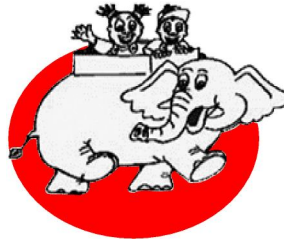


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Ms Lindiwe Ntsabo  
Portfolio Committee on Social Development  
National Assembly Parliament  
[childrens-amendment-bill@parliament.gov.za](mailto:childrens-amendment-bill@parliament.gov.za)

Dear Ms Ntsaba

The Pietermaritzburg Child and Family Welfare Society is an accredited child protection organization with a sub speciality in adoption and is based in the KZN Midlands. The Society was formed in 1994 following the amalgamation of three local child welfare societies who collectively had more than 100years experience in the field of child protection.

Below are the submissions of the organization in respect of the Childrens Amendment Bill:

Clause commented on	Proposal	Motivation
Section 1	Amend the definition of 'care':  (g) guiding the behaviour of the child in a humane manner <b>[using positive parenting and non-violent disciplinary methods]</b> ;	<ul style="list-style-type: none"> <li>This amendment clarifies that the duty of care includes guiding behaviour, but highlighting that must be done without resorting to violence of any form.</li> </ul>
	Add a definition:  <b>'corporal punishment'</b> or 'physical punishment' means any punishment in which physical force or action is used and intended to cause some degree of pain or harm. It involves, but is not limited to, hitting ('smacking', 'slapping', 'spanking') children in any environment or context, including the home setting, with the hand or instruments such as a whip, stick, belt, shoe or wooden spoon. It can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions,	<ul style="list-style-type: none"> <li>Even 'moderate' corporal punishment violates children's rights and evidence shows that it increases children's risk to experience more severe forms of physical abuse.</li> <li>A definition clarify that all forms of violence no matter how light or the threat of force are a violation of child rights.</li> <li>A definition is required to give effect to the changes proposed to section 12(11) – the proposed definition is based on the definition used in General Comment No. 8 by the United Nations</li> </ul>

	burning, scalding, or forced ingestion.	Convention on the Rights of the Child. It also reflects South Africa's Child Care And Protection Policy October 2019, as approved by Cabinet.
Section 12	Add the following sub-clause: 12. (11) No child may be subject to corporal punishment or be punished in a cruel, inhuman or degrading way. Hitting a child is assault.	This mirrors the principles in the National Policy. It is necessary to increase public awareness, and correct implementation of the Children's Act
Section 18	Add the following sub-clause:  S 18(6) A person who has care of a child, including a person who has parental responsibilities and rights in respect of a child, must not subject the child to corporal punishment or treat or punish the child in a cruel, inhuman or degrading way, to ensure the child's right to physical and psychological integrity as conferred by section 12(1)(c), (d), (e) of the Constitution.	Important to have explicit reference to corporal punishment – the most common form of cruel punishment – to make it absolutely clear that corporal punishment by parents/caregivers is prohibited
<b>Section 21 (1A)</b> <b>(new sub-section)</b>	The Amendment Bill is proposed a new sub-section 1A:  We support with amendment with an additional sub-section (as underlined) “(1A) A family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b) on application from— (a) the mother and biological father jointly; (b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or (c) the biological father, if— (i) in terms of subsection (3), he referred the matter for mediation and the mother, after receiving such notice of mediation,	The Act needs to cater for the situation where the mother has abandoned the family or she has died. This insertion would enable an unmarried father to apply for a certificate from the family advocate to recognise his s21 rights as a father. This process is likely to be more accessible than a court process.

	<p>unreasonably refused to attend the mediation, <u>or</u></p> <p><u>(ii) the mother's whereabouts are not known or she is deceased;</u></p> <p>and</p> <p><u>(iii) the biological father has shown to the satisfaction of the family advocate that he has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b).'';</u></p>	
<p><b>Section 24(1)</b></p> <p><b>No amendment is included in the bill</b></p>	<p><b>Assignment of guardianship by order of court</b></p> <p>Insert underlined words:</p> <p>'(1) Any person having an interest in the care, well-being and development of a child may apply to the High Court <u>or the children's court</u> for an order granting guardianship of the child to the applicant.'</p>	<p>The Act should be clear that the children's court also has jurisdiction to hear guardianship applications. The children's court will be more accessible than the High Court for unmarried fathers and also more practised in ensuring child participation in the decision making process.</p>
<p><b>Section 24(3)</b></p> <p><b>No amendment</b></p>	<p><b>Assignment of guardianship by order of court</b></p> <p>Insert underlined words:</p> <p>“(3) In the event of a person applying for guardianship of a child that already has a guardian, the applicant <u>must indicate whether he or she is applying for co-guardianship with the existing guardian or submit reasons as to why the child's existing guardian is not suitable to have guardianship in respect of the child.</u>”</p>	<p>In terms of s30(1) the Act clearly envisages that more than one person can hold PRRs with respect to one child. This is naturally the case for all married couples and for all unmarried couple where there is no dispute. There is therefore no reason to require a person applying for guardianship to have to prove the existing guardian is not suitable, unless they are applying for sole guardianship.</p>
<p><b>Section 45(3A) &amp; (3B)</b></p>	<p><b>We support this recommendation</b></p> <p><u>“(3A) The High Court and children's court have concurrent jurisdiction over the guardianship of a child as contemplated in section 24 of this Act.</u></p> <p><u>(3B) The High Court, children's court and regional court have concurrent jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.</u>”.</p>	<p>This amendment is strongly supported as it means that guardianship orders can be granted by either the High Court or the children's court.</p> <p>It also means that if a change has to be made, you can go back to either court to change it or end it.</p> <p><b>However, the problem is that it refers back to 24(1) of the Act, which is not being amended (see above) and this may cause confusion. This can be solved if s24 is amended as suggested above.</b></p>

