
SUBMISSION TO THE NATIONAL ASSEMBLY ON THE CHILDREN'S AMENDMENT BILL [B19B-2006]

Children's Institute, University of Cape Town
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1. The provisioning clauses (s 78, 93, 105, 146, 193 and 215)

Section 28(1)(c) of the South African Constitution accords children the right to social services. Section 7(2) obliges the state to respect, promote, protect and fulfil the right.

A range of policies, laws, strategic plans and programmes are needed in order to realise children's social welfare rights. These measures together make up the state's overall plan for the realisation of the rights. Within this overall plan, a law has a distinctive role to play with regards to guiding decisions on budget allocations. This role includes:

- Placing a legislative/statutory obligation on government to provide the services or programmes that are needed to give effect to the rights. For example, S193 of the Children's Amendment Bill places an obligation on government to provide child and youth care centres; and
- clarifying which sphere of government is responsible for providing the service. For example, the same section of the Children's Amendment Bill states that the provincial MECs for social development bear the duty to provide child and youth care centres.

The Children's Amendment Bill specifies that the following social services should be provided to children and their families:

- Partial care (crèches);
- Early childhood development centres and programmes;
- Prevention and early intervention programmes (to assist families to prevent abuse and neglect from occurring);

- Protection services for children who have been abused and neglected;
- Foster care;
- Child and youth care centres (children's homes, places of safety, secure care facilities, schools of industry, reform schools, and shelters for street children); and
- Drop in centres for vulnerable children.

Provinces receive their funding from national treasury via the equitable share. The decision making with regards to how much each province gets vests mainly with National Treasury. National Treasury is bound by s214(2) to consider a range of factors when making these decisions. One of the factors is the obligations imposed on provinces by national legislation [see s 214(2) (h)]. Despite the fact that the Child Care Act currently imposes a number of obligations on the provinces to provide social welfare services to children, these obligations are not explicitly factored into the equitable share. However the obligations borne by the provinces as a result of the National Health Act and the South African Schools Act are explicitly costed into the equitable share. One of these consequences of this is that when provinces receive the lump sum of money from National Treasury for division between the various provincial departments, the provincial departments of social development have a distinct bargaining disadvantage.

The Financial and Fiscal Commission (FCC), a constitutional body mandated to safeguard the factors listed in s 214(2) of the Constitution, has recommended that social welfare services should be included in the equitable share formula. National Treasury agrees that this is a good idea, but has not yet followed up on the advice.

In 2006/07, provinces allocated a total of R60 647m for their Health departments, and R91 995m for their Education Departments, but only R5,289m for Social Development Departments. The Health allocation was thus more than 11 times as large as the Social Development one, while Education was more than 17 times as large. Of the total Social Development amount, only R2 244m was allocated for social welfare services. Within this, only R1 103m was allocated for Child Care and Protection Services.

The Children's Act and Children's Amendment Bill repeat the Child Care Act obligations and impose a number of new obligations on the provinces which will need to be funded via the equitable share. Some of these obligations are phrased in compulsory language (protection services and child and youth care centres) while others are phrased in discretionary language (partial care, ecd, prevention and early intervention, and drop in centres).

The use of discretionary language could result in these services not being provided and funded at all or being provided and funded inadequately. Strong and clear provisioning clauses in the Children's Amendment Bill, coupled with

the necessary changes to the equitable share formula in line with s214 (2) (h) of the Constitution, could help ensure that these services are explicitly costed into the equitable share formula. This should result in more budget being allocated to the provinces.

At the provincial budget decision making level, clear legislative mandates could help the MEC's for Social Development to negotiate a bigger slice of the provincial budget. At a meeting of the Portfolio Committee on Social Development on 20 June 2007, Musa Mbere (Director for Children, national Department of Social Development) reported that the national had allocated R2,4bn for ECD to provinces, but the provinces used some of these funds for other purposes. If the provinces have clear legislative mandates obliging them to provide ECD services, this kind of problem is less likely to occur.

The Children's Act provides explicit guidance to national treasury and to the provinces with regards to making decisions about how much budget should be allocated for social welfare services for children. Section 4(2) of the Act requires national, provincial and, where relevant, local spheres of government, to take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of the Act. This means that national treasury and the provinces need to prioritise the implementation of the Children's Act when they are making decisions about budgets and the allocation of resources.

Recommendation: Remove the word "may" from sections 78, 93, 146 and 215 and replace with the word "must".

2. Other policies that will ensure more vulnerable children are reached and at the same time help reduce costs in the long term

2.1. More vulnerable children will be reached if the Child Support Grant (CSG) is extended to 18

Extending the CSG to 18 will reduce the demand for the Foster Child Grant (FCG) and give social workers more time to devote to the care and protection of abused children. It will also ensure that orphans and other vulnerable children receive the material assistance they need more easily and speedily.

Statistics South Africa surveys show that:

- more than two-fifths of South Africa's children live in a household where neither parent is employed;
- two-thirds of all children live in poverty; and
- over half of all children live in households with a monthly income of R800 or less.

In short, South Africa's children are bearing a large part of the burden of poverty.

