Submission on the Draft Children's Amendment Bill from the HIV/AIDS subgroup of the Children's Bill Working Group[1]

Compiled by Dr Wanjirũ Mũkoma, Sue Philpott, Lucy Jamieson

For Further information contact Dr Wanjirũ Mũkoma
082 423 8515
(021) 689 5404;
wanjiru.mukoma@uct.ac.za

1. Introduction: the problem, magnitude and consequences

It is estimated that approximately 294 000 South African children aged 0-14 years are living with HIV.[2]. In South Africa, the risk of transmission from mother-to-child is up to 36%,[3] compared to about 2% in developed countries. Forty-four percent of mortality in children under the age of two years results from AIDS-related illnesses.[2] HIV positive children represent only a small proportion of children directly affected by HIV/AIDS. The scale of HIV prevalence, morbidity and mortality in the adult population has direct consequences on children. The Department of Health estimates that 5.4 million people in South Africa are living with HIV. This translates into millions of children that are living with chronically or frequently ill parents. It also translates into 3.5 million orphaned children (18.6% of all children).[4]

The HIV/AIDS pandemic, combined with mass poverty have resulted in many more children being rendered vulnerable. The magnitude of the problems and huge scale of need have strained families and communities, and presents particular challenges to social services and child protection services.

2. Overview of recommendations

2.1 Improved provision of all services

The huge demand for services due to HIV/AIDS has exerted enormous pressure on social development infrastructure and staffing, to the extent that they have been unable to cope.

- The challenge is to ensure that services are able to respond to the sheer numbers of children that require them.
- This means, first and foremost, better provisioning for all levels of services. This requires increased coverage and extent of the service as well as consistently high quality services. In particular, services need to reach those who most need them
- The social service system is only as strong as the weakest link. Sufficient resources must be provided at all levels of service.

[1] The Children's Bill working group consists of civil society organisations working in the children's sector. The working group is co-ordinated by the Children's Institute, University of Cape Town.
[2] Dorrington R, Bradshaw D, Johnson L, Budlender D. (2004) The Demographic Impact of HIV/AIDS in South Africa. National Indicators for 2004. Centre for Actuarial Research and South African Medical Research Council 2004
[3] Coetzee D, Hilderbrand K, Boulle A, Draper B, Abdullah F, Goemaere E. (2005) Effectiveness of the first district-wide programme for the prevention of mother-to-child transmission of HIV in South Africa. Bulletin of the World Health Organization. 2005; 83:489-94.
[4] Statistics South Africa, General Household Survey of 2005

2.2 Prevention and early intervention

This is one of the most important chapters of the Children's Amendment Bill and we commend efforts to strengthen it. This chapter speaks to the well known and proven adage of a stitch in time. To safeguard children's well-being, problems should be prevented before they arise, and if they do, early and appropriate responses must be implemented, thus preventing family breakdown, and reducing the need for statutory interventions.

Parents provide the best environment for children to grow and thrive. It is therefore crucial that prevention and early intervention services are geared at supporting families to stay together. In the context of HIV/AIDS, access to treatment is vital for preserving parents and families.

2.3 Child-headed households

The impact of AIDS has been a dramatic increase in the number of child-headed households.

- The Bill must ensure that children in these households are not denied access to services and basic necessities provided to all other families in need.
- We support the inclusion of a protection mechanism through the adult-supervision of child-headed households.
- However, the children's right to participate in decision-making regarding their household must be upheld.
- Children in child-headed households should have recourse through prescribed procedures, to hold the adults supervising them to account

2.4 Alternative care

There are a range of options provided for children who are not living with their parents, and these need to be further developed, building on community-based initiatives. Children may be accommodated through extended households in the community, looked after by their siblings (in child-headed households) or be in children's homes (child and youth care centres). Although the Department may not fund all of these, it is important that their activities are monitored to ensure that children are protected and not exploited in any way.

