



The South African Association for Social Workers in Private Practice

SAASWIPP's SUBMISSION ON THE CHILDREN'S AMENDMENT BILL, 2020 AS IT RELATES TO ADOPTIONS

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1. Introduction

The Children's Act, 2005 aims to give effect to certain rights of children as contained in the Constitution and determines in section 9, that in all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance and must be applied. The honourable members of Parliament are therefore required to read, review, and consider this proposal within this context.

Only children who are adoptable and available for adoption may be adopted. Section 230 lists children who may be adopted and this section also gives insights in the reasons for adoption varying from children being orphaned and abandoned to stepparent adoptions and children of parents consenting to adoption.

In our economically impoverished and socially stressed society there is a need for adoption of vulnerable children. Family structures are not able to always support unplanned pregnancies. A study revealed three thousand five hundred babies are abandoned yearly in SA (Dee,2014) and recent reports of seventy children who were abandoned during lockdown, half of which died (Daily Maverick, 21.10.2020) highlight the need for child protection services to be effectively put in place.

Not all adopted children are abandoned or in need of care and protection. Some are already part of a family system or the birth parents are intricately involved in deciding what is in the best interests of the child. Family or stepparent adoptions are commonly processed by private adoption social workers and are usually less complicated or costly. The private adoption social worker is usually approached by prospective adoptive parents or birth parents wanting to put a child up for adoption for personal reasons and would prefer the services of a private social worker due to their availability. Child Protection Organisations (CPO's) and Department of Social Development (DSD) have large caseloads, provide good services but it could take a longer time.

DSD in being ordered to resolve the foster care backlog, have included adoption in amendments to the Children's Bill as well as the foster care concerns it was designed to resolve. Adoption is different from foster care in the permanence of the care provided for the children, as well as in the thoroughness of the adoption process giving the children



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immediate and long term emotional, economic, and social safety. It is funded by the public. There is no adoption grant, but families in financial need can apply for assistance of the Child Support Grant of R440 per month per child if they pass the means test of an income below R4500 per month if single or R9000 per month if married. Foster care is a temporary state funded protection for children up to the age of 18 years. Unlike adoptive parents, foster parents can apply for a foster care grant of R1040.00 per month per child.

SAASWIPP was a leader in the development of a specialisation in adoption social work which was implemented by our professional council, S A Council for Social Service Professions (SACSSP). We believe in setting a high standard of expertise required for all those administering adoptions to safeguard the quality of the service rendered to the child and to increase the success of adoptions. A well-managed adoption process has generational consequences. A social worker with a specialisation in adoption services is a necessity. The specialisation is available to all who apply to the SACSSP for approval, provided that the requirements are met.

The quality of the service rendered is held accountable by our court of law in the interest of the child and our professional body which regulates all social work services in SA. We believe in an inclusive partnership of all stakeholders to the end of facilitating the child's right to a family and protection. DSD currently manages the accreditation of the adoption social workers.

All adoption services are paid for, either by taxpayers' money, donor funding, and the public. DSD adoption social services are paid by taxpayers via government spending, CPO's have a combination of all the above- mentioned funding and private social workers are funded by the public entirely. The myth that private adoption is a 'money making industry' is unfounded, a belief that materialised because the fees charged seem higher than those of the CPO's. Unlike CPO's and DSD, the private adoption social worker receives no subsidy, salary, support funding or facilities needed to provide the adoption services, therefore the fees charged to the public are inclusive of all costs involved in the service delivery (rent, medical, transport, professional time, etc.). The fees are negotiated with the people contracting the services of the adoption social worker on an income based sliding scale, are then disclosed in court reports, and submitted to peer review.

SAASWIPP has engaged with SACSSP and our Professional Board for Social Work (PBSW) to develop guidelines on the appropriate range of costs and charges that are acceptable for the adoption profession. Every adoption is different, as delays and complexities could vary the costs between adoptions comparisons. We support that our Professional Board be the custodian of the ethical parameters required. Corruption is possible in any sector, unfortunately, but the evaluation and monitoring mechanisms are already in place to protect our profession and the public.

In addition to being subjected to legislative requirements regulating the social work scope of practice, private social workers are also subjected to the requirements of the Competition Act, 1989, which amongst other provide our service users with competitive fees and service choices, and the Consumer Protection Act, 2008 which amongst other aims to protect the economic interests of our service users.

