PART 1

Children and Law Reform

Part one summarises and comments on recent policy and legislative developments that affect children including the:

- Social Assistance Amendment Act
- Children's Amendment Bill
- Victim Support Services Draft Bill
- Domestic Violence Bill
- Draft Regulations to the Citizenship Act
- Regulations to the Births and Deaths Act
- School Admissions Policy

Flourishing food gardens ensure a constant supply of fresh vegetables for the children attending the Bulungula Incubator's Jujurha Preschool.
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Legislative developments in 2019/2020

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In this chapter we provide updates on seven significant legal developments affecting children's access to grants and a range of services essential for their development and protection. Services affected include early childhood development, alternative care, education, birth registration, citizenship, protection and psychosocial services, and alternative care.

The Social Assistance Amendment Bill

The Social Assistance Amendment Bill was tabled in Parliament in April 2018 and passed in October 2020.[1] The Bill amends the Social Assistance Act and includes amendments giving the Minister authority to make additional payments on top of existing grant amounts. This amendment will enable the Minister to introduce a higher Child Support Grant (or CSG Top-Up) for family members caring for orphaned children.[2] The CSG Top-Up is the first part of the "comprehensive legal solution" to the foster care crisis which the Minister has been obliged to design and implement in terms of a 2011 High Court Order.[3] The second part of the solution is contained in the Children's Amendment Bill, which has recently been tabled in Parliament (see below).

During 2020, public hearings were convened by both the National Assembly and the National Council of Provinces. All submissions made on the CSG Top-Up were supportive of the proposed amendments.[4]

- The Centre for Child Law (CCL) submitted that, if effectively implemented, the CSG Top-Up will lessen the pressure on the foster care system that is causing social workers to be overloaded and preventing them from helping children who have been abused or neglected. The CCL cautioned that because the CSG Top-Up will be slightly less than the Foster Child Grant (FCG), children already receiving the FCG should continue to receive it to prevent the reform from being regressive, while new applicants should be referred to the CSG Top-Up. Over time, children in the foster care system would gradually be reduced to only those "in need of care and protection" from the state.[5]
- The Children's Institute (CI) advised Parliament to request clarity from the Minister on the details she intended to prescribe via government notice and regulation, as the success or failure of the reform lay in these details. The regulations and government notice will determine the top-up amount that orphans qualify for and the proof families will need to provide. The CI argued that the system should be 'inclusive' by avoiding stringent requirements such as the insistence on two death certificates to prove orphan status, as this would exclude the most vulnerable orphans.[6]
- The Children in Distress Network (CINDI) raised concerns about the grant amount given high poverty levels and presented a case study to illustrate how the comprehensive legal solution could work in practice.[7]

At the time of publication, the Bill was awaiting signature by the President. Once the Bill is signed, the draft regulations can be gazetted for public comment. If the CSG Top-Up is implemented by 1 April 2021, then it is less likely that the 2011 High Court order will have to be extended for a fifth time.[8]

Children's Amendment Bill

The comprehensive legal solution to the foster care crisis also requires amendments to the Children's Act to clarify which orphaned and abandoned children should go into the care and protection system (and therefore into foster care) versus those who already have family care and simply need the CSG Top-Up and support services. To do this, s150(1) (a) of the Act needs to be amended. Other sections also need amendments to deal with the backlog of extensions, prevent existing FCG beneficiaries from losing their grants, and make it easier for family members to formalise their parental responsibilities and rights.