The Children's Bill is a remarkable step forward in the protection of children. It will provide many social services to children, ranging from community-based prevention services for all children, to alternative care in residential facilities for children who have suffered abuse or neglect at home or are on the streets. However, the Children's Bill needs to be supported with changes to the social security system in order to be effective.

The loss of one or more parents makes a child vulnerable, but does not mean that they need statutory protection services. Most poor children who have been orphaned by AIDS are cared for by relatives. Many of these relatives go through a long court process to claim the FCG, not because the child needs protection services, but because the family is living in poverty and needs a social grant to support the child. As a result, the formal child protection system is being used as a poverty alleviation mechanism, leaving fewer resources to provide support and protection to children who have been seriously abused or neglected.

In May 2000 there were less than 50 000 children in court-ordered foster care. By May 2007 the number had reached 418 608. This means an increase of more than 700% in seven years, and long waiting lists for social work services and court dates. This situation has created a major crisis in the country's child protection services.

To address the crisis, we need to lift the age ceiling of 14 years on the CSG and reduce or eliminate the gap in monetary value between the CSG and the FCG. In addition, the CSG means test must be adjusted as it has not changed since it was introduced in 1998, despite significant inflation. These changes in the CSG would mean that relatives and other caregivers would not have a reason to prefer the FCG. Instead, they would apply for the CSG, which does not require a court order. This would remove the extra, unnecessary burden on the courts and social workers and free them up to help children who have suffered serious cases of abuse. However, it would be important to ensure that there are good prevention and early intervention services in all communities to assist these relatives to provide good care for orphans.

The call for the extension of the CSG to age 18 is supported by all the major networks in civil society, by the majority of ANC branches, by the Human Rights Committee and the UN Committee on the Rights of the Child.

Recommendation: It is interesting to note that while the age limits for all the other social grants have been set by Parliament in the Social Assistance Act of 2004, the age limit for the Child Support Grant lies within the Minister's discretion via regulations. A question should be raised as to why the age limit

for this grant is not being set by Parliament. Parliament can however play a role in influencing the Minister's decision by getting involved in the drafting of the regulations. The Department of Social Development will soon gazette the final regulations to the 2004 Social Assistance Act. These regulations set the age limit for the CSG and give the details of the means test. Parliament could request a briefing on the draft regulations and in particular inquire as to when the age limit for the CSG will be extended.

2.2 More prevention of HIV/AIDS and treatment of caregivers with HIV/AIDS will reduce the cost of the Children's Bill in the long term (s146)

HIV/AIDS is one of the big 'drivers' of the need for services for children. For example, HIV/AIDS hugely increases the need for foster care orders as well as the need for places in children's homes. Overall, about two-thirds of the cost of the FC high scenario reflects services to children orphaned by HIV/AIDS. These costs can be reduced if the government vigorously implements its HIV/AIDS prevention and treatment strategy. For example, if more adults can access anti-retrovirals, there will be fewer children with ill caregivers who cannot earn enough to provide for them adequately, and fewer orphans needing placement in care.

Improving access to anti-retrovirals and care and support for HIV-positive parents will reduce the cost of the Children's Bill over time.

Recommendation: Many NGOs provide programmes aimed at assisting adults and children to access HIV prevention and treatment services. These programmes would largely fall within the ambit of Chapter 8 (Prevention and Early Intervention) and NGOs would access their funding via the provincial departments of Social Development or Health. Strengthening the provisioning clause, s146, in Chapter 8, by replacing the word "may" with "must" would help ensure that there is more funding to allocating to the many NGOs running these programmes.

3. Some changes to the Bill that will reduce the cost in the long term and realise children's rights more effectively

3.1 Prevention and early action is better and cheaper than waiting for bad things to happen to children before we take action

The costing team used a 'good practice' approach to work out the cost of prevention and early intervention services covered in Chapter 8 of the Children's Bill instead of sticking strictly to what the Bill says. As a result, the costing allocated much more money to these services than is currently spent on them. For example, the costing says that R644m should be spent on prevention services in 2005/06 under the FC high scenario, and R4 800m (R4, 8 billion) on early intervention services. By 2010/11, these amounts increase to R1 178m

(R1, 2 billion) for prevention services and R8 667m (R8, 7 billion) for early intervention services. Emphasising these services may seem to add more money to the total cost than is necessary. But the relatively small amounts of extra money will soon lead to much bigger savings in costs of other services by reducing the number of children in need, and thus the 'demand'. Changing the Bill by strengthening the chapter dealing with prevention and early intervention services will therefore add small-ish costs in the short run that will soon result in savings – and a better situation for children.

Recommendation:

The Bill needs to be changed to place more emphasis on prevention and early intervention services.