As the adoption process is governed by the Children's Act, it is a highly regulated form of child protection. The courts of law, DSD and the accredited adoption social workers from CPO's or private practice work in conjunction with each other to provide the service. It is unlikely and untrue that there is a fine line between adoptions and child trafficking, considering the accountability required and engagement of many parties in the adoption process.



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The key issues requiring review, and which will be addressed in this submission relate to:

1. An Enabling Legislative Framework
2. Prohibition of undue consideration for adoption services.
3. Amendments that may create confusion
4. Standards and quality of service

It must be emphasised that this submission seeks to identify key overarching issues impacting on adoptions. This submission aims to provide guiding considerations to address concerns relating to adoptions and must be read holistically. To this end, we do not deal with each proposed amendment made by the Bill. A failure to deal with any specific clause in the Bill should not be read to suggest that we necessarily accept or endorse those proposed amendments.

2. An Enabling Legislative Framework

2.1. *Current challenge(s) in the Children's Act – delays in issuing of s239 letters of recommendation and placement of children pending adoption*

Delays in issuing of s239 letters of recommendation

Under the current legislation, an application for an adoption order must be accompanied by a letter by the provincial head of social development recommending the adoption of the child. A delay in the issuing of the s239 letter of recommendation would therefore delay the finalization of the adoption.

In a High Court application¹ brought against the KZN Department of Social Development because of lengthy delays in issuing of s239 letters, the Court declared that the right to access to court, and the right to just administrative action of children who are adoptable and that of the prospective adoptive parents of children who are adoptable, have been violated by irrelevant considerations and delays caused by such irrelevant considerations, relating to prospective adoptions.

Placement of children pending adoption

All adoptable children are currently dealt with as children in need of care and protection and the application for placement in temporary safe care must therefore be done by a designated social worker, which excludes an adoption social worker in private practice.

The adoptive parents are generally not considered for purposes of a temporary safe care placement, depriving the adoptable child of crucial bonding time with the adoptive parents.

2.2. *How to address the challenge(s)*

Delays in issuing of s239 letters of recommendation

¹ National Adoption Coalition of South Africa vs Head of Department of Social Development for the Province of KZN and others, Case no D4680/2018



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Section 239 of the Children’s Act should be amended to align with the judgement of the Court in the mentioned High Court application. The Court directed that a period of thirty (30) days from the date of submission of the adoption application to the appointed and appropriate persons at the DSD, KwaZulu-Natal, to the date of the letter being received by the adoption social worker is a reasonable time for the purposes of section 239(1)(d) of the Act.

The Court further directed that where the letter is a letter not recommending the adoption, alternatively failing receipt of the letter within the time frame stipulated, for the listed adoptions, and outstanding for more than thirty (30) days, the adoption social worker may set the matter down in the children’s court for consideration, in which case:

- a) The requirement of a letter of recommendation may be waived by that court in the interests of justice for the children who are awaiting adoption, on a case by case basis, for those adoptions listed where the letter has remained outstanding for more than 45 days;
- b) A member of the panel is to be present at the children’s court at the time of the hearing of the adoption application, being duly notified by the adoption social worker of the set down date;
- c) The court having considered the evidence of the adoption social worker and the member of the panel, may make a decision that it deems fit on the adoption application before it.

Section 239 of the Children’s Act should therefore be amended to reflect the abovementioned ruling of the KZN High Court.

Placement of children pending adoption

In the mentioned High Court application the Court declared that an adoptable child is not a child designated in need of care as a consequence of a child’s parents consenting to his or her adoption, and the related provisions to a child in need of care are not an automatic consequence of a child’s parents consenting to his or her adoption or of an adoption application.

The Court further declared that placement of a child in place of safety, foster care and freeing orders are each acceptable to place a child with a prospective adoptive parent if such placement is warranted and in the best interests of the child, as decided by the adoption social worker. An adoptable child is to be placed in an environment best suited to meet his or her emotional, psychological, and physical needs.

Section 46 of the Children’s Act should therefore be amended to reflect the abovementioned ruling of the KZN High Court.