The Children's Amendment Bill,[9] tabled in August 2020, contains most of the required amendments. These include:

- changing the definition of an orphan to ensure that single orphans whose other biological parent is effectively absent and uninvolved are included in the definition;[10]
- allowing the children's court to hear applications for legal guardianship by family members caring for orphaned and abandoned children;[11] and
- clarifying that the majority of orphaned or abandoned children in the care of family members are not children 'in

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need of care and protection' and therefore do not need to be placed into foster care to obtain an adequate social grant.[12]

Yet there is no provision to prevent the 300,000 orphans already in foster care with family members from losing their FCGs when their cases are reviewed by the children's court in terms of s159 (2). This is because s150 (1)(a) is being changed to clarify that such children are no longer going to be considered to be children 'in need of care and protection' from the state and children's courts will not be able to extend their foster care placements unless the Bill contains a transitional clause allowing an exception for existing foster care placements.[13, 14]

Besides addressing the foster care crisis, the 147-clause Bill also proposes amendments to other areas of child law. These include:

Partial care and early childhood development programmes

Over 1,200 submissions opposed the amendments to the partial care and ECD chapters and recommended amendments to strengthen the struggling ECD sector. These submissions are calling for:

- a one-step registration process for ECD providers;
- different types of ECD providers to be regulated differently;
- all children attending any type of ECD programme to be able to access the early learning subsidy if they need it;
- simpler, adequate health, safety and programme standards to be put in place and approved through one registration process; and
- it to be made clear that "conditional registration" of ECD providers is possible before meeting the full requirements of registration and will therefore be granted based on lower threshold requirements
- support for conditionally registered ECD providers to meet the full registration requirements within a specified period and MECs to report on these support systems.[15]

Protection of children's privacy in court

The Bill proposes to delete s74, which currently protects children's privacy in children's court proceedings, and replace it with a new s6 A which simply lists a range of current privacy laws. This repetition in the Children's Act is unnecessary since these are laws already in place and must be respected. The amendment fails to recognise the need to guarantee specific privacy to children during court proceedings. Furthermore, the list is incomplete as it has omitted the Divorce Act and the Maintenance Act, which also provide important provisions on protecting children's identity in court proceedings. If the Bill is passed as is, the Act will no longer provide for the specific protection of children's privacy in children's court proceedings, nor will it extend protection to children in High Court proceedings. Submissions have recommended alternative wording to ensure children's privacy is protected in both the children's court and high court.[13, 14, 16]

Parental responsibilities and rights of unmarried fathers

Married fathers automatically acquire full parental responsibilities and rights (PRRs) while unmarried fathers only acquire full PRRs if they meet the requirements set out in s21 of the Act. Alternatively, they may acquire PRRs through a court order. The requirements in s21 have caused some confusion and amendments are proposed to simplify the wording and remove any adjectives that require "value" judgements. A mechanism for unmarried fathers to obtain a certificate from the family advocate to confirm their s21 PRRs is also being introduced to provide a legal document that fathers can use to prove their PRR. All these amendments are generally being supported by civil society and additional amendments are being proposed to further promote the involvement of fathers in their children's lives.[13, 17, 18] For example, the new certificate process does not provide for unmarried fathers in situations where the child's biological mother has died or abandoned the family. Submissions have been made to enable these fathers to obtain a s21 certificate.

Adoption

The amendments to the provisions regulating adoption include amendments to s239 on letters of recommendation and s249 which regulates fees for adoption services.

In terms of s239, an application for an adoption order must be accompanied by a letter from the provincial Head of Social Development, recommending the adoption of the child. Delays by the department in issuing the s239 letter will therefore delay the finalization of the adoption. In 2018, the High Court considered an application brought against the KwaZulu-Natal Department of Social Development because of lengthy delays in issuing s239 letters.[19] The Court declared that the right of access to court and the right to just administrative action had been violated by these delays caused by the department taking into account factors that were not required by the law. Networks representing adoption service providers have recommended further amendments to s239 to impose a 30-day turn around for s239 letters and to give the court authority to dispense with the letter if the department does not report to the court within 14 days of failing to meet the 30-day deadline.[20, 21]

Section 249 regulates the fees that can be charged for adoption services. Section 249, when read with s250 which allows only certain persons to provide adoption services, currently limits the possibility of financial and criminal exploitation by service providers. However, the Bill proposes to delete s249 which would effectively remove these safeguards. Networks representing adoption service providers have recommended that s249 be retained with amendments and that fees by private social workers should be regulated by the South African Council for Social Service Professions.[20, 21]

The National Assembly called for written submissions in October 2020 and will hold public hearings in February 2021.

