

***Submission on the Children's Amendment
Bill [B19B of 2006]***

***From the Child, Youth, Family & Social
Development (CYFSD) research programme
at the Human Sciences Research Council
(HSRC)***

To:

**The Portfolio Committee on Social Development:
National Assembly**

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Social science that makes a difference

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The Child, Youth, Family & Social Development (CYFSD) research programme at the Human Sciences Research Council (HSRC)

Introduction:

Child Youth, Family & Social Development (CYFSD) hereby submits comment on the Children's Amendment Bill [B19B of 2006].

We believe that the Bill is a milestone in legislative provision for the protection of children and support of vulnerable families in their efforts to care for children as well as addressing the need for services appropriate to their emotional, physical, and spiritual development. Based on the research which we conduct in the unit, we would like to make certain points in relation to the matters outlined below.

The Human Sciences Research Council (HSRC)

The HSRC is a statutory research institution established in terms of the Human Sciences Research Act, No 23 of 1968. The Act broadly requires the HSRC to focus its activities on research into societal problems. A ministerially appointed Council governs and oversees the activities of the HSRC. The organisation is designed to ensure that its research activities and programmes are aligned to South Africa's national development priorities: notably poverty reduction through economic development, skills enhancement, job creation, the elimination of discrimination and inequalities, and effective service delivery. The HSRC has consolidated its research capabilities into five interdisciplinary, problem-orientated, research programmes, one of which is Child, Youth, Family and Social Development (CYFSD), headed by Professor Linda Richter.

CYFSD has 17 senior research staff, and 3 research interns covering a range of disciplines including: Sociology, Demography, Psychology, Social Anthropology, and Economics. Staff and research outputs may be viewed at <http://www.hsrc.ac.za/CYFSD.phtml>

CYFSD aims to promote human and social development through the production of high quality applied research that addresses challenges arising from social inequality, poverty, violence, HIV/AIDS and other causes of ill-health, suffering, and loss of human potential. Our interdisciplinary approach contributes knowledge and evidence to inform the design, implementation and evaluation of policies and programmes to achieve a better life for all

South Africans. We also seek to extend our work by joining together in partnership with colleagues from other African countries.

We research aspects of the life course, from infancy to old age, with an emphasis on understanding how contexts, policies and politics shape and distribute life chances. Our research focuses on individuals, groups and institutions relating to children, youth, families, and vulnerable populations, including older individuals and people with disabilities.

In relation to the Bill we have conducted the following relevant research (among many other projects (see www.hsrc.ac.za) :

- A rights-based approach to monitoring child well-being: Responding to the need for a robust system to monitor the situation of children, this output provides indicators for measuring child poverty; education and early childhood development (ECD); child disability, health, HIV/AIDS, injury, mental health, and substance abuse; and child protection. The system includes indicators for monitoring access to and quality of services in each of these areas.
- Child protection: A series of studies has been conducted including a situation analysis of child maltreatment, as well as indicators and policy recommendations for improving services to children affected by maltreatment and abuse. We have also advised the Department of Social Development in the Western Cape on the development of an Integrated Child Protection Plan.
- The Early Years: A major multi-year research initiative draws on the National Integrated Plan for ECD and is developing demonstration projects to improve access of children to services in the years 0-4, while improving quality and increasing employment in the ECD sector. The objective is to improve child survival and health, child protection and development.
- Family and Elderly Policy: We have undertaken research on households to inform policies for the family and the protection of the elderly in South Africa. We have also tracked changes in household and family demographics since 1994.
- Child labour in commercial and subsistence agriculture: The study investigated the causes, nature and impact of work and labour by children aged 12-16 in commercial and subsistence agriculture. The incidence of child work was high, and exposure to hazardous conditions was common. Children also carry a heavy burden of additional domestic and other work activities. Together, these were found to have a negative impact on time available for schooling, recreation, socialization and home work. The study highlights the urgent need for more effective economic and social support measures for children and families affected by poverty.
- Supporting Indigenous Community-Based Responses to children and families affected HIV and AIDS. In the face of poverty and HIV and AIDS, indigenous community responses play a critical role in averting destitution and crises, retaining children in school, providing psychosocial support, and promoting human and social capital development. This project supports community-based responses to the needs of children affected by HIV and AIDS.
- Psychosocial care of infants in HIV/AIDS treatment programmes: The aim of this project is to investigate the existing evidence for and experiences of the psychosocial needs and care of young children infected or affected with HIV/AIDS in paediatric and adult treatment programs. An exploration of local practices, experiences and knowledge through key informant interviews with experts and with the health services representatives.

