

SUBMISSION TO THE WESTERN CAPE LEGISLATURE
(SELECT COMMITTEE ON SOCIAL DEVELOPMENT)
ON THE CHILDREN'S AMENDMENT BILL B19-2006
AS INTRODUCED IN THE NCOP DATED 30 JUNE 2006

SUBMITTED BY **B L A C K S A S H**
MAKING HUMAN RIGHTS REAL

FEBRUARY 2007

INTRODUCTION

This submission relates particularly to the clauses dealing with child protection systems in clause 105 and child-headed households in clause 136. The Black Sash is in favour of administrative oversight and compliance and would also like to make some general comments on the Bill's compliance with PAJA and PAIA legislation.

The Black Sash works to advance equality and social justice.

We provide a paralegal service to those who need help in a variety of matters, including child support and other social grants, labour problems, debt counselling and citizenship applications. Our services are free.

Our seven regional offices help recover an average of R16 million a year in government grants and private pensions/social security. In the process, our clients recover their rights to the recognition of their dignity and humanity. Last year we helped 10 000 people.

The Black Sash is an independent, non-governmental organisation which contributes significantly to different areas of national policy.

Our research and recommendations have tangible, real-world effects on comprehensive social security systems like the Social Security Agency and Promotion of Administrative Justice Acts.

We train dozens of new paralegals for other organisations each year, and conduct outreach and education campaigns in four provinces, on issues ranging from HIV/AIDS to voter education.

We believe in the rigorous monitoring and promotion of basic human rights.

We intervene when necessary, to ensure rights extend to all.

The Black Sash is an advocate for a just society.

We are committed to making human rights real.

PART 1, CLAUSE 105: CHILD PROTECTION SYSTEM

- ✓ **Clause 105(1): who reports?**
- ✓ **Clause 105 (2): replace “believes” with “reasonable suspicion”**

Clause 105 (1): who reports?

“Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, **legal practitioner**, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official *who on personal observation concludes* that a child has been sexually abused...”

The Black Sash is concerned with who is allowed by this legislation to report when a child is in need of care. Legal practitioners are incorporated into the list of people mandated to report when a child is in need of care. However, the definition of a legal practitioner excludes paralegals. The Draft Legal Services Charter 2006 defines legal practitioner as a “person engaged in the provision of legal services including a paralegal”. The Charter further defines paralegal services as provision of primary legal services to the general public, especially the poor, marginalized, indigent individuals, groups or community. Although the position of clearer status of paralegals is anticipated to change in the future with the Draft Legal Services Charter, the definition currently stands to exclude paralegal workers.

The Black Sash's would argue that in poorer (especially rural) communities who do not have access to legal advice because of high fees, paralegals are a necessary alternative. Furthermore, advice offices are likely to be the first point of access by people trying to secure social protection and assistance and therefore, paralegals have an essential role to play in the reporting of children in need of care.

Therefore, the Black Sash would argue for paralegals to be included separately in the Children's Amendment Bill Clause 105 (1):

"Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, **paralegal**, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation concludes that a child has been sexually abused..."

Clause 105 (2): replace "believes" with "reasonable suspicion"

"Any person who **believes** that a child is in need of care and protection because of abuse, sexual abuse or deliberate neglect may report that belief to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

The Black Sash endorses the submission by Child Line SA and (Kwazulu-Natal) to include the word "reasonable suspicion" in Clause 105(2) because the people listed in Clause 105(1) are not specially trained to investigate abuse. Therefore, the Black Sash would like to endorse the wording to be changed to "Any person who reasonably suspects that a child is in need of care and protection because of abuse...".

"Any person who **reasonably suspects** that a child is in need of care and protection because of abuse, sexual abuse or deliberate neglect may report that **suspicion /belief** to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

PART 4, CHILD-HEADED HOUSEHOLDS

- ✓ **Clause 136(3)(2)(a): inclusion of “may apply”**
- ✓ **Clause 136 (3)(2)(a): definition of social security grant**

Clause 136(3)(2)(a): why is “may apply” absent?

136 (3) The organ of state or non-government organisation contemplated in subsection (2)-
(a) **may collect and administer** for the child-headed household any social security (*grant*) or other grant or assistance to which the household is entitled;

The term “may apply” has been excluded from the Children’s Amendment Bill. We argue that “may apply” is necessary terminology in the case of child-headed households – a section needs to be dedicated to help child-headed households **apply** for social security funds such as the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries and Diseases Act (COIDA) and the Road Accident Fund (RAF).

Child-headed households are entitled to the UIF and COIDA benefits of their deceased parents -who contributed to the mentioned funds -within a prescribed time after their parents’ death. The Black Sash argues that it is difficult for a child-headed household to access these benefits during the limited prescription periods without guidance. The Black Sash is active in securing these types of benefits for adults who find it difficult to access these benefits. Our experience is that it is difficult enough for adults to gain access to these benefits and the prescribed time is unlikely to be known to a child. The most vulnerable children – from child-headed households - lose access to benefits necessary for their survival unless they have access to bodies that can apply for them. Therefore, the term “may apply: should be incorporated into Clause 136(3)(2)(a).