2.3. The Bill’s proposed amendments and submissions on how the Bill needs to be changed

Provision	Alternative Proposal	Potential Impact/Motivation
<p>120. Section 239 of the principal Act is hereby amended—</p> <p>(b) by the substitution in subsection (1) for paragraph:</p>	<p>120. Section 239 of the principal Act is hereby amended—</p> <p>(b) by the substitution in subsection (1) for paragraph:</p>	<p>The recommended change will contribute towards creating an enabling legislative environment by removing delays and its impact on adoptable children and adoptive</p>



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<p>"(d) be accompanied by a letter [by] <u>from</u> the provincial head of social development [recommending] <u>confirming compliance with the requirements</u> for the adoption of the child <u>in terms of this Act</u>;</p>	<p>"(d) be accompanied by a letter [by] <u>from</u> the provincial head of social development [recommending] <u>confirming compliance with the requirements</u> for the adoption of the child <u>in terms of this Act</u>;</p> <p>(i) <u>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 within 14 days from the date on which the letter was due; and</u></p> <p>(ii) <u>if the provincial head fails to provide the report required in subsection (), the letter may be dispensed with.</u></p>	<p>parents. It will further be compliant with current case law.</p>
<p>Section 46 of the Principle Act</p>	<p>Insertion in subsection (1) after paragraph (C) of the following paragraph</p> <p><u>(cA) 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 allow the placement of a child in temporary safe care pending adoption once the children's court enquiry concludes the child is adoptable.</p> <p>It will also enable the adoption social worker to request this temporary safe care placement notwithstanding the 60-days 'cooling off' period.</p> <p>It will further be compliant with current case law.</p>

3. Prohibition of undue consideration for adoption services

3.1. *Current challenge(s) in the Children's Act- no prohibition could allow for criminal exploitation*

All adoption services are paid for, either by taxpayers' money, donor funding, and the public.

Private adoption social worker receives no subsidy, salary, support funding or facilities needed to conduct the adoption, therefore the fees charged to the public are inclusive of all costs involved in the service delivery. These costs include expenses in relation to professional time required to render services, expenses relating to general operating costs (rent, transport, petrol, etc.) and lastly costs incurred for actual expenses for



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services in relation to children and legal finalisation of the adoption (medical, psychological, tracing & advertisements and sheriff).

Fees charged for adoptions are negotiated with the individuals contracting the services of the private adoption social worker on an income based sliding scale. Fees charged are disclosed in the report to the court and is also subject to peer review. In addition to any legislation and Codes of Conduct and Ethics regulating their scope of practice, private adoption social workers are subjected to the requirements of the Consumer Protection Act, 2008 which amongst other aims to protect the economic interests of consumers (users of the services of an adoption social worker).

Since evaluation and monitoring mechanisms are already in place to protect our profession and the public from a fee’s perspective, there is not a need for regulation of fees in terms of the Children’s Act. SAASWIPP has also engaged with SACSSP and PBSW to develop guidelines on the appropriate range of costs and charges that are acceptable for the adoption profession.

Apart from aiming to regulate fees charged for adoption services, section 249 read with section 250, which allows only certain persons to provide adoption services, limits the possibility of exploitation – both criminally and otherwise. Deletion of Section 249 would remove the safeguards against exploitation.

3.2. *How to address the challenge(s) – amending the Children’s Act*

Amendments to section 249 is proposed, rather than the deletion of the section.

3.3. *The Bill’ proposed amendments and submission on how the Bill needs to be changed*

Provision	Alternative Proposal	Potential Impact/Motivation
122. Section 249 of the principal Act is hereby deleted.	<p>(1) No person may-</p> <p>(a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or</p> <p>(b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.</p> <p>(2) Subsection (1) does not apply to-</p> <p>(a) the biological mother of a child receiving compensation for-</p> <p>(i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;</p>	<p>The proposed amendments would recognise the latitude professional and regulating bodies (such as the SACSSP) have through their enabling statute to self-regulate the profession, including aspects relating to fees in respect of adoptions.</p> <p>The proposed amendments would further ensure that the safeguard against possible exploitation remains in place.</p>



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	<p>(ii) reasonable expenses incurred for counselling; or</p> <p>(iii) any other prescribed expenses;</p> <p>(b) [a lawyer, psychologist] an adoption social worker in private practice or any other professional person receiving fees and expenses for services provided in connection with an adoption;</p> <p>(c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;</p> <p>(d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;</p> <p>(e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;</p> <p>(f) an organ of state; or</p> <p>(g) any other prescribed persons.</p>	
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4. Amendments that may create confusion

4.1. Current challenge(s) in the Children's Act- amendments may create confusion

Definition of Adoption Social Worker

According to Section 1 of the principal Act, **adoption social worker** means -

(a) a social worker in private practice-

(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); and

(ii) who is accredited in terms of section 251 to provide adoption services;

(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services; or



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(c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act 110 of 1978);

The following amendments create confusion, since they do not consistently refer to an adoption social worker:

Section 1 – definition of after care: includes ‘social service practitioner responsible for adoption services’

Section 239 – replaced adoption social worker with social worker responsible for adoption

Section 250 – includes ‘a social worker employed by the Department or a provincial department of social development who provides adoption services’

Section 252 – includes ‘social worker responsible for adoption’

4.2. How to address the challenge(s) – amending the Children’s Act

Deletion of any reference to social worker/social service practitioner who provides adoption services and consistent reference to adoption social worker, to avoid any confusion.