Submission

We make submission in relation to Chapters 5, 6, 7 and Part 4 of the Bill as follows:

Chapter 5: Partial Care

Clauses 77, 78, 80, 81, 83, 84, 85 & 87: Pertaining to Funding, Registration, Cancellation, Minimum Norms and Standards, Records and Inspection:

We wish to draw attention to the following points:

We support provisions in the Bill for these services, as well as their registration, and the inclusion of minimum norms and standards for partial care. Based on our research, we would like to observe the following:

1. ECD service provision is vulnerable to provincial budgeting processes.
2. The current registration process is cumbersome and duplicated by local authorities and education.
3. Norms and standards for registration should articulate with the Guidelines for ECD Services (Clause 83c)

Recommendations regarding Funding, Registration, Minimum Norms and Standards

1. Clause 78 B19B should be strengthened to require the Minister to provide funds for partial care services.
2. A single registration process for both facilities and programmes is required. Clause 80 should provide for this.
3. Officials involved in supporting the application for registration and renewals of registration should have received suitable orientation to ECD services (Clause 81c)
4. Cancellation for registration is supported but alternative arrangements must be made with immediate effect and in relation to sub-clause 2 (a) and (b) we would like to see the time frames for suspension and reinstatement specified to avoid misunderstandings.

Chapter 6: Early Childhood Development

We support the provisions for ECD services, their registration and the inclusion of minimum norms and standards for this area.

Based on our research, we would like to observe the following:

1. ECD is not simply a Chapter 5 and Chapter 6 concern. ECD is a key preventative strategy for children and their families.
2. Clause 91 defines ECD services and programmes. However, the focus on provision by a person other than the child's parent or caregiver on a regular basis will tend to be interpreted as ECD group facilities; whereas current ECD Policy specifies a range of programmes including direct support for the role of the parents as the child's first duty bearer. These may include parent education and support programmes, advice and counselling services etc.
3. Clause 93 contains a discretionary budget commitment to ECD services and programmes which, as noted in relation to Partial Care, undermines provision of these essential services, when funding earmarked for ECD is used for other purposes.

4. ECD provisioning services in the poorest communities are unlikely to have funds and resources required to comply with regulations unless they become registered and subsidised.

Recommendations regarding Registration, Funding, Coordination of ECD to Prevention and Early Intervention, Funding:

1. There is need for a comprehensive ECD system which must link also to Chapter 8 (Prevention and Early Intervention). This will include addressing the needs of young children with disabilities, chronic illnesses including HIV/AIDS and other special needs.
2. There is a need for clear legislative mandates to ensure adequate funding for the provision of ECD services and programmes.
3. With regard to consideration of applications for registration (Clause 97 1b), regulations must be drafted in such a way that they do not act as barriers to ECD provisioning in the poorest communities.
4. There should be provision for the Department of Social Development to assist service providers to meet the requirements. This would also apply for Conditional Registration in Clause 98.

Chapter 7, Part 1: Child protection systems

We wish to draw attention to the following points:

1. Our social work services for children are at risk of abuse and neglect and under massive strain.
2. As the Barbeton 'costing report' on the Bill notes, the ratios of social workers to children are extremely poor as it is – even in a minimum service scenario – and are inadequate to address preventive (as described in Chapter 8 of the Bill) and protective services (covered in various clauses but particularly under Clauses 106 through 109).
3. We note that the Department of Social Development is committed to strengthening preventive and early intervention services. We support these moves while also recognising the need for greatly enhanced service provision for children who have suffered abuse and neglect.
4. In regard to the provisions for mandated reporting contained in Clause 105 (1) of the Bill, we wish to make the following observations:
 - a. While reporting is an important component of child protection systems the research evidence is that *mandated reporting systems* such as contained in the Bill are likely to *massively* increase the strain on social work services due to an increased requirement for investigations of reports.
 - b. Experience in other parts of the world (with highly developed social services) indicates that mandated reporting provisions result in social work services becoming skewed toward an investigatory (and prosecutorial) function and away from supportive preventive services for vulnerable families in which children are at risk. This is because investigations of abuse are necessarily resource intensive and pull limited social service resources away from other functions. Furthermore, up to 70% of reported cases are not substantiated.
 - c. Our research in the Western Cape indicates a massive under-resourcing of children's social work services as things stand currently (see also the 'Barbeton costing on the Bill'). Resources are further strained by the pressures of increasing numbers of children made vulnerable by HIV and AIDS, including child headed households. We are concerned that mandated reporting will result in increased reports of abuse and neglect that will have to be actioned by an

already overstretched service and that this *will impact negatively* on the provision of much needed *preventive* and *statutory* services.

5. Regarding the *Child Protection Register* (as provided for in Chapter 7 (Part 2) of the Children's Act (No 38 of 2005), our research in one province (the Western Cape) has revealed the following:
 - a. The Register is not functioning effectively due to insufficient technical and human resource capacity. While its major function is to record and track children through the protection system, this is not happening as the capacity to regularly capture data and update the Register is not in place, and the necessary information technology supports (IT) are not adequate. Furthermore data on alleged perpetrators is not being regularly updated either. While our research is restricted to one province, we are concerned that similar problems may be experienced elsewhere. Regardless of the issues raised regarding mandated reporting, we note the risks of a knock on effect on District Office capacity to manage the Register if the required resources do not follow the legislation.

