

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO**

**CHILDREN'S BILL**

**[B 70B—2003]**

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*(As agreed to by the Portfolio Committee on Social Development  
(National Assembly))*

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**[B 70C—2003]**

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## AMENDMENTS AGREED TO

### CHILDREN'S BILL [B 70B—2003]

#### PREAMBLE

1. On page 2, to omit the second paragraph and to substitute:
 

**AND WHEREAS** every child has the rights set out in section 28 of the Constitution;
2. On page 2, from the sixth line of the preamble, to omit all the words after “and” up to and including “Rights” in the seventh line and to substitute “fulfill those rights”.
3. On page 2, in the twelfth line of the preamble, to omit “childhood is” and to substitute “children are”.
4. On page 2, in the fourteenth line of the preamble, to omit the first “of” and to substitute “on”.
5. On page 2, in the fifteenth line of the preamble, to omit the first “and” and to substitute “,”.
6. On page 2, in the fifteenth line of the preamble, after the second “Child” to insert “and in the African Charter on the Rights and Welfare of the Child”.

#### TABLE OF CONTENTS

1. On page 3, in line 35, to omit “parental responsibilities and rights” and to substitute “contact and care”.
2. On page 3, in line 40, to omit “parental responsibilities and rights” and to substitute “guardianship and care”.
3. On page 4, in line 5, to omit “Amendment or termination of registered parenting plan” and to substitute “Refusal of access or refusal to exercise parental responsibilities and rights”.
4. On page 5, in line 1, to omit “**Part 3**”.
5. On page 5, in line 2, to omit “*Clerks of children’s courts*”.
6. On page 5, in line 3, to omit “Appointment or designation of clerks of children’s courts” and to substitute “Clerk of court”.
7. On page 5, after line 4, to insert:

#### *Part 3*

#### *Pre-hearing conferences, family group conferences, other lay forums and settling of matters out of court*

8. On page 7, from line 18, to omit “Accreditation of designated child protection organisation for inter-country adoption” and to substitute “Accreditation to provide inter-country adoption services”.
9. On page 7, in line 20, to omit “agreements” and to substitute “agreement”.

10. On page 7, in line 21, to omit “Adoption of children from Republic by persons in convention countries” and to substitute “Adoption of child from Republic by person in convention country”.
11. On page 7, in line 22, to omit “Adoption of children from Republic by persons in non-convention countries” and to substitute “Adoption of child from Republic by person in non-convention country”.
12. On page 7, in line 24, to omit “Adoption of children from convention countries by persons in Republic” and to substitute “Adoption of child from convention country by person in Republic”.
13. On page 7, in line 25, to omit “Adoption of children from non-convention countries by persons in Republic” and to substitute “Adoption of child from non-convention country by person in Republic”.
14. On page 7, in line 26, to omit “Recognition of inter-country adoption of children from convention countries” and to substitute “Recognition of inter-country adoption of child from convention country”.
15. On page 7, in line 28, to omit “Recognition of inter-country adoption of children from non-convention countries” and to substitute “Recognition of inter-country adoption of child from non-convention country”.
16. On page 7, in line 32, to omit “children” and to substitute “child”.
17. On page 7, in line 51, to omit “a”.
18. On page 7, in line 52, to omit “children” and to substitute “child”.
19. On page 7, in line 54, to omit “Report of child who is a victim of trafficking” and to substitute “Reporting of child who is victim of trafficking”.
20. On page 8, in line 1, to omit “a”.
21. On page 8, in line 2, to omit “a”.

#### CLAUSE 1

1. On page 9, in line 40, to omit “designated”.
2. On page 9, in line 43, to omit “designated”.
3. On page 10, in line 30, to omit paragraph *(b)*.
4. On page 10, in line 31, to omit “*(c)*” and to substitute “*(b)*”.
5. On page 10, in line 33, to omit “*(d)*” and to substitute “*(c)*”.
6. On page 10, in line 34, to omit “*(e)*” and to substitute “*(d)*”.
7. On page 10, in line 36, to omit “*(f)*” and to substitute “*(e)*”.
8. On page 10, in line 37, to omit “*(g)*” and to substitute “*(f)*”.
9. On page 10, in line 39, to omit “*(h)*” and to substitute “*(g)*”.
10. On page 10, after line 49, to insert:
 

**“circumcision”**, in relation to a female child, means the removal of the clitoris by any means;

11. On page 10, from line 50, to omit the definition of “**clerk of the children’s court**” and to substitute:
 

“**clerk of the court**” means clerk of the court of the relevant magistrate’s court;
12. On page 11, in line 17, to omit “\*\*\*\*\*”.
13. On page 11, in line 23, to omit the second “or”.
14. On page 11, in line 24, after “organisation;” to insert “or”.
15. On page 11, after line 24, to insert:
 