4.3. The Bill’s proposed amendments and submissions on how the Bill needs to be changed

Provision	Alternative Proposal	Potential Impact/Motivation
<p>1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—</p> <p>(c) by the substitution for the definition of "after-care" of the following definition:</p> <p>"after-care' means the supportive service provided by a social worker [or]; a social [service professional] auxiliary worker or a social service practitioner responsible for adoption services, to monitor progress with regard to the child's developmental adjustment as part of—</p> <p>(a) family preservation or reunification services;</p> <p>(b) adoption or placement in alternative care; or</p>	<p>1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—</p> <p>(c) by the substitution for the definition of "after-care" of the following definition:</p> <p>"after-care' means the supportive service provided by a social worker [or]; a social service professional] <u>auxiliary worker or an adoption social worker</u>, to monitor progress with regard to the child's developmental adjustment as part of—</p> <p>(a) family preservation or reunification services;</p> <p>(b) adoption or placement in alternative care; or</p> <p>(c) discharge from alternative care;"</p>	<p>The alternative proposal ensures consistent reference to adoption social worker to avoid confusion.</p>



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<p>(c) discharge from alternative care;"</p>		
<p>120. Section 239 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:</p> <p>"(b) be accompanied by a report, in the prescribed format, by [an adoption] a social worker responsible for adoption, containing—"</p>	<p>This amendment should be removed and the existing clause in the principal Act should stand, since the section in the principle act already refers to an adoption social worker.</p>	<p>Proposed amendment to change 'an adoption social worker' to social worker responsible for adoption creates confusion. Removing the proposed amendment would ensure clarity through the consistent use of the term 'adoption social worker' which is also defined in section 1 of the principal Act.</p>
<p>123. Section 250 of the principal Act is hereby amended—</p> <p>c) by the insertion in subsection (1) after paragraph (d) of the following paragraph:</p> <p><u>"(e) a social worker employed by the Department or a provincial department of social development who provides adoption services."</u></p>	<p>123. Section 250 of the principal Act is hereby amended—</p> <p>c) by the insertion in subsection (1) after paragraph (d) of the following paragraph:</p> <p><u>"(e) a social worker employed by the Department or a provincial department of social development who has a speciality in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act 10 of 1978)"</u></p>	<p>The proposed amendment is not consistent with the definition of an adoption social worker. and</p> <p>section 250 of the principal Act includes reference to an adoption social worker, which by definition includes a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act 110 of 1978).</p> <p>Should the inclusion nevertheless be required, it is proposed that the inclusion is aligned with the definition of adoption social worker, as per the principal Act.</p>
<p>125. Section 252 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p>"(b) [an advertisement] a notice by a [child protection organisation</p>	<p>125. Section 252 of the principal Act is hereby amended—</p> <p>(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p>"(b) [an advertisement] a notice by an [child protection organisation accredited to provide adoption services] <u>adoption</u></p>	<p>The alternative proposal ensures consistent reference to adoption social worker to avoid confusion.</p>



<p>accredited to provide adoption services] social worker responsible for adoption for purposes of recruitment of prospective adoptive parents, according to prescribed guidelines;"</p>	<p>social worker for purposes of recruitment of prospective adoptive parents, according to prescribed guidelines;"</p>	
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5. Standards and quality of service

5.1. Current challenge(s) in the Children’s Act- inconsistent requirements may result in inconsistency in terms of quality of service

Adoption is an area of speciality in terms of the Social Service Professions Act, 1978 and registration requirements for the speciality include a combination of knowledge, expertise, competence, and experience. This aims to set a certain standard towards the quality of adoption services rendered. Requirements set for social workers rendering adoption services should therefore be consistent and applied equally, which is not currently the case.

To be considered an adoption social worker in terms of the Children’s Act, 2005, the Act requires that social workers in private practice and social workers in the employ of the Department or a provincial department of social development holds a speciality in adoption services. This requirement however does not apply to a social worker in the employ of a child protection organization accredited to provide adoption services.