Recommendations regarding Mandated Reporting:

1. *Clear guidelines on signs and symptoms of child abuse and neglect need to be provided* to all those who have responsibility for mandated reporting. Inclusion criteria for reporting must be defined as well as guidelines for exclusion. The purpose of this recommendation is to reduce the probability of 'over-reporting' which will inevitably compromise and overload an already under-resourced child protection system;
2. *Staffing:* Provinces must make provision for *strengthening the intake systems* at District DSD Offices in order to reduce the burden on social work staff who are required to process reports of child abuse and neglect.
3. Similarly there should be sufficient resources and appropriate systems at District level to permit regular updating of each case on the Register (see below) as the need arises.
4. We recommend that consideration should be given to such roles being filled by specially trained *auxiliary staff* who work under professional supervision so as to free up professional staff for more specialised duties.
5. There is a need for clear legislative mandates to ensure adequate funding for the provision of child protective services and programmes

Recommendations regarding the Child Protection Register:

1. Improve the quality of child protection data at *source*. All staff who provide reports and enter data must be *familiar with the Child Protection Manual* and use the *same definitions* of abuse, neglect and related constructs as required by the Manual (currently this is not the case).
2. Provincial Departments should provide appropriate *human and technical resources* for data capture, integration and reporting in all child protection sectors based on an operational assessment of staffing and equipment needs at all levels from Provincial Head Office, down to District level.
3. *Findings of the Children Courts* regarding individual children should be recorded in a Standardised Register that articulates with the Child Protection Register so that children are more readily tracked through the system.
4. A register for all children in statutory care should be held at Provincial level to articulate with the Register and enable tracking of children through the protection system.
5. Consideration should be given to the establishment of a *Child Protection Information Unit* within each Provincial Department of Social Development that will integrate all appropriate information on vulnerable children (including those

on the streets) so as to enhance capacity to plan and deliver appropriate services.

Part 4 Other Protective Measures: “Child-headed household”

Clause 136 (1):

Under this clause definitions of a “child-headed household are provided. We recognise the psychological impact of a terminally ill parent or caregiver, even death of such on the children in a household. We are pleased that this is broadly construed and inclusive of all forms of causes of terminal illness or death which may leave children vulnerable (and *not just* HIV and AIDS).

However, we have the following concern:

Clause 1(a): states that a child-headed household includes cases in which: *“the parent or caregiver of the household is terminally ill or has died”*

We interpret this to mean that this refers to a situation in which *the only adult* in the household is terminally ill or has died, but it remains ambiguous and could be read as a situation in which a child’s carer is ill or has died but that there are other adults living in the household.

Recommendation:

1. We recommend this be changed to read: *“the sole adult in the household is terminally ill or has died”*

Clause 1(c): states that a child-headed household includes cases in which a *“child has assumed the role of caregiver in respect of a child in the household.”*

Again this is ambiguous. Many children in our country care for young children. This practice is very common and is embedded in local African culture. The definition leads to the situation where children may care for other children within households where adults are also present.

Recommendation:

1. We recommend this be changed to read: *“a child has assumed the role of caregiver in respect of a child in the household in which there is no adult resident.”*

Clause 136 (1):

This clause designates care roles in the case of child-headed households to certain authorities.

We wish to comment that in many rural traditional settings, traditional authorities may assign a supervision role to an adult in the community even before the court or an organ of state acts. The current provisions of the bill do not make provision for such practice.

Recommendation:

1. It is suggested that 2 (c) be amended to accommodate ***traditional leaders***.

Clause 141, 1(c)

This clause deals with the worst forms of child labour.

Firstly, we observe that there is no provision for *reporting* of these forms of worst forms of child labour to authorities by designated individuals.

Recommendation:

1. It is recommended that 2 (c) be amended to include a clause on reporting instances of the worst forms of child labour to the authorities in terms of the provisions for mandated reporting contained in Clause 105 (1) of the Bill, and the Basic Conditions of Employment Act (No. 75 of 1997) (BCEA).

Second, there is no reference to children working in agriculture (as addressed by the Child Labour Plan of Action – 2003 and the BCEA).

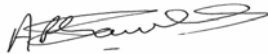
Research undertaken in the HSRC indicates that children are involved in labour (as defined by the BCEA) and this takes place in both commercial and subsistence agriculture. In both cases this has an impact on schooling and health.

Recommendations:

1. Resources for law enforcement to prevent employment of children younger than the legal age in commercial agriculture.
2. Resources for educating traditional communities and authorities as to the risks of involvement of children in forms of subsistence agriculture that are *hazardous* to all children (including those over 15 years) and which *constitute risks to child health, development and education*. These activities should be monitored similarly to the case of commercial agriculture such that child labour as defined in the BCEA is prevented.
3. This should be done without detracting from the important role that children may play in subsistence agricultural activities.

Thank you for the opportunity to comment on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andy Dawes', with a stylized flourish at the end.

Andy Dawes

(On behalf of the Child, Youth, Family & Social Development Research Programme of the HSRC).