National Admission Policy for Schools of 1998 and Circular 1 of 2020

In late 2019, the Eastern Cape High Court declared sections 15 and 21 of the National Admission Policy for Schools unconstitutional.[22] These sections were being used by the National and Provincial Departments of Basic Education (DBE) to exclude undocumented children from school. A DBE circular informed schools that DBE would only provide funding for a child if the school could provide an ID number for that child. The DBE's reasons for this change in the funding policy were that at one stage, so-called 'ghost pupils' were discovered (where some schools claimed additional funding for non-existent pupils) and that non-citizens did not have a right to education unless legally in the country.[23] The department's requirement resulted in undocumented children (whether South African citizens or not) being excluded by schools or schools that admitted them receiving less funding, diluting the quality of education and food for all the children in the school.

Section 15 of the Admission Policy required caregivers to submit the child's birth certificate to the school as part of the admissions process. If the caregiver did not do so, the section provided that a learner "may" be conditionally admitted but the caregiver of the learner had to "ensure that the admission of the learner is finalised within three months of conditional admission." In reality, children were unable to obtain birth certificates within the three-month period, which led to those children being removed from the schools – or in some instances, not being admitted at all. Section 21 provided that "persons classified as illegal aliens must, when they apply for admission for their children or for themselves, show evidence that they have applied to the Department of Home Affairs (DHA) to legalise their stay in the country in terms of the Aliens Control Act, 1991 (No. 96 of 1991)." Many children could not obtain proof that they had applied to legalise their stay and were accordingly refused admission.

According to the DBE's own administrative system, approximately one million children attending public schools were undocumented.[24] Approximately 80% (800,000) of these children were South African (SA) citizens and 20% (200,000) were foreign nationals. With regards to the citizens, there were several reasons why the school did not have their birth certificates: the children did not have birth certificates; or they did, but their caregiver had not yet submitted it to the school; or they had lost it and were unable to obtain a new copy from DHA; or the school or district DBE had not yet entered the information into the provincial DBE database.

If DBE had been allowed to continue excluding these children from school and underfunding schools with undocumented children, many children's right to basic education would have been infringed. The policy was not only negatively affecting those excluded, but also those attending school because the quantity and quality of education goods and services (such as textbooks and the school nutrition programme) would be diluted for *all* the children in attendance.

The court held that section 15 of the Admission Policy constituted a severe limitation of children's constitutional rights including the right to basic education (s29); the right of children to have their best interests considered paramount (s28 (2)); their right to dignity (s10); and equality (s9 (3)). As for section 21, the court held that the right to education extended to everyone within South Africa's borders and that nationality and immigration status were irrelevant. The court, therefore, declared both sections unconstitutional.[25]

Following this judgment, the national DBE published a circular to informing all provincial DBEs and schools that they are obliged to allow undocumented learners unconditional access to education in line with the judgment.[26] If the child's caregiver is unable to provide formal identity or immigration documents for the child, the provincial DBEs and schools must accept alternative proof of the child's identity such as an affidavit by the caregiver which fully identifies the child.

This circular replaces sections 15 and 21 of the Admissions Policy until DBE has finalised its amendments to the policy to align it with the High Court judgment.

Births and Deaths Registration Act and Regulations

Children living with their fathers face the risk of remaining without a birth certificate for many years if their father is not married to their mother and the mother is undocumented, deceased or has abandoned the family. This is because the Births and Deaths Registration Act (BDRA)[27] and its regulations and forms[28] do not enable birth registration in these circumstances.

A mother is 'undocumented' if she does not have an identity document or is a non-citizen and has lost her passport or her permit or visa has expired. In these cases, regulations 3, 4, 5 and 12, read together with section 10 of the Act, are being used by the DHA to prevent the father (who is South African with a valid identity document) from making the application to register the birth of the child. This occurs even when the mother is present at DHA and available to consent to the father's application.