Section 251 of the principal Act mandates the Director-General to accredit a social worker in private practice as an adoption social worker to provide adoption services and a child protection organisation to provide adoption services. The purpose of accreditation is to ensure that adoption services are rendered by competent adoption service providers. There is no requirement for social workers in the employ of the Department of provincial department of social development to be accredited to provide adoption services. Even though this would become a requirement, DSD cannot accredit their own social workers due to possible conflicts of interest.

Accredited adoption social workers must re-apply for accreditation within a prescribed period and with the recent applications in this regard, the failure to finalise re-accreditation on a timely basis, impacted service delivery to adoptable children and adoptive parents. In certain instances, adoption social workers had no other option to refer clients to another adoption social worker, even though they have progressed quite far with the adoption process. This is not ideal and not in the interest of adoptable children and adoptive parents.

5.2. How to address the challenge(s)

Amendments to the Act to ensure consistent application of requirements to meet standards.

Accreditation of adoption social workers to coincide with the registration of a speciality in adoption services as a responsibility of the S A Council for Social Service Professions (SACSSP) as the regulatory body.

5.3. The Bill’s proposed amendments and submissions on how the Bill needs to be changed



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Provision in the Principal Act	Proposed Amendment	Potential Impact/Motivation
<p><u>1 Interpretation</u></p> <p>(1) In this Act, unless the context indicates otherwise -</p> <p>'adoption social worker' means-</p> <p>(a) a social worker in private practice-</p> <p>(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); and</p> <p>(ii) who is accredited in terms of section 251 to provide adoption services;</p> <p>(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services; or</p> <p>(c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is</p>	<p>It is proposed that the definition of adoption social worker is amended as follows:</p> <p>'adoption social worker' means-</p> <p>(a) a social worker in private practice-</p> <p>(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); and</p> <p>(ii) who is accredited in terms of section 251 to provide adoption services;</p> <p>(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services, <u>who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978); or</u></p> <p>(c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act 110 of 1978)</p>	<p>The amendments will ensure that standards towards quality service delivery are applied consistently.</p>



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<p>251 Accreditation to provide adoption service</p> <p>(1) The Director-General may in terms of a prescribed process accredit-</p> <p>(a) a social worker in private practice as an adoption social worker to provide adoption services; and</p> <p>(b) a child protection organisation to provide adoption services.</p> <p>(2) The Director-General must keep a register of all adoption social workers and child protection organisations accredited to perform adoption services.</p>	<p>251 Accreditation to provide adoption service</p> <p>(1) [The Director-General] <u>The Registrar of the S A Council of Social Service Professions</u> may in terms of a prescribed process accredit-</p> <p><u>an adoption social worker</u></p> <p>[(a) a social worker in private practice as an adoption social worker to provide adoption services; and</p> <p>(b) a child protection organisation] to provide adoption services.</p> <p>(2) [The Director-General] <u>The Registrar of the S A Council of Social Service Professions</u> must keep a register of all adoption social workers and child protection organisations accredited to perform adoption services</p>	<p>The amendments will ensure that standards towards quality service delivery are applied consistently.</p>
<p>124. Section 251 of the principal Act is hereby amended by the insertion</p> <p>after subsection (1) of the following subsection—</p> <p><u>"(1A) The Director-General may, in the form and manner prescribed, withdraw an accreditation to provide adoption services."</u></p>	<p>124. Section 251 of the principal Act is hereby amended by the insertion</p> <p>after subsection (1) of the following subsection—</p> <p><u>"(1A) The Registrar of the S A Council of Social Service Professions may, in the form and manner prescribed, withdraw an accreditation to provide adoption services."</u></p>	

6. Conclusion

The proposed amendments are aligned to other pieces of legislature like the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The purpose of adoptions is to protect children and to promote the goals of permanency by providing stable permanent alternative family care. The emphasis is on the fact that children have a right to grow up in permanent and stable families, and that adoption should be based on the child's best interest and rights.



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In summary, the following is required:

- Timely issuing of section 239 letters
- Temporary placement of adoptable children with the adoptive parents, pending finalization of the adoption.
- Safeguard of Section 249 against exploitation of adoptions.
- Equal application of standards and requirements

If there ever was a time to find the political will to fix these challenges, it is now. We hope that the Children's Amendment Bill process does not become another missed opportunity. We call on all MPs to urgently ensure that real reform of matters pertaining to the care and protection of our children is taken seriously and is based on fact rather than myth.