(c) a municipality;
16. On page 11, after line 52, to insert:
 

“**genital mutilation**”, in relation to a female child, means the partial or complete removal of any part of the genitals, and includes circumcision of female children;
17. On page 12, in line 13, to omit “\*\*\*\*\*”.
18. On page 12, from line 30, to omit all the words after “the” up to and including “(Act No. 18 of 1973);” in line 31 and to substitute “Mental Health Care Act, 2002 (Act No. 17 of 2002);”.
19. On page 12, after line 34, to insert:
 

“**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
20. On page 12, in line 42, to omit “\*\*\*\*\*”.
21. On page 12, in line 58, to omit “or kinship care-giver”.
22. On page 13, after line 16, to insert:
 

“**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);
23. On page 13, after line 22, to insert “\*\*\*\*\*”.
24. On page 13, in line 49, after “youth worker” to insert “, social auxiliary worker”.
25. On page 13, in line 61, to omit “\*\*\*\*\*”.
26. On page 14, in line 9, to omit all the words after “place” up to and including “prescribed,” in line 10.
27. On page 14, in line 30, to omit “\*\*\*\*\*”.
28. On page 14, in line 38, to omit “ ‘contact’ and ‘care’ ” and to insert “ ‘care’ and ‘contact’ ”.

29. On page 14, after line 41, to insert:

(4) Any proceedings arising out of the application of the Administration Amendment Act, 1929 (Act No. 9 of 1929), the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act No. 116 of 1998), and the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), in so far as these Acts relate to children, may not be dealt with in a children's court.

## CLAUSE 12

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 11:

### **Social, cultural and religious practices**

**12.** (1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.

(2) A child—

(a) below the minimum age set by law for a valid marriage may not be given out in marriage or engagement; and

(b) above that minimum age may not be given out in marriage or engagement without his or her consent.

(3) Genital mutilation or the circumcision of female children is prohibited.

(4) Virginity testing of children under the age of 16 is prohibited.

(5) Virginity testing of children older than 16 may only be performed?

(a) if the child has given consent to the testing in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(6) The results of a virginity test may not be disclosed without the consent of the child.

(7) The body of a child who has undergone virginity testing may not be marked.

(8) Circumcision of male children under the age of 16 is prohibited, except when—

(a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or

(b) circumcision is performed for medical reasons on the recommendation of a medical practitioner.

(9) Circumcision of male children older than 16 may only be performed—

(a) if the child has given consent to the circumcision in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(10) Taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision.

CLAUSE 21

1. On page 20, in line 9, after “father” to insert “or pays damages in terms of customary law;”

CLAUSE 23

1. On page 21, in line 3, to omit “parental responsibilities and rights” and to substitute “contact and care”.

CLAUSE 27

1. On page 22, in line 12, to omit “parental responsibilities and rights” and to substitute “guardianship and care”.

CLAUSE 28

1. On page 22, in line 35, to omit “parental responsibilities and rights” and to substitute “contact and care”.

1. CLAUSE 29

On page 23, in line 17, after “may” to insert “, subject to section 55”.

CLAUSE 34

1. On page 25, after line 19, to insert the following subsections:
  - (4) A parenting plan registered with a family advocate may be amended or terminated by the family advocate on application by the co-holders of parental responsibilities and rights who are parties to the plan.
  - (5) A parenting plan that was made an order of court may be amended or terminated only by an order of court on application—
    - (a) by the co-holders of parental responsibilities and rights who are parties to the plan;
    - (b) by the child, acting with leave of the court; or
    - (c) in the child’s interest, by any other person acting with leave of the court.
  - (6) Section 29 applies to an application in terms of subsection (2).

CLAUSE 35

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 34:

**Refusal of access or refusal to exercise parental responsibilities and rights**

**35.** (1) Any person having care or custody of a child who, contrary to an order of any court or to a parental responsibilities and rights agreement that has taken effect as contemplated in section 22(4), refuses another person who has access to that child or who holds parental responsibilities and rights in respect of that child in terms of

that order or agreement to exercise such access or such responsibilities and rights or who prevents that person from exercising such access or such responsibilities and rights is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(2) (a) A person having care or custody of a child whereby another person has access to that child or holds parental responsibilities and rights in respect of that child in terms of an order of any court or a parental responsibilities and rights agreement as contemplated in subsection (1) must upon any change in his or her residential address forthwith in writing notify such other person of such change.

(b) A person who fails to comply with paragraph (a