If a mother is deceased or has abandoned the family, regulation 12 read together with section 10 of the Act, prevents the unmarried father from making a birth registration application for the child because DHA requires the mother to be present at the application and to consent to the application. This is impossible if she is dead or her whereabouts unknown to the father and child. Regulations 3, 4 and 5 also act as barriers to unmarried fathers in these circumstances because they are often cannot provide all the prescribed documents.

To protect children in these situations from remaining unregistered, Mr Naki, Legal Resources Centre, Centre for Child Law and Lawyers for Human Rights took the Minister and DHA to court to have the problematic regulations and section 10 of the BDRA declared unconstitutional.[29] The Grahamstown High Court declared aspects of regulations 3, 4, 5 & 12 unconstitutional[30] and provided a 'reading-in' remedy to address these. A reading-in remedy is when a court adds words into the regulations to make them constitutional. By doing this, the Court effectively 'amends' the regulations. This reading-in remedy made it clear that DHA must accept applications by undocumented mothers where the missing document is a passport, or by unmarried fathers where the mother's documents are missing, or she is deceased or has abandoned the child. The 'reading-in' remedy also struck out the sub-regulations that required all the documents listed in regulations 3, 4 and 5 to be submitted before DHA would accept an application.[31]

The High Court did not agree with the applicants that section 10 of the Act was problematic and therefore did not declare this section unconstitutional. The CCL and LHR took this aspect of the judgment on appeal to the full bench of the High Court, which subsequently declared section 10 to be unconstitutional.[32] The appeal court held that section 10, in its present form, implicitly prevents an unmarried father of a child born outside of marriage from giving notice of the child's birth if the mother is absent, because it requires the mother to consent to the child taking the father's surname.[33] This discrimination on the basis of the marital status of the father directly violates the father's right to equality in terms of section 9(3) of the Constitution.[34]

The appeal court held that by extension, it also has the effect of denying children, with a legitimate claim to a nationality from birth, from receiving a birth certificate. In this manner, it discriminates against children born outside of marriage.[35] The court further indicated that children without birth certificates are 'invisible' and their lack of recognition in the civil birth registration system exposes them to the risk of being excluded from the education system, social assistance and healthcare.[36] A law that results in discrimination with these potentially enormous consequences cannot be said to be in the best interest of the child.[37]

Section 10 was therefore declared inconsistent with the Constitution and invalid to the extent that it does not allow an unmarried father to register the birth of his child in the absence of the child's mother.[38] The appropriate remedy devised by the court was a reading-in remedy that amended section 10 to enable the birth of a child born outside of marriage to be notified by the father where the mother is absent.[39] Parliament was given 24 months to amend the BDRA.[40]

In September 2020, application was made to the Constitutional Court to confirm the appeal court's order of constitutional invalidity.[41] The Minister and DHA stated in their submission to the Constitutional Court, that since the 2018 judgment of the High Court, the Department had commenced the process of making amendments to the relevant regulations to enable unmarried fathers to give notice of birth of their child without requiring the presence of the child's mother.[42] They did not oppose the application for confirmation of the unconstitutionality of section 10 of the BDRA, but asked the court to devise a different interim reading-in remedy. They argued that the law did not cater for the situation when there was a dispute between unmarried parents as to what surname the child should be registered with. This issue was raised for the first time in the Constitutional Court as the Minister of DHA had not raised it in the first two courts that had dealt with the matter.

If the Constitutional Court confirms the appeal court's order, it will be a victory for unmarried fathers and unregistered children in their care, particularly when the mother is deceased, undocumented or has abandoned the family.

South African Citizenship Act draft regulations

Section 4(3) of the Citizenship Act[43] makes provision for children born in South Africa (SA) to parents who are not South African citizens or permanent residents to apply for SA citizenship by naturalisation when they turn 18 years old.

To qualify, they must have been 'ordinarily resident' in SA from birth until turning 18, and their birth must have been registered in accordance with the provisions of the Birth and Deaths Registration Act.[27] Section 4(3) was passed by Parliament in 2010 and came into operation on 1 January 2013.

