.
- Further definitions have been included and others have been given greater clarity.
- The importance of the provision and delivery of parallel services to children is emphasized.
- The controversial issue regarding parental discipline of children is reintroduced.
- The roles of various courts are delineated, which will potentially result in expeditious processing of court matters concerning children and the avoidance of long delays.

The Children's Act is of such magnitude and consequence that it needs this kind of review to evaluate whether or not the present policy framework provides sufficiently for the care and protection of children, and promotes their well-being whatever their circumstances.

While it is beyond our capacity to comment on all the complexities and technicalities of the Draft Bill, we would like to highlight some points which are the particular concern to the Church. (For clarity, we will refer to the relevant *clauses* in the Draft Bill wherever possible. We cite the clause numbers used in the version of the Bill published in Govt Gazette 42005 on 29 October 2018.)

Clause 1: Definitions

(a) The definition of '**abandoned**' children has been expanded and in so doing provides greater clarity in identifying children who have been abandoned and thus allows for quicker placement in appropriate alternative care. We support this amendment.

(b) The expanded definition of '**adoption service**' provides for after care services for the adoptive family. Such services were not included before and could play an important role regarding the adopting family providing support and ongoing evaluation. Such services have been available to foster families and families with children in alternative care and the inclusion of these services fills a gap in insuring the oversight of children in this form of alternative care and provide adoptive parents with advice and support. We support this this amendment.

(j) & (k) Both of these definitions regarding **Early Childhood Development Centres** and **Partial Care Facilities** bring greater clarity as to the programmes and services that must be provided. The proper implementation of the Children's Act is dependent on this.

However, the focus is on facilities which are already registered. Our concern is that many facilities which presently provide ECD services and programmes do not conform to the regulations for such facilities, and do not have the financial means to enable them to meet the requirements in order to be registered. They need to be capacitated in order to become registered. The Department of Social Development is heavily dependent on the NGO sector for services but does not always provide the resources to make it possible for such organizations to conform to the norms and standards set out in the Act and the regulations pertaining to it. ECD services and programmes are essential for the well-being of our children, but in effect it is the private and voluntary sectors that supply the vast majority of such services, without adequate State support. We support this amendment, but with reservation that it does nothing to assist unregistered ECD service-providers.

(m) '**Genital cutting**' – the inclusion of this definition (and the prohibition of this practice) is supported.

(u) We support the expanded and comprehensive definition of '**sexual abuse**' and the alignment of the Act with the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

(v) The expanded definition of '**social service practitioner**' clarifies the relationship between auxiliary social workers, child and youth care workers, community caregivers and social workers.

Social workers are one of the key categories of personnel who will be required to implement the future Children's Act, but should, however, not be regarded as the dominant category. While social workers have a critical role to play, they share this role with a range of other workers. However, within formal child protection, social workers are key, and they tend to work closely with child auxiliary and youth workers. A core of skilled social workers is needed order to ensure the proper implementation of the Children's Act. We support this amendment.

Clause 2: Amendment of Section 6 of Act 38 of 2005, Unfair Discrimination

The inclusion of discrimination on the grounds of nationality takes into account the climate of xenophobia anti-foreigner sentiment that pervades our society. It also reminds us that prejudices that are articulated at home are repeated in the school playgrounds and on the streets.

The reference to creating an 'accessible and inclusive' environment is welcomed, as it will help in the mainstreaming of disability, which is an important focus area for the Church. We support this amendment.

Clause 5: Amendment of Section 8 of Act 38 of 2005

The inclusion of unaccompanied migrant children is particularly to be welcomed. Much of the pastoral care of the Catholic Church focuses on the care of refugees and migrants, and especially the care and rights of unaccompanied minor children. It is regrettable that, despite the fact that the Constitution is clear that all children in South Africa, regardless of their origin, are entitled to have their rights respected and promoted, far too many State institutions and officials discriminate against 'foreign' children and violate their rights for the simple, and spurious, reason that they are not South

African. This amendment will hopefully go a long way to addressing this problem. Accordingly, we strongly support this amendment.

Clause 7: Insertion of Section 12A in Act 38 of 2005, the Disciplining of Children

This is a very carefully nuanced and balanced approach. We welcome its inclusion and the focus on the positive discipline of children. This particular Section of the Children’s Act is that over which there has been the most controversy and we feel that this need not be so. On behalf of the Catholic Church internationally, the Vatican has signed the Convention on the Rights of the Child and we note that this amendment is in keeping with the Convention as well as with the African Charter on the Rights and Welfare of the Child.

While the Catechism of the Catholic Church has no stated position on the corporal punishment of children the clear teaching of the Church urges a contextual approach. Church teaching refers to parents’ duties to “educate, guide, correct, instruct, and discipline”.¹ The root word for discipline is ‘disciple’ meaning to teach.

Furthermore, in developing a protocol regarding the sexual abuse of minors the Church commented that “is not satisfied with merely responding to the sexual abuse of the young. It seeks to safeguard and protect the young from any form of abuse.”² The document went on to point out that “parents need the active support of the whole community, and an important part of that community is the Church”.³

The positive discipline approach is an important intervention in the life of our society, which is characterized of by high levels of inter-personal violence from which the domestic sphere is in no way exempt. The Government’s health and social services have prioritized the importance of the first 1000 days of a child’s life, that is, from conception to the age of two, as predictive of later psycho-social well-being. Moreover, longitudinal studies have shown that early childhood trauma, while not necessarily articulated, impacts profoundly on the neurological development of infants and young children.

