

**CENTRE FOR CHILD LAW OPPOSES URGENT COURT APPLICATION ON FOSTER CARE BY
DEPARTMENT OF SOCIAL DEVELOPMENT**

FOR IMMEDIATE RELEASE

26 November 2019

Today, on application by the Minister of Social Development, the High Court in Pretoria granted an order to keep thousands of foster care orders from lapsing and in turn avoiding thousands of children losing foster child grants. The court order gives the Minister 12 months to develop a comprehensive legal solution. It also places stringent reporting requirements on the Minister – who needs to report to the Court and the Centre on progress made in implementing the court order every 3-months.

This is after almost a decade since a 2011 High Court order was granted to keep children from falling off the foster care system. The Minister has still not finalised and implemented a comprehensive legal solution to deal with the crisis in the foster care system. Currently, approximately 30 000 foster care orders were at risk of lapsing on 28 November 2019 and a further 105 000 in 2020.

In 2017, the High Court granted a 3rd order (first two were obtained in 2011 which was then extended in 2014) which prevented foster care orders from lapsing. The deadline of this court order is 28 November 2019. The Department admitted to the Parliamentary Portfolio Committee on Social Development, at a briefing session on 23 October 2019, that it would not meet the 28 November 2019 deadline and that it would be approaching the High Court.

The Centre for Child Law did not oppose the extension of the 2017 order in so far as it relates to ensuring that foster care orders do not lapse. The Centre accepted that it is necessary to get the extension in order to protect the interests of children who would be negatively affected by the lapsing of their orders because they would lose foster child grants. This emergency situation has been caused by the Minister and Department not prioritising putting in place a new system that is effective and sustainable.

The Centre opposed the part of the court application that purported to deal with what the proposed comprehensive legal solution will be. The Centre believes that the solution provided in the Department's court papers will not fix the crisis in the foster care system. In its court papers, the Centre points out that the challenges relating to the foster care system have been ongoing for almost a decade. While aspects of the comprehensive legal solution are on the

horizon, the main ingredient is missing. The litigation started in 2011, when the Centre approached the High Court asking it to intervene after the foster care system collapsed, resulting in over 120,000 children losing their grants. Backlogs as a result of failures to extend foster care orders in time had caused the foster care system to grind to a halt. Child protection organisations and departmental social workers were spending all their resources on resolving the crisis, and de-prioritising other essential child protection services. Not much has changed after two amendments to the Children’s Act that did not address the foster care crisis, and two additional court orders, in 2014 and 2017, keeping the foster care system afloat.

The Centre disagrees with the Department’s view that the Children’s Amendment Bill, 2019 – currently waiting to be introduced to Parliament– contains a comprehensive legal solution. The Centre’s answering affidavit notes that the provisions as they stand

“will leave the system in the same situation that it is at present (and has been since 2011). A system that is overburdened and not financially sustainable, and most important, draining vital resources from other care and protection services that are urgently needed.”

The court order requires the Minister to report to the High Court and the Centre for Child Law, every 3 months, on the process of tabling amendments to the Children’s Act in order to put a comprehensive legal solution in place. Furthermore, the Minister and MECs must report on how the backlog of orders that need to be extended is progressing.

Ends

For more information, please contact:

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