The section is one of the mechanisms in the Citizenship Act to prevent and eradicate statelessness in South Africa. A stateless person is defined in international customary law as "a person who is not considered to be a national of any State under the operation of its laws"[44] and is a serious human rights violation which should be addressed collectively by all states.

However, section 4(3) has not been accessible in practice because the DHA failed to promulgate the regulations and application forms necessary to enable the section to be implemented. This is because the DHA interpreted the section to only apply to children born after 1 January 2013 (the date that the amendments to the Citizenship Act came into force) and argued that they were only obliged to start implementing the section in 2030, when individuals applying in terms of the provisions would turn 18 years old.[45] This led to numerous court cases being brought against the DHA on behalf of children or young adults who should have benefitted from the provisions.

Finally, in 2017, in Miriam Ali v Minister of Home Affairs,[45] the High Court ordered the Minister to make regulations, within one year, to enable applications for citizenship by naturalisation in terms of section 4(3) of the Act, and to allow applications on affidavit as an interim remedy while forms did not exist. After the Minister appealed the judgment, the Supreme Court of Appeal (SCA) upheld the decision of the High Court.[46] More than nine months later, the Minister tried to appeal to the Constitutional Court. This was outside of the prescribed time periods in which to lodge an appeal. Therefore, in February 2020, the Constitutional Court indicated that it would not hear the matter.

In July 2020, the draft regulations were finally gazetted for public comment.[47] They have been criticised by a number of civil society organisations[48] who are concerned that they will result in the exclusion of many eligible young people because they go beyond what is authorised by section 4 (3) by imposing additional unattainable requirements on applicants and they fail to take into account recent case law or international law. For example:

- The regulations exclude people who did not obtain their birth certificates within 30 days of birth.[49] This restriction in the regulations is not consistent with the wording of section 4 (3) of the Act. The Act requires the applicant's birth to have been registered in accordance with the Births and Deaths Registration Act, and this Act does allow for birth registration after 30 days (late birth registration).
- The regulations list a number of supporting documents which must be provided.[50] These include the applicant's maternity certificate, original birth certificate, school reports and a letter from the school they attended in grade 1, proof of residence since birth, and originals of their parent's travel and immigration status documents. If every document on this list is considered compulsory, many eligible citizens will be excluded. For example, if a maternity certificate is considered compulsory, people who were born at home will be excluded; or if a letter from their grade 1 school is required but that school has lost its records or closed down, the young person would be excluded.[51] The regulations should therefore be amended to make it clear that applicants need not provide all of these documents.[48]
- Applicants will be expected to prove their parent's status in the country by providing the original of their parent's visa, permit or passport.[52] However, the parent's status is irrelevant and not required by section 4 (3) of the Act. Furthermore, this requirement will be a major barrier for young people who were orphaned or abandoned as children, because they are unlikely to be unable to provide any documents proving their parent's status.

At the date of publication, the Regulations have not yet been finalised by DHA and DHA has consistently refused to accept applications 'on affidavit' in the interim as ordered by the High Court in 2017 and the SCA in 2019. This has necessitated further litigation against the DHA.[53]

Domestic Violence Amendment Bill

The Minister of Justice and Constitutional Development recently introduced three bills in Parliament to refine the criminal laws in relation to gender-based violence.[54] These included the Domestic Violence Amendment Bill,[55] which aims to amend the Domestic Violence Act[56] to address practical challenges, gaps and anomalies that have manifested since the Act was put into operation in 1999.

The Bill, tabled in Parliament in August 2020, includes amendments aimed at:

- facilitating electronic access to protection orders;
- creating an electronic repository of protection orders;
- obliging the departments of Social Development and Health to provide certain services to victims of domestic violence; and

- creating a universal obligation to report domestic violence to a social worker or a police official.

