

## laws that protect - laws that endanger

# the child care act in perspective

*This analysis of the Child Care Act (No 74 of 1983) was presented by Chris Giles, speaking on behalf of the Organisation for Appropriate Social Services in South Africa (OASSSA), at the Children and the Law Forum organised by the Education Subcommittee of the Free the Children Alliance, Western Cape, in November 1988. It has been updated for SASH.*

In many respects the Child Care Act (CCA) is well-designed to protect those whom it is meant to protect, but in others it is inadequate. The following are some of its good points - the list is not exhaustive:

- it applies indiscriminately to all persons under the age of 18;
- it is quite clear that all children have not only the right to be parented, but the right to be parented by adults who are fit to take on such responsibility. The CCA also spells out what behaviour or attitudes would constitute unfit parenting;
- the Act provides for removing a child from unsuitable circumstances - very quickly if need be - and provides checks as to how the child is cared for thereafter;
- it provides for a compulsory court hearing where all the parties concerned, including the child, may be represented by lawyers;
- the CCA recognizes the right of a child to a permanent place to grow up in, and requires welfare workers who remove a child from his/her caregiver to find another permanent place within two years;
- it establishes that child maltreatment is a notifiable condition, the child possessing a legal right to have her/his condition examined by qualified persons and suitable treatment arranged.

The inadequacies of the CCA lie both in the Act itself and in the enabling regulations. Some deficiencies of the Act are:

- the right of the child to legal representation seems to depend on the parents' agreeing to this. Often the parents do not want the child's point of view argued too clearly or forcefully;
- child maltreatment is notifiable -

but only by doctors, dentists and nurses! Teachers, social workers, psychologists and police are left out;

- the notion of the 'unfit' parent as opposed to the idea of the 'child in need of care' introduces an unnecessary and simplistic accusatory element into child protective work.

The regulations are inadequate in these among other ways:

- welfare services are defined as 'own affairs' despite widespread requests and recommendations that one national Department of Welfare be created. This means that there are several sets of regulations, with unnecessary duplications and complications;
- while the Act provides for a Welfare Advisory Council, this has not materialised and non-governmental opinion is felt to be underrepresented;
- the registration of abused children is incomplete and confused as each department has its own forms and procedures. Also, some departments do not require the registration of neglected children, although this is a much more common and serious form of child maltreatment. The reason given is that no satisfactory definition of 'neglect' exists!

There are also a number of wider issues involved. One is lack of knowledge of the CCA. Any Act is complex and written in a way that makes it hard for ordinary people to understand and use. A booklet designed to make the Act more accessible would be of value.

It must be noted that the CCA does not protect children against whom criminal charges have been brought. This was recommended as

long ago as 1937, and is a recently introduced reform in countries such as Brazil where the horrors to which such an omission leads have been recognised. Moreover, the CCA is specifically superseded by security legislation. In this way children are deprived of all the protections which would otherwise be theirs by law: access to lawyers, to the courts, to their parents.

In 1985 the state began working on, and issuing for comment (which it largely ignored) proposals for a welfare policy. The policy, announced in 1989, is divisive and sinister. Welfare is entrenched as an 'own affair' and the state which, in the past, ran an effective welfare state for 'poor whites' (who are today's gravy-train bureaucrats) has now made individuals primarily responsible for their own welfare. New funding procedures make control of welfare initiatives by the state very much easier, and there is a clear intention to provide improved services and housing to certain communities who have shown themselves to be 'trouble spots', in an effort to defuse protest without conceding full democratic rights. Welfare is being misused to pacify, divide and control.

The experience of many countries both in Africa and elsewhere, that children are damaged by involvement in violent conflict, is available to us - but is not part of our CCA. It has been recommended that more comprehensive child protective legislation would incorporate the following principles:

- children should be respected as 'zones of peace';
- they should at all times have access to basic services;
- refugee legislation and services

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- should be extended to those who are displaced within their own country and not only to those who cross international borders;
- under no circumstances should children be recruited into armed conflict;

- places frequented by children - schools, hospitals, buses, play areas - should not be attacked.
- In sum, aspects of the CCA are good, work well, and should be known and used more widely. The CCA fails in defining child abuse too narrowly so

that structural or economic abuse is not dealt with. The CCA also fails in being superseded, in a situation of prolonged turmoil, by security legislation which sacrifices child protection goals on the altar of 'state security'. □