2.5 Foster care

One of the outcomes of the HIV/AIDS pandemic has been a dramatic increase in the numbers of foster care applications. Additional demands are being made on a system that was already severely under-resourced and dysfunctional before the increase in applications for foster care. In April 2000 the number of children in statutory foster care stood at 49 843. By May 2007 the number had reached 418 608. This means an increase of more than 700% in seven years. The foster care system is collapsing. Social workers are spending a significant amount of their time processing foster care applications, while children who are in dire need of protection due to abuse and neglect either go unattended or wait endlessly. This situation has created a major crisis in the country's child protection services. By all means possible, we must prevent situations that place children into the statutory systems.

In addition, as long as all children up to 18 years that are living in poverty do not have access to the child support grant and other poverty alleviation measures, the potential is ever present for the abuse of the foster care system and the children going through it.

- Strengthening of prevention and early intervention services and programmes is crucial in order to take some pressure off the foster care system
- The foster care grant must not be used as a poverty alleviation measure as processing of the grant places unnecessary burden on the system and ties up social workers' time
- We support the concept of cluster foster care scheme. However, these need to be clearly defined in the Bill and differentiated from child and youth care centres.

2.6 Child and youth care centres

Recent research by the Children's Institute indicates that although widespread abuse, neglect and abandonment of children were the major reasons for their entry into the residential care settings, homes were providing care to an exceptionally high ratio of HIV-positive children. The study suggests that HIV/AIDS and poverty are part of a complex causal pathway rather than the dominant reasons for admission in and of themselves. If this is indeed the case, the distinction has important implications for the design and delivery of 'prevention' services. This feature of the child population in homes raises important considerations for the provision of adequate and appropriate care, including in relation to caregiver skills, training and continuity; and children's access to health services.

2.7 Recognition of child and youth care workers

We support NACCW's submission on the explicit recognition of and provision for child and youth care workers in relevant sections of the Bill. Child and youth care workers provide a wide range of child protection and care services and are recognised as a category of social service professionals by the South African Council for Social Service Professionals (SACSAP). Due of the numbers of children in need, we cannot continue to rely on dwindling numbers of social workers to deliver services. Recognition of the role of child and youth care workers enables us to broaden our scope of social service professionals and para-professionals. For example, child and youth care workers can provide the necessary support to child-headed households to enable children to continue to live together in their family home, and attend school or pre-school. The Bill needs to make provision for adequate training and support for large numbers of these personnel.

2.8 Collaboration

The AIDS pandemic has resulted in a scale of need that demands a collaborative between government departments and between these departments and civil society. While the Bill deals with competencies within the Department of Social Development, on its own, this department cannot effectively tackle the challenges facing South African children today and in the future. In particular, the Department of Education has an important role to play.

- Schools have an important role to play in identifying children who show signs of being at risk. The role of schools in identifying and referring vulnerable children needs to be clearly stated in the Bill and adequately resourced.
- We support submissions by Casnet on the role of schools

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The HIV sub-group of the Children's Bill Working Group consists of the following organisations:

ACESS
Aids Law Project
AIDS Legal Network
Absolute Return for Kids
Blacksash
CASNET
CHAiN (Children's HIV/AIDS Network Western Cape)
Child Litigation Project
Child Welfare SA
Childline SA
Children's Institute
Children's Rights Centre
CINDI
Child Rights Centre
Dikwankwetla Children in Action
Disability Action Research Team
Johannesburg Child Welfare
Legal Resources Centre Grahamstown
Lakehaven Children's Homes
Makhputhamata
Matjhabeng AIDS consortium
NACCW
NALEDI
PACE
Catholic Institute for Education
SACC
Samaritan Centre
SASPCAN
Siyakhana Youth Outreach and Education Programme
Soul City
Umtata Child Abuse Resource Centre (Ucarc)
Zisize Educational Trust