Parliament called for written submissions on the three bills and held five days of public hearings. A submission by Sonke Gender Justice, which was endorsed by a number of other organisations, welcomed the amendments to the Domestic Violence Act but emphasised that any amendments to the Act or any other legislation aimed at curbing gender-based violence would be of little use if structural barriers are not addressed. These include systemic challenges in the South African Police Services (SAPS) and the court system, which often result in secondary victimisation.[57]

Most submissions supported the amendments, which establish a duty to report domestic violence against children[58] in line with section 110 of the Children's Act[59] and section 54 of the Criminal law (Sexual Offences and Related Matters) Amendment Act[60]. However, the provisions for the mandatory reporting by anyone with suspicion or reasonable knowledge of domestic violence involving adults, and the criminalisation of failure to report, was flagged as problematic. These provisions may place the victim and her/his children in further danger, discourage victims from seeking help and criminalise many service providers who provide refuge and confidential support to adult victims.[61]

Organisations working with children also recommended that the definition of "domestic violence" be expanded to include "corporal punishment" and "child neglect",[57, 62] and that section 5 be harmonised with the Children's Act, which requires a risk assessment to be conducted by a social worker, via Form 22, when a child has been abused.[57, 62]

The Children's Institute recommended that designated social workers and police officers be adequately trained and encouraged to use section 153 of the Children's Act to remove the offenders, rather than the women and children, from the household when domestic violence or abuse has taken place in the home.

Victim Support Services draft Bill

The National Strategic Plan on Gender-Based Violence and Femicide (NSP GBVF), 2020-2030[63] aims to strengthen the legislative and policy framework to combat violence against women and children. One of the gaps identified in the legal framework relates to providing psychosocial services for victims of violent crime. The Victim Support Services draft Bill aims to close this gap and strengthen Pillar Four of the NSP: Response, Care, Support and Healing. The draft bill was published for comment by the Minister of Social Development in August 2020. Once all comments have been considered, it will be submitted to Cabinet for approval before tabling in Parliament.

Civil society has campaigned for many years to ensure that the rights of victims of crime and violence are promoted and protected. The call has been for legislation that will require the state to:

- Inform and educate the public on how the criminal justice system works, what victim's rights are, and how to hold the state accountable when things go wrong.
- Provide victims with information about their cases and how to track their progress
- Empower and support victims by providing and funding psychosocial care
- Develop intersectoral collaboration between all the relevant departments and role-players in the criminal justice system
- Create better accountability mechanisms and a centralised complaints system.[64]

The Bill has been widely criticised by civil society as not providing the legal framework necessary to meet these five objectives and for posing a serious danger to existing services, particularly those providing support in marginalised communities.[65] A child-centred analysis reveals further concerns. We focus below on the provisions of the Bill that affect shelters for victims of domestic violence.

Funding for victim support services and shelters

There is currently no law or provision in a law that obliges the government to provide services and shelters for women and children who need to escape domestic violence in their homes. This gap in the legal framework contributes to the chronic underfunding of non-profit organisations (NPOs) that run shelters.[66] The underfunding of shelters also impacts on the availability of dedicated services for children who accompany their mothers to the shelters: children accessing shelters with their mothers have health and psychosocial needs that are generally not met.

The Bill obliges the National Minister of Social Development to ensure there are enough resources for services for victims of crimes,[67] and places an obligation on the provincial Members of Executive Council (MECs) for Social Development to provide and fund services and facilities for victims of violence.[68] This is a welcome step towards a rights-based approach to services for victims of crime.

However, this obligation is made dependent on the provincial legislature allocating money to the provincial departments of social development for this purpose. Provincial treasuries are dependent on the National Treasury

and Parliament for their revenue. If national government does not increase the share of funding that goes to provincial government, then provinces will not have sufficient resources to fulfil this mandate. This is a challenge for all services provided and funded by the provincial departments of social development. Several laws have been passed by Parliament that place an obligation on the provinces to provide and fund an increased portfolio of services for vulnerable groups, including the Children's Act, Child Justice Act and the Older Person's Act. However, the formula used by the National Treasury and Parliament to decide how much of the national share of revenue goes to provinces has not been changed to take account of these increased mandates.[69-71]

The scope of the Bill

The Bill defines "victim" very broadly to include 'any person who has suffered physical, emotional, spiritual or psychological harm as a result of a violent crime'. It therefore overlaps with the definitions of abuse in the Children's Act. Yet, there is no explicit mention of children's rights and special needs, except the requirement that service providers need to screen their staff against the National Child Protection Register. The Bill should clarify how children fit into the picture.