We recommend that s144 (2) is amended as follows:

- (2) *Prevention and early intervention services or programmes may include -*
- (a) *assisting families to obtain the basic necessities of life and to access government services and grants;*
 - (b) *empowering families to obtain such necessities and access government services and grants for themselves; and*
 - (c) *providing families in desperate need with the basic necessities of life including food, clothing, and shelter.*

3.2 Civil society organisations are essential to address service delivery backlogs and ongoing need

At present there are many non-governmental organisations (NGOs), faith-based organisations (FBOs) and community-based organisations (CBOs) that are providing services for children. In fact, civil society provides the majority of the services for vulnerable children. If these organisations were not there to help, the government would need to provide all the services on its own. Some of the services – such as foster care placements – are services that the government is obliged to provide by law. Other services – such as prevention and early intervention – are not yet required by a specific law, but are required by the Bill of Rights and are necessary for the well-being of the children of the country. The government's obligation to ensure these services are provided will increase when the Children's Bill becomes law.

In some cases the government gives a subsidy to the organisations that provide services on its behalf. In many cases it does not give a subsidy. Even where the government provides funding to the organisations, at present it only covers a

portion of the cost. Organisations are forced to spend time and energy looking for funding elsewhere. They are also often forced to pay their workers much lower salaries than people doing similar jobs in government. They often struggle to retain their workers because the funding from the government is not guaranteed and predictable. When organisations fail to retain staff, the quality of the service to children deteriorates, for instance when a child's case is passed on from one staff member to the next.

Cornerstone calculated the costs of services that can be provided by either government or other organisations using the full cost of the services if government delivers the service itself. It did the calculations in this way because government cannot expect civil society organisations to deliver the services with less funding than government itself needs to provide the same service. If the government continues to provide only partial subsidies to NGOs, FBOs and CBOs, it will be weakening the services and support systems that can help to address the service delivery backlogs and provide for children's needs. In the end it will be the children who suffer because the services will either not be provided at all or will be of a poor quality, including long waiting periods.

Recommendation: Government should cover the cost of delivering services provided for in the Bill. The Bill should say that where these services are delivered by NGOs, government should provide the NGOs with full cost funding. Organisations must also have certainty about funding for beyond the period of a single year.

3.3 Using a range of professionals and para-professionals instead of relying only on social workers will help tackle backlogs and save costs (s 81, 82, 97, 110, 141, 186 and 220)

The Children's Bill that was tabled before the NCOP referred mostly to "social workers". It did not acknowledge that there are different types of indigenous (home-grown) social service professionals and para-professionals who can (and already do) provide protection, prevention and early intervention services for many vulnerable children in a cost-effective manner.

Placing too much emphasis on social workers is not sensible. Firstly, we simply don't have enough social workers in the country. Social workers should therefore be reserved for the tasks for which they are really needed and for which their skills are appropriate. The other social service professionals and para-professionals can do many of the other tasks just as effectively – and sometimes more appropriately – than social workers because the tasks match their training and experience.

In particular, we already have 6 000 child and youth care workers who are providing prevention, protection and alternative care services to children. Many of these workers come from the communities they work in. This helps them

provide a good service that is responsive to the local community. Auxiliary child and youth care workers are much less expensive than social workers, take a much shorter time to train and can be trained on the job. They are much less likely to emigrate than social workers as their skills are most appropriate for South Africa. Finally, by expanding the numbers of these home-grown workers we get the added benefit of providing employment to young people in the poorest areas.

The Department of Social Development and the NCOP have amended the Bill and, where possible, replaced references to social workers with the term “social service professionals”. The Children’s Act defines a social service professional to include a probation officer, development worker, child and youth care worker, youth worker, social auxiliary worker and social security worker who are registered in terms of the Social Service Professions Act of 1978.

The amendments in sections 81, 82, 97, 110, 141, 186 and 220 may reduce the total cost of implementing the Bill as these other categories of workers are less expensive than social workers.

Recommendation: We support these amendments by the NCOP as they will help reduce costs and also ensure that a range of social service professionals can be used to deliver appropriate and community-based services to vulnerable children.

3.4 Replacing two-yearly court review of foster care orders with a simpler, cheaper administrative process for children in low-risk placements will reduce costs and promote permanency for children (s186)

The Children’s Bill tabled in the NCOP specified that the children’s courts must review all foster care placements every two years. The costing team calculated that the cost to the Department of Justice of reviewing these orders is R531m in 2005/06 under the FC high scenario. This equals 24% of the total cost of the Bill for the Department of Justice in 2005/06. And the cost almost doubles over the period 2005/06 to 2010/11.

As discussed above, this cost in time and money is unnecessary where there is no sign of danger to the child. Court review is, for example, not appropriate for many children placed in the long-term care of relatives, including many placed with relatives as a result of being orphaned. Where child protection services are not needed, these children can be supported and monitored through expanded prevention and early intervention services.

Taking these arguments into account, the NCOP amended s186(2) to say that a court may under specified circumstances make a permanent order that a child remains in the care of a relative until the age of 18. This order can be made at the first court hearing, and will eliminate the need for a two-yearly review.

Where a child is placed in the care of a non-related foster parent, the court may extend the placement until the child is 18 after the first two-yearly review. These long-term foster placements will be evaluated by a social service professional.

Recommendation: *We support these amendments by the NCOP because they reduce costs, free up social workers' time to deal with child abuse cases and increase stability for children.*

4. Conclusion

Thank-you for considering our submission and we wish you well in your deliberations on the Bill. Please contact us for any further information needed to assist you in your deliberations.

Kind regards

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