Proposed Amendments

CHAPTER 7: PART 4, CHILD HEADED HOUSEHOLDS

Clause	Proposed Amendments	Discussion/ Motivation
136(1)	A provincial head of social development may recognise a household as a child-headed household if- **(a)** The parent or caregiver of the household is terminally ill, or has died, or **has abandoned the child(ren)**	This clause currently refers only to children whose parents are terminally ill or have died. It excludes children in child-headed households, whose parents or caregivers are alive but have abandoned them.
136(1)	(d) **We recommend that this clause be deleted**	Assistance should be rendered immediately to child-headed households. Social workers are compelled by section 150(2)(b) to conduct an investigation as per s155(2). The purpose of the investigation should be determine whether children should remain in the home, or be placed in alternative care i.e. foster care or residential care.
136(2)	A child-headed household must function under the general supervision of an adult designated by – (a) a children's court **in consultation with the child heading the household and where appropriate the other children in the household and terminally ill parent or care-giver** (b) an organ of the state or a non-governmental organisation determined by the provincial head of social development **in consultation with the child heading the household and where appropriate the other children in the household**	Children's right to participate is granted in Section 10 of the Child Act, as well as the United Nations Convention on the Rights of the Child. This right must be upheld for children in child-headed households. The children should participate in decisions about the adult assigned to supervise their household. Parents/caregivers still have a legal duty to care for the child as per section 18 of the Act. This must be upheld and respected.
136 (3)	The supervising adult must	It is critical that the adult supervising a child-

	(c) where possible, assist the child heading the household to remain in school and (d) where facilities are available, assist pre-school children in a child-headed household to attend pre-school facilities	headed household should assist the children to stay in school
136(4)	(a) The child at the head of the household or the adult contemplated in subsection (2) may **<u>apply</u>**, collect and administer for the child-headed household any social security grant **or benefits** or other assistance to which the household is entitled.	Children in child-headed households are entitled not only to social security grants but also other benefits such as the UIF and COIDA benefits of their deceased parents. The Black Sash argues that it is difficult for a child-headed household to access these benefits during the limited prescription periods without guidance. We support this recommendation. Children living on their own, and the adults assigned to supervise them may need assistance in the process of applying for social security funds, particularly in securing the necessary documentation. Currently, many children living on their own are unable to access social security grants and other assistance because they do not have documentation such as birth certificates and are too young to have IDs.
136(5)	(b) An organ of the state or non-governmental organisation is accountable **<u>in the prescribed manner</u>** to the provincial department of social development or the children's court for administration of any money received on behalf of the household	Children in child-headed households may require extra protection from exploitation. Therefore the NGO, organ of the state or adult involved in supervising a child-headed household must be held accountable not only to the children in the household but also to the provincial department.
136(6)	(a) **<u>given the child's age, maturity and stage of development,</u>** the child at the head of the household (c) **<u>Where the parent /caregiver is terminally ill, we suggest inclusion of a clause compelling the adult charged with</u>**	Reference to a *child at the head of the household* is problematic as it often implies that the eldest child is the head of the household, and that there is always one child heading the

	<u>supervising the household to consult with this adult</u>	household at all times. This is not the case as different children may head the household at different times depending on factors such as the household needs at the time and responsibilities that need to be taken care of. The children may also have an adult caregiver at certain times and not others. Parents/caregivers still have legal duty to the child as granted in section 18 of the Act. This must be upheld.
136(7)	The child heading the household may take all day-to-day decisions relating to the household and the children in the household ~~**as if that child was an adult care-giver**~~ **as is appropriate given the child's age, maturity and stage of development**	A child is a minor and cannot make decisions as though they were an adult. They have limited decision-making capacity in comparison to an adult.
136(8)	We support the addition of phrases strengthening this clause but suggest an additional clause (136(9)) to cover children's entitlement to security of tenure	
<u>136 (9)</u>	**Children in a <u>child headed household must be assured of the right to shelter and security of tenure</u>**	Children in CHH face challenges similar to those faced by all other vulnerable children. However there is some specific additional protection required for CHH. For example there are cases of children in CHH being evicted from their home by relatives who claim the house in which the children live. The Children's Amendment Bill should ensure security of tenure

		for CHH.
136 (10)	**The children in the child-headed household must have recourse through prescribed procedures to hold to account the adult, organ of state or NGO referred to in subsection (2)**	There should be mechanisms to protect children in child-headed household from any form of exploitation or abuse by those to whose supervision they are entrusted by the state, and for children to seek recourse should such exploitation occur