Screening and assessment

When women experience gender-based violence in the home, children are often co-victimised, or they witness the domestic violence and suffer negative consequences. It is, therefore, critical that the Bill recognises the intersection between gender-based violence and violence against children and ensures that children whose caregivers are victims of domestic violence, are screened and assessed by service providers who are trained to assess children and determine their specific therapeutic needs.

The regulation of facilities and programmes

The Bill proposes that organisations and professionals who provide any form of physical, psychological, social or spiritual services to victims of violent crime must register with the government and meet standards set in regulations.[72] In addition to registering the various programmes that they provide, a shelter will also need to register its premises.[73] If services are not registered, the Bill allows the department to close them down and impose criminal sanctions, including possible imprisonment.[74]

The cost of meeting these standards and completing the registration process is expected to be borne by the individual or organisation providing the service. Many of these organisations are run from private homes in the same communities in which women live. Most survive on private donations while others receive partial funding from government. Therefore, many shelters are unlikely to meet the norms and standards unless provided with adequate financial support prior to full registration. This dual and onerous registration process is currently not working for early childhood development centres and serves as a barrier to the provision of services in disadvantaged neighbourhoods and rural areas.[75] It should therefore not be replicated in this Bill.

Whilst there is a need to strictly regulate services for children who are removed from the care of their families, the situation is different for children accompanying their caregivers who have experienced gender-based violence into shelters. In this instance, the caregiver remains responsible for caring for the child and ensuring that his or her rights are protected and fulfilled. Government's obligation in this instance is to support the service provider financially to enable them to adequately support both caregiver and child.

Protecting victims from secondary victimisation

The Bill recognises the phenomenon of secondary victimisation. This is where someone who has been the victim of violence experiences further trauma because of how they are treated by the system. It is encouraging to see a clear obligation on the Department of Social Development to ensure that victims receive therapeutic services, counselling, court preparation and support. The Bill should make it clear that these services should be extended to children who witness domestic violence.

Conclusion

2021 promises to be a busy year in Parliament with many bills on its agenda, including the Children's Amendment Bill, Domestic Violence Amendment Bill, and the Victim Support and Services Bill. The Department of Home Affairs has several sets of regulations that it needs to get right to uphold vulnerable children's rights to birth registration and nationality, while the Department of Basic Education will be busy with a new School Admissions Policy to ensure inclusion of all children, irrespective of whether documented or not. All these new laws and regulations need to promote the best interests of all children affected and be responsive to the lived reality of children, their caregivers and the many practitioners who provide services to them. This can only be determined by ensuring that these constituencies can meaningfully participate in the law reform process and that their opinions are given serious consideration.