The polarization of positions on the discipline of children is unfortunate and unhelpful. The common good of all our children is a priority that religious communities share. “The voice and influence of religious leaders is particularly important to deconstruct arguments that justify or condone the use of violence, including corporal punishment, on the basis of culture, tradition or faith. With strong resolve and example, religious leaders are uniquely placed to spearhead their communities’ contribution towards building a world free from violence against children and a society based upon the values of tolerance, respect, compassion, fairness and solidarity”.⁴

We welcome the focus on Prevention and Early Intervention. Parenthood is the most challenging and important of endeavours, but it is also a role for which there is little training and support. Alternative approaches to the discipline of children could be seen as part of a spectrum of preventative measures that may avoid the involvement for the child protection services. Therefore, the roll-out of programmes promoting the use of positive discipline is imperative. We support this amendment.

Clause 11: Amendment of Section 21 of Act 38 of 2005, the Position of Unmarried Fathers

The provision for the recognition of the rights of unmarried fathers, should they meet certain conditions, is welcome. Children benefit greatly from active and positive contact with both parents. Children should never be used as leverage in domestic disputes. The amendments are clear that that parental rights are coupled with obligations. We note that these rights and obligations come at a time where absent fathers are common, and when many fathers play a minor role in the upbringing of their children. Furthermore, many unmarried fathers may be adolescents given the level of teenage pregnancy. The provision for a mediated process, if necessary, is also welcomed. We support this amendment.

Clause 13: Amendment of Section 22 of Act 38 of 2005, Parental Rights and Responsibilities

These amendments are in line with the underlying theme of the Children's Act, which is that of Child Participation. Elsewhere in the Act, notably in the sections related to medical care, children from the age of twelve are allowed to contribute to decisions regarding their health care. Divorce, or any other separation of parents, impacts profoundly on the parental contact and care regarding the child. Separation between parents may be acrimonious and such acrimony should not be to the detriment of the parent/child relationship. The child should, if at all possible, be allowed to express his or her views in the drawing up of a rights and responsibilities agreement. We support this amendment.

Clause 39: Amendment of section 78 of Act 38 of 2005, Funding of Partial Care

There is an urgent need for funding for all Partial Care Facilities. However, government policy has been to reduce funding to the NGO sector and this has resulted in the closure of some partial care facilities resulting in large gaps in the provision of services. At the same time there are increasing instances of government departments approaching non-profit organisations and the private philanthropy sector for assistance. International aid has largely dried up and there is a scramble to find alternatives.⁵ The state cannot simply shift its constitutional obligations to civil society. We support this amendment, subject to the condition that the State must do far more to support NGOs and community based organisations that are struggling to supply Partial Care services.

Clause 64: Amendment of section 111 of Act 38 of 2005, the Child Protection Register

The abysmal performance of the Child Protection Register has seriously hampered child protection services and left children vulnerable. In the absence of a functional Child Protection Register the Catholic Church has developed its own screening process, which includes police clearance certificates for clergy and all persons working with minors within Church structures. This is far from ideal, and it is hoped that the proposed amendments result in a properly functioning Child Protection Register. Given the high rate of crimes against children the need is urgent. We support this amendment.

Clauses 133 & 134: Amendment of sections 249 & 250 of Act 38 of 2005, Payment For, and Persons Providing, Adoption Services

The stated purpose of the proposed amendment of sections 249 & 250 is to make adoption services more widely accessible. We believe that it will have the opposite effect, since it will require everyone who now uses 'private' adoption services (and pays for them) to use the more limited number of people who will be allowed to provide such services in terms of the amended section 250.

There is no good reason why professionals such as lawyers or psychologists who assist with adoptions, or child protection agencies which do likewise, should be prohibited from doing so. Likewise, there is no good reason why such professionals and agencies should not be allowed to charge a reasonable fee for their services.

It is well-known that State social workers carry very heavy caseloads, and that they are generally under-resourced. These amendments would only add to their burden, by making them responsible for carrying out adoption procedures for people who can easily afford to pay private professionals to assist them.

These proposed amendments will simply make it harder for people to successfully adopt children, to the detriment of both the prospective parents and the many thousands of children in our country who stand to benefit from being adopted.

We strongly oppose the amendments to sections 249 & 250 (with the exception of the addition of sub-section (e) in section 250(1)).

Conclusion

The Children's Act has proved very difficult to implement over the years since its adoption. It is to be hoped that these amendments will help to achieve the vision of the Act in practice for the good of all our children.

¹ 'The Charter of the Rights of the Family', October 1983

² 'The Catholic Church in Southern Africa Protection Policy and Procedures for Minors'.

³ See 14 above

⁴ Marta Santos Pais, Special Representative of the United Nations Secretary General on Violence against Children

⁵ <https://www.dailymaverick.co.za/opinionista/2018-08-22-civil-society-and->

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