CHAPTER 8: PREVENTION AND EARLY INTERVENTION

Clause	Proposed Amendments	Discussion/ Motivation
143	(1) Early intervention programmes means programmes **and social development services -**	
144	(1) Prevention and early intervention **services or** programmes must focus on (i**) providing support to families of children with disability or chronic illness**	Families and caregivers of children with disability or chronic illness (which may be as a result of HIV infection) face many demands in providing care and support for these children. Early intervention programmes need to recognise this and provide the necessary services in order the prevent such stresses that lead to the breakdown of the family.
	(2) Prevention and early intervention **services or** programmes ~~may~~ **must where necessary** include – (a) assisting families to obtain the basic necessities of life **and to access government services and grants**; (b) empowering families to obtain such necessities **and access government services and grants** for themselves; **and**	

	(c**) Providing families in desperate need with the basic necessities of life including food, clothing, and shelter.**	
	(3) Prevention and early intervention **services or** programmes must involve and promote the participation of families, parents, care-givers and children in identifying and ~~**seeking solutions to**~~ **resolving** their problems	
146	(1) The MEC for social development **must**, from money appropriated by the relevant provincial legislature, province and fund prevention and early intervention programmes for that province	Prevention and early intervention are the foundation on which other social services are to be provided. It is therefore essential that such services are not left to the discretion of the MEC and/or be subject to competing priorities for spending.

CHAPTER 12: FOSTER CARE

Clause	Proposed Amendment	**Discussion/ Motivation**
185(2)		This clause provides for more than 6 children (and no maximum number of children) to be placed in cluster foster care. In terms of 191(1) a facility with more than 6 children is a CYCC. The Bill should provide clarity to differentiate between 'cluster foster care' and residential homes. The provision for more than 6 children to be placed in cluster foster care allows the cluster foster homes to bypass the strict administrative, registration and monitoring processes required of CYCC. This provision does not provide the necessary safeguards. It also exposes children to being cared for by "employed" multiple carers.
	Provide absolute clarity as to the difference between cluster foster care schemes and child and	Organizations are currently using foster care legislation to provide residential care without having to operate within the regulations for

<table>
<tr><td></td><td>youth care centres.

We recommend and support that cluster foster care schemes be defined as originally conceptualized: as networking and supportive bodies for foster parents. This would exclude the use of foster care grants as salaries or foster parents being employees of the organization running the scheme.

We recommend the following amendments to s3(d) and s3(g):</td><td rowspan="3">residential care. Children are thus living outside of family environments, but are not protected by stricter provisioning for residential care. Without a clearer definition of a cluster foster care scheme which explicitly excludes this practice, provisions for cluster foster care will allow this practice to continue. This is problematic not only because of the lesser protection afforded to children but also in terms of labour practices, as caregivers are both children's foster parents (who need to reside with have responsibility for children 24 hours a day) and staff employed to care for the children.

On the other hand organizations currently providing support (emotional, material, training) to foster families are playing a crucial role in strengthening the foster care system and ensuring that foster care placements do not fail. One such organization in our study reported that none of their placements had failed.

Amendments to the provisions for cluster foster care along these lines which ensure that children are placed in the care of foster parents directly and not into the care of organizations and which limit the definition of a foster parent to exclude salaried employees of organizations operating cluster foster care schemes are critical in order to prevent cluster foster care schemes from operating as child and youth care centres and therefore allow the Bill to accommodate 'extended households'.</td></tr>
<tr><td>s3(d)</td><td>By insertion after the definition of "clerk of court" of the following definitions:
" 'cluster foster care scheme' means a ~~scheme providing for the reception of children in foster care in accordance with a foster care programme~~ **support network for foster parents** operated by-
a) a social, religious or other non-governmental organization; or
b) a group of ~~individuals, acting as care-givers of the children, and~~ **foster parents** managed by a provincial department of social development or a designated child protection organisation</td></tr>
<tr><td>s3(g)</td><td>By the insertion after the definition of "family member" of the following definitions:
" 'foster care' means care of a child as described in section 180(1) and includes foster care in a cluster foster care scheme;
" 'foster parent' means a person who has foster</td></tr>
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	care of a child by order of the children's court, ~~and includes an active member of an organization operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child.~~	