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24. Director General for Department of Basic Education. Answering Affidavit in Centre for Child Law and Others v Minister of Basic Education and others 2020 (3) SA 141 (ECG).
25. Centre for Child Law and Others v Minister of Basic Education and others 2020 (3) SA 141 (ECG). Paras [75] – [87], [90] – [93], [97] and [101].
26. Minister of Basic Education. *Circular 1 of 2020. Admission of Learners to Public Schools*. 2020. [http://section27.org.za/wp-content/uploads/2020/02/Circular-1-of-2020-Undocumented-Learners.pdf]
27. Births and Deaths Registration Act 51 of 1992.
28. Minister of Home Affairs. Regulations on the Registration of Births and Deaths. GN 37373. No. R. 128. 26 February 2014.
29. Naki and Others v Director General: Department of Home Affairs and Another [2018] 3 All SA 802 (ECG).
30. The affected sub-regulations are 3(3) (f) and 3(5); 4(3) (f) and 4(5); 5(3) (f) and 5(5); and 12(1)
31. Regulations 3(5); 4(5); and 5(5)
32. Centre for Child Law v Director-General, Department of Home Affairs and Others 2020 (6) SA 199 (ECG).
33. CCL v DHA 2020 (ECG) para 8.
34. Above CCL v DHA 2020 (ECG) para 5.
35. Above CCL v DHA 2020 (ECG) para 5.
36. Above CCL v DHA 2020 (ECG) para 4.
37. Above CCL v DHA 2020 (ECG) para 4.
38. Above CCL v DHA 2020 (ECG) para 5 and 20.
39. Above CCL v DHA 2020 (ECG) para 18, 20 and 22.
40. Above CCL v DHA 2020 (ECG) para 23.
41. Centre for Child Law v Director General of Home Affairs and Others CCT 101/20.
42. Written Submission by the Department of Home Affairs and Director-General, Home Affairs in Centre for Child Law v Director General of Home Affairs and Others CCT 101/20, para 41.
43. South African Citizenship Act 88 of 1995.
44. Article 1 of the 1961 UN Convention on the Status of Stateless Persons.
45. Ali v Minister of Home Affairs 2017 JOL 38775 (WCC).
46. Minister of Home Affairs v Ali 2019 2 SA 396 (SCA).
47. Department of Home Affairs. *South African Citizenship Act (88/1995): Publication of the Draft Regulations on Citizenship Act, 1995 for Comments, Government Gazette Vol. 661 (No: 43551)*. 24 July 2020.
48. Scalabrini Centre of Cape Town. *Submissions on Citizenship Act Draft Regulations*. Endorsed by Centre for Child Law, Lawyers for Human Rights, Section 27, Nelson Mandela University Refugee Clinic and the University of Cape Town Refugee Rights Unit. 30 August 2020. [https://scalabrini.org.za/resources/submissions/our-submissions-on-citizenship-act-draft-regulations/]
49. Draft regulation 3A (1)(a) and (b)
50. Draft regulation 3A (1)(a) and (b)
51. Schools are not required by law to maintain records for more than five years, so it is likely that a school may not have Grade 1 records for an 18-year-old.
52. Draft regulation 3A (1)(a) and (b)
53. Minister of Home Affairs and others v Joseph Emmanuel Jose & Another (169/2020) [2020] ZASCA 152. 25 November 2020.
54. The Bill forms part of a triad of legislation which Parliament seeks to promulgate in order to address the epidemic of gender-based violence (GBV) in South Africa. These are Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B16 -2020], Criminal and Related Matters Amendment Bill [B17-2020] and Domestic Violence Amendment Bill [B20-2020].
55. Domestic Violence Amendment Bill 20 of 2020.
56. Domestic Violence Act 116 of 1998.
57. Sonke Gender Justice. *Submission on the Domestic Violence Amendment Bill B20 of 2020*. Endorsed by Gun Free South Africa, Save the Children South Africa, Childsafe, and the Children's Institute. 2020. [https://genderjustice.org.za/publication/submissions-on-the-domestic-violence-amendment-bill/]
58. Section 2B (1)(a)
59. Children's Act 38 of 2005.
60. Criminal law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.
61. Women's Legal Centre. *Submission on 'Gender Based Violence Bills'. Written and oral submission to the Portfolio Committee on Justice and Correctional Services*. 2020. https://static.pmg.org.za/201023WLC.pdf]
62. Children's Institute. Submission on the Domestic Violence Amendment Bill. 2020. https://static.pmg.org.za/201020Childrens_Institute_submission_2020_SOA_and_DVA.pdf]
63. Department of Women YaPwDD. National Strategic Plan on Gender-Based Violence & Femicide: Human dignity and healing, safety, freedom & equality in our lifetime. In: YaPwDD DoW, editor. Pretoria: GCIS; 2020.
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72. Sections 20, 21 & 27.
73. Sections 20, 21 & 27.
74. Section 29 and 20.
75. See Real Reform for ECD https://www.ecdreform.org.za/downloads/infographic-1.png.