



NATIONAL WELFARE, SOCIAL SERVICE AND DEVELOPMENT FORUM

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**MS J MASILO
CHAIRPERSON
SELECT COMMITTEE ON SOCIAL DEVELOPMENT
NATIONAL COUNCIL OF PROVINCES**

Dear Ms Masilo,

CHILDREN'S AMENDMENT BILL: PROPOSED ALTERNATIVE APPROACH TO THE CARE OF ORPHANS AND VULNERABLE CHILDREN IN LONG-TERM KINSHIP CARE, IN RESPONSE TO THE CRISIS WHICH HAS ARISEN IN FOSTER CARE PROVISION

The National Welfare, Social Service and Development Forum (NWSSDF) was established in 1993 to provide a voice for the developmental social welfare sector, and to promote its transformation within a democratic South Africa. It is comprised mainly of regional and provincial substructures which between them represent a very large proportion of South Africa's social welfare and development NPOs.

The number of children in court-ordered foster care increased by more than 650% between April 2000 and October 2006. This upsurge is the result of the spiralling of the numbers of orphans in the country. We strongly support the intention behind this phenomenon, namely that of ensuring that orphans and other vulnerable children are provided with access to family care and financial support along with supportive and protective services. We are, however, suggesting that despite the best efforts of all roleplayers, the huge challenge posed by the plight of orphans and vulnerable children in our country cannot be effectively managed via statutory foster care. A major crisis has arisen in the country's child protection services and in the broader developmental social welfare system as a result of the sheer numbers of children coming into statutory care. The escalation in these numbers is set to continue for the foreseeable future.

In summary, the elements of the crisis are as follows:

- ◆ The deluge of foster care cases is **paralysing the child protection system**, particularly its social work component and the children's courts.
- ◆ **Children urgently needing financial assistance have to wait endlessly** due to the resulting log-jam.
- ◆ **Children needing protection from severe forms of active abuse such as rape, assault and worst forms of child labour are going unattended.**

- ◆ It appears that the vast majority of **those currently in foster care are receiving no meaningful social work services**. The only benefit reaching them is the Foster Care Grant. This is a crucial form of support, but social security measures do not intrinsically require the attention of our limited children’s court and social work resources. These are urgently needed for the protection and healing of children affected by abuse, which is at epidemic levels in our country.
- ◆ **Orphans and vulnerable children are being deprived of the types of services which they really need**, which overlap with, but also differ in important respects from, those delivered to children who are in foster care due to a need for protection from abuse.
- ◆ Although social work has been designated as a scarce skill, **social workers are in effect being deployed as social security clerks**. There is no time for them to do anything other than process children through the courts and onto the Foster Care Grant rolls.
- ◆ **Continual movement of NPO staff due to aggressive recruitment by government to address the foster care backlog is creating gaps all over the children’s service system and in services to all other vulnerable groups served by the social development sector**. Essential children’s services, ironically, are among those most severely affected. The service ethos is being damaged and service users are being harmed in the process.

Please see the attached discussion paper for a more detailed analysis of the above issues. The document also proposes an alternative approach. In relation to the Children’s Act and the Children’s Amendment Bill this involves:

1. **A legal distinction between foster care and informal kinship care**,¹ as proposed by the SA Law Reform Commission.
2. **Legal recognition for the position of extended family members who are caring for orphans**, where there is no evidence of a need for services to protect children from maltreatment.
3. **The strengthening of Chapter 8 of the Bill**, which deals with prevention and early intervention services, so as to provide for a national roll-out, particularly in the poorest communities, of the support services needed by orphans and vulnerable children and their families, along with other children and families who are at risk. These could involve the full range of social service professionals, assisted by personnel in other categories and volunteers. The emerging cadre of community development workers could play an extensive role here. The roll-out should give priority to the poorest communities and those with the highest rates of orphanhood. It could incorporate the existing process of developing Child Care Forums for orphans and vulnerable children throughout the country. The activities should be built into the Integrated Development Plans of local authorities. The use of schools as nodes of care and support would also be an important aspect.

Annexure A lists proposed amendments to the Bill to provide for the above elements.

¹ The SALRC also defined “court-ordered kinship care” which would be the route taken for children who are placed in care as a means of protection against maltreatment, but for whom relatives are available to provide care while efforts are being made to assist the biological family to resolve their problems. Here there is closer overlap with conventional foster care. The Commission emphasised the importance of recognising the inherent differences between placements within the extended family and those with people come forward to offer a service as foster parents to children who are unknown to them, but who need care after protective intervention by the state. “Court-ordered kinship care” is not discussed in detail in this submission because of the urgency at this stage of focussing on informal kinship care.

The measures suggested for the Bill need to be combined with a **shift in the social security system**. There are **two possible routes** currently being debated between organisations concerned with child rights, namely:

- **Provision for an Informal Kinship Care Grant (IKCG)**, as described in the draft Children's Bill originally prepared by the SA Law Reform Commission, which would be available to children who are in the care of extended family members, in cases where financial assistance is needed but protection against maltreatment is not required. The amount paid for such a grant would be at the discretion of government – it could be equal to the Foster Care Grant if this were affordable.
- **Lifting of the age ceiling on the Child Support Grant (CSG) and reduction or elimination of the gap between this benefit and the Foster Care Grant (FCG)**. In addition there should be a substantial adjustment of the means test which has been in place since the inception of the CSG – if this cannot be done away with altogether. Such an approach would have the advantage of requiring only a change to the Regulations of the Social Assistance Act rather than the Act itself. The extension of the CSG is favoured by many organisations because of the perverse incentive which exists for children to be left in the care of relatives in order to gain access to the FCG, as this could also arise in relation to an IKCG. These organisations also point to an element of injustice in the present situation, which discriminates against extremely poor children who are in the care of their biological parents, in favour of those who are with relatives.

