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SOCIO-ECONOMIC ANALYSIS OF THE CHILDREN'S AMENDMENT BILL, 2020

PREPARED FOR THE

GAUTENG PORTFOLIO COMMITTEE ON SOCIAL DEVELOPMENT

BY

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1. Introduction

The purpose of the Children's Amendment Bill, 2020 is to "amend the Children's Act, 2005, so as to amend and insert certain definitions; to extend the children's court jurisdiction; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to provide for additional matters relating to children in alternative care; and to provide for matters connected herewith".¹ The following sections present analysis on the social and economic benefits of amendments on this Act.

2. Committee's Observations

At a provincial level, the Portfolio Committee on Social Development has engaged extensively with the Gauteng Department of Social Development on their concerns around the glitches observed especially on foster care placement processes, and on the speed at which cases are finalized. It has been observed via different interactions that budget has to some extent impacted the role that social workers needed to play in dealing with related cases. Over the past financial year, the Committee noted the Department's response in ensuring that tools of trade are provided accordingly. Nonetheless such did not resolve the continuing negative reasons for deviation on case completion. Whilst the Bill introduces amongst others, extension of the Children's Court jurisdiction, the current different interpretation of the Principal Act by these courts, which is noted as one of the reasons for delays, will have to be monitored to ensure that these do not add to the delays already existing.

3. Envisaged Economic Implications

Whilst the Bill aims at improving the care and protection of children, such cannot be achieved without government providing financial, human and material (tools of trade) resources. Since there is currently shortage of Social Workers to fully service the mandate of the Gauteng Department of Social Development, it is envisaged that there

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https://www.parliament.gov.za/storage/app/media/Bills/2020/B18_2020_Childrens_Amendment_Bill/B18B_2020_Childrens_Amendment_Bill.pdf

will be a need to create more jobs through the appointment of social workers, which must be accompanied by tools of trade. The amendments of section 105 require the above to be given attention for the implementation of the Bill. Although section 155 has minor insertions and changes, the emphasis on investigations suggest that social workers must be equipped to conduct these investigations, and such requires relevant training which is budgetary related and on how to manage children's cases.

4. Envisaged Social Implications

Section 28 of the Bill of Rights says: Every Child has the right to: A name and nationality from birth. Family care or parental care, or to appropriate alternative care when removed from the family environment. Section 28(1)(d) further states that children have the right to be protected against maltreatment, neglect, abuse and humiliation. In view of the data reported by the Department through their quarterly reports, it is evident that the system remains inundated with children in need of care and protection. In some instances, these are not only caused by abandonment or orphanage but the changes in economic development of the province. That is, issues relating to unemployment and or poverty, amongst others. Since the Bill now considers hearings for guardianship, it will also assist in cases where children who are not necessarily abandoned or orphaned but seek guardianship due to economic challenges will be given attention through the legal system.

Since the Bill makes provision for the children's court to now adjudicate matters pertaining to unaccompanied or separated migrant child in line with Refugees Act no 30 of 1998, this expands the scope of the children's courts and that of designated social workers. Once such cases will be finalized, it means services such as schools, provision of basic health services, provision of sanitation, etc., will be affected. Noting that a child in need of care and protection will include "*an unaccompanied migrant child from another country*"; "*a victim of trafficking*"; or a child who "*has been sold by a parent caregiver or guardian*", amongst others.

Noting the challenges faced by courts in finalization of children's cases, it is hoped that the extension of jurisdiction for the children's court to refer any criminal matter arising from the non-compliance with an order of such court, may not result in delay.

5. Envisaged Environmental implications

Whilst the Bill does not have external environmental issues to consider, the main aspect is creating an environment that will best suit the child and the caregiver. Amendments relating to Section 185 which states that not more than six children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme. This clause will enable the children placed under cluster foster care to experience an environment that will be conducive for their protection, care and development and also limit the burden for caregiver to feel obliged to provide for a bigger space whilst they are not in a financial viable position to do such. Also, amendments to Section 186 states that the "*children's court may deem it necessary to order further supervision services*" and despite the provisions of Section 159 (1) (a), regarding the duration of a court order, and after having considered the need for creating stability in the child's life.....Moreover, social service practitioners will be recommended to have annual visits, unlike the once in two years as prescribed in the Principal Act.

6. Envisaged Financial Implications

Although the provision of services for children is already costed in every financial year since they are provided in line with the Principal Act, one the provisions of this Bill are promulgated, there will be a need for additional financial resources to provide for amongst others, material (tools of trade) and human resources.

7. Envisaged Institutional Implications

Unless the Department has a different opinion to how the changes will affect its day-to-day provision of services. The preempted Child Protection Unit may require

additional human resources, since the court orders have been reduced from 2 years to six months, the visits and investigations, may require for Department's Organogram to change.

8. Conclusion

Care and protection services for children are evolving, thus far the Bill has attempted to address some of the challenges in the system. Unfortunately, the different interpretation of Principal Act by different children's courts remains a challenge in dealing with the foster care cases. Whilst the Bill may seek to address other challenges and unless Children's courts move from a unison interpretation of the Principal Act these changes may not necessarily bring change to the process. Majority of the insertions and or changes remain more administrative in nature.

References

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Children's Amendment Act no 41 of 2007

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