<p><b>Section 46 of the principle Act</b></p>	<p>Insertion in subsection(1) after paragraph ( C ) of the following paragraph (cA) <u>an order , in the prescribed form, placing a child in temporary safe care pending an application for the adoption of such child, including with prospective adoptive parents, notwithstanding the provisions of section 167(2)</u></p>	<p>This inclusion will compliment section 156 that allows the placement of a child in temporary safe care pending adoption once the children’s court enquiry concludes the child is adoptable(see proposed amendment to s156 below)</p>
<p>Section 110</p>	<p>Amend section 110(2) by inserting the word in bold:</p> <p>(2) Any person who on reasonable grounds believes that a child [<b>has been abused or neglected or</b>] is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.</p>	<p>In general, criminalisation of parents for using corporal punishment should be considered a last resort. The addition of a non-mandatory reporting clause will allow social worker to assess the situation and refer parents to a suitable prevention and early intervention programme such as positive parenting or anger management</p>
<p>Section 114 Contents of Part A of Register</p>	<p>Amend section 110(2) by inserting the word in bold:</p> <p>114. (1) (a) all [<b>substantiated</b>] reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;”</p>	<p>This ensures that reports of corporal punishment will not be added to the child protection register unless the a social worker has investigated and deems the child to be in need of protection.</p>
<p>Section 144</p>	<p>Add the following sub-clause:</p> <p><b>(4)</b> The Department in partnership with relevant stakeholders, must take all reasonable steps, to ensure that -</p> <p><b>a)</b> education and awareness-raising programmes concerning positive parenting are implemented across the Republic; and</p> <p><b>b)</b> programmes promoting positive discipline at home and in alternative care are available across the Republic.</p>	<ul style="list-style-type: none"> <li>• DSD is responsible for protecting children from violence and assisting those children who have experienced violence. A prohibition of corporal punishment and other cruel, inhuman and degrading punishment in itself will not change behaviour. Therefore, it needs to be accompanied by adequate programmes to change behaviour.</li> <li>• The proposed subsection 144(4)(a) will ensure that DSD budgets for and undertakes education and awareness-raising programmes. These</li> </ul>

		<p>should not only focus on the prohibition of corporal punishment, but also include information on positive discipline to inform caregivers about non-violent discipline.</p> <ul style="list-style-type: none"> <li>• The proposed subsection 144(4)(b) emphasises that all role-players need to understand what their role is in ensuring positive discipline. The Department therefore needs to equip all relevant government and civil society role-players in promoting positive discipline in the home and alternative care. Given the widespread acceptance of corporal punishment in society, role-players need to understand the rationale behind the prohibition and their role in promoting the prohibition.</li> </ul>
<p><b>Section 156 (1)( iii)</b></p>	<p>(e) if the child has no parent or caregiver or has a parent or care – giver but that person is unable or unsuitable to care for the child, that the child be placed in- (iii)) temporary safe care, pending application for , and finalization of, the adoption of the child, <u>which placement may include placement with prospective adoptive parents in appropriate circumstances;</u></p>	<ul style="list-style-type: none"> <li>• This will allow that the child can be placed in family care as soon as possible</li> </ul>
<p><b>Section 239 (1)(d)</b></p>	<p>Section 239(1)(d) be accompanied by a letter from the provincial head of social development [recommending] <u>confirming compliance with the requirements in terms of this Act regarding the adoption of the child:</u></p> <p><u>(1) Provided that when the provincial head does not issue the letter within 30 days of it being requested, the provincial head must report the reason for such failure to the children’s court and the requesting accredited agency/accredited</u></p>	<p>This would hopefully alleviate the current problems due to lengthy delays being experienced in DSD responding to s239 requests and expedite the adoption process</p>

	<p><u>adoption social worker within 14 days from the date on which the letter was due; and</u></p> <p><u>(2) if the provincial head fails to provide the report required in subsection (1), the court may dispense with the letter and proceed with the adoption;</u></p>	
<p>Section 249 relating to fees and adoptions</p>	<p>1. Instead of deleting the section 249</p> <p>2. Amendment of subsection (2)(c), (d) and (e) by deleting the words:</p> <p style="text-align: center;"><i>“receiving the prescribed fees”.</i></p> <p>3. Amendment of subsection (d) by including:</p> <p style="text-align: center;"><i><u>“a child protection organization or an adoption social worker in private practice accredited in terms of section 251 to provide adoption services”</u></i></p>	<p>1. Removal of section 249 in its entirety is not be recommended since it could allow for criminal exploitation.</p> <p>2. By deletion of the words “receiving the prescribed fees” the objective aimed at removing the regulating professional fees for adoption services from the Children’s Act will be achieved, since it will not place a complete prohibition on the charging of fees.</p> <p>3. Professional fees charged can still be regulated by the relevant respective professional bodies and councils.</p>

Yours sincerely



Julie M Todd BSoc Sc LLB  
Director