136 (3) The organ of state or non-government organisation contemplated in subsection (2)-
(a) **may apply, collect and administer** for the child-headed household any social security (*grant*) or other grant or assistance to which the household is entitled;

Case study “Hit-and-run” claims for child-headed households

ROAD ACCIDENT FUND (RAF) cases present further problems for child-headed households. A RAF case does not prescribe until a child is 21 years or older. If the head of a child household or sibling gets hurt/killed in a hit and run case, the prescription period for a claim is only 2 years. Again, in a child-headed household

that may not have access to guidance on these matters, the prescription period disadvantages the most vulnerable children in our society.

It procedurally intimidating and costly for a child from a child-headed household to apply for the above, even in the unlikely event that such a child is aware of the benefits available to him/her. The state has a responsibility to make it easier for children from parentless households by removing some of these obstacles. We recommend that provision be made for other bodies to apply on behalf of the child.

Clause 136 (3)(2)(a): definition of social security grant

The Black Sash argues that there are social security exclusions implicit in the Children's Amendment Bill Clause 136(3)(2)(a):

136 (3) The organ of state or non-government organisation contemplated in subsection (2)-

(a) may apply, collect and administer for the child-headed household any social **security grant** or other grant or assistance to which the household is entitled;

Clause 136(3)(2)(a) guarantees children access to a "social security grant", although South African legislation does not have a definition of social security. The Black Sash is concerned that by not listing social assistance schemes we inadvertently interpret grant to mean government assistance and exclude other strands of social security. We argue that any child-headed household should be entitled to benefits like UIF, COIDA, RAF, money in trust (insurance policies), pensions and maintenance.

The Black Sash is concerned that these benefits, which can be accessed by child-headed households, have been excluded from the Bill. The terminology needs to be extended to include social security funds/benefits such as UIF, COIDA, RAF, money in trust (insurance policies), pensions and maintenance.

136 (3) The organ of state or non-government organisation contemplated in subsection (2)-
(a) may apply, collect and administer for the child-headed household any social **security funds** or other grant or assistance to which the household is entitled;

The treasury refers to social security fund – and therefore the Black Sash argues that the legal drafters use the word fund to include the mentioned funds above.

PART 4, EXCLUSION OF COURT-ORDERED KINSHIP CARE

Clause 180 (2) (a) provides “Foster care excludes the placement of a child – (a) in court-ordered kinship care

Kinship Care is not referenced in the principal Act, Children’s Act 38 of 2005. (Refer to Children’s Act: Clauses 46, 150, 156). The Children’s Amendment Bill does refer to kinship care, but does not include a definition of kinship care.

The state distinguishes between Foster Care Grants and Kinship Care Grants. The Foster Care Grant is a monthly payment made to foster parents in respect of a foster child under the age of 18 who has been placed in their custody in terms of the Child Care Act. The Kinship Care Grant refers to money provided for families that take care of relative’s children, when these relative’s cannot afford to do so.

The court-ordered kinship clause become confusing because in clause 180(2) the legislature intend excluding court ordered kinship care from the foster care system while clause 180 (3) provides that “a children’s court may place a child in foster care with a family member who is not the parent or guardian of the child.”

The Black Sash requests the inclusion of a definition of what is meant by kinship care in the Children’s Amendment Bill to prevent the exclusion of certain family members to access a grant for their relatives’ children. If court-ordered kinship care is excluded from the Bill, the Black Sash fears that some impoverished families will not have the means to take care of children placed in their care.

THE BILL’S COMPLIANCE WITH PAJA-PAIA LEGISLATION

Writing legislation that is progressive, comprehensive and attends to the holistic needs of children is not sufficient in itself. The implementation of legislation, making legislation a living reality in the lives of South Africa’s children, requires the monitoring of implementation of legislation and policy, legislative review mechanisms and its impact on effective service delivery to children. The Black Sash is in favour of the Promotion of Access to Information Act 2 of 2000 and the Promotion of Administrative Justice Act 3 of 2000 and would like to recommend periods of compliance to be prescribed to certain facilities, places of care, shelters and youth care centres, appeals to comply with the provisions of the Bill. It is our experience that in the absence of specific legislative prescriptions the provisions in the Bill might get watered down or of no use.

The Black Sash therefore recommends clauses relating to facilities ie youth care centres, ECD centres and shelters to prescribe a period within which a partial care facility to be registered or a clause 86 appeal to be lodged.

The Promotion of Administrative Justice Act 3 of 2000 prescribe in section 9 a period of 90 days or less for reasons for administrative action and with a maximum period of 180 days for judicial review. The Black Sash recommend that similar periods be incorporated in the Bill to ensure the constitutional rights of children are respected and effective service delivery to South Africa's children.

The Black Sash recommend like section 13 Information on health and 272 Access to Information in the Children's Act 38 of 2005 dealing with access to information to the adoption register to be included in the Bill to provide for access to

We thank the Portfolio Committee on Social Development for considering our recommendations and possible incorporation of the recommendations in the final draft of the Bill.