It is proposed that the feasibility of both the above approaches be fully investigated within a process running parallel to that relating to the Children's Amendment Bill.

The NWSSDF regards the present deliberations regarding the Children's Amendment Bill as an opportunity to address the present crisis, and to create a system which will be able to make a real impact on the overwhelming problems faced by the orphans and vulnerable children of our country.

Thank you for your consideration of these proposals.

Yours sincerely,

MARILYN SETLALENTOA
NATIONAL CHAIRPERSON

cc: all members, Select Committee on Social Services

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ANNEXURE A

PROPOSED INSERTIONS AND AMENDMENTS TO THE CHILDREN'S AMENDMENT BILL²

A. The following insertions are suggested to flesh out the sections in Chapter 8 which describe the types of prevention and early intervention services which are to be provided, and to provide for an early intervention role for schools:

Purposes of prevention and early intervention services or programmes

144(1) *(describing prevention and early intervention services which are to be provided).....*

- (i) providing assistance with issues of trauma and grief in families affected by illness, death, separation, violence or natural disasters;*
- (j) providing practical assistance and guidance for older persons, children and young adults who are serving as caregivers for children;*
- (k) providing assistance to families with children with disabilities;*
- (l) providing assistance to families with children with chronic illnesses;*
- (m) providing assistance to children in families with sick or terminally ill caregivers and children living in child-headed households;*
- (n) providing assistance to children suffering from substance abuse or children living with caregivers suffering from substance abuse; and*
- (o) providing aftercare services and support to children when they leave residential care.*

144(2) *Prevention and early intervention services or programmes ~~may~~ must where necessary include –*

- (a) assisting families to obtain the basic necessities of life and to access essential services;*
- (b) empowering families to obtain such necessities and access essential services for themselves.*
- (c) providing families in desperate need with the basic necessities of life including food, clothing, and shelter*

148. *The principal of a public or private school must on a confidential basis –*

- i) identify children who are frequently absent from school, where this may be due to their becoming involved in exploitative child labour or excessive household responsibilities, or to lack of appropriate family care;*
- ii) take all reasonable steps to assist them in returning to school or to discourage them from leaving school;*
- iii) submit the names and addresses of those children to an appropriate prevention or early intervention programme or alternative support service, or to the nearest office of the Department of Social Development for assistance; and*
- iv) submit the names and addresses of those children to the provincial head of Social Development, for purposes of data-gathering and planning.*

² With acknowledgements to the SA Society for the Prevention of child Abuse and Neglect (SASPCAN) and the Johannesburg Child Welfare Society which have previously tabled many of the recommended changes..

B. The following amendment is recommended to secure the position of the services in question in planning and budgeting processes:

146. ~~(1) The Minister must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children across the country~~ ensure that a national network of prevention and early intervention services as described in s145 is in place and operating effectively throughout the country, based on data reflecting the numbers of vulnerable children and families in each province.

C. The following provisions, designed to enable kinship caregivers to properly carry out their caregiving responsibilities, are drawn directly from ss 207-8 of the original draft Bill prepared by the SA Law Reform Commission:

Responsibilities and rights of relatives in terms of informal kinship care arrangements

- (1) A relative caring for a child in terms of a an informal kinship care arrangement
 - (a) has the responsibilities and rights in respect of the child –
 - (i) as provided for in section and any other provision of this Act; and
 - (ii) as a court may assign to that relative in terms of section ...; and
 - (b) may on behalf of the child's parent or guardian -
 - (i) consent to medical treatment of or an operation on the child in terms of section ..., or
 - (ii) assist the child in terms of section to consent to such operation;
 - (c) may on behalf of the child apply to any organ of state for any grant or other aid in respect of which the child may qualify, including a social security grant;
 - (d) may consent to the child going on journeys, including educational, cultural, sports and holiday excursions; and
 - (e) may perform such other acts as may be prescribed by regulation.
- (2) A relative caring for a child in terms of an informal kinship care arrangement may exercise the responsibilities and rights referred to in subsection (1) only to the extent that the care of the child is not provided by the parent, guardian or other person to whom parental rights and responsibilities in respect of the child have been assigned.
- (3) Consent or assistance in terms of subsection (1) (b) may only be given with the written authority of the parent or guardian except if –
 - (a) the child –
 - (i) has been abandoned by the parent or guardian; or
 - (ii) is an orphan; or
 - (iii) the whereabouts of the parent or guardian are unknown.

Termination of informal kinship care arrangement

An informal kinship care arrangement may at any time be terminated by –

- (a) the parent or guardian of the child reclaiming his or her right to care for the child, except when a children's court orders otherwise;
- (b) the relative caring for the child in terms of the arrangement;
- (c) the children's court on application by the child or any other person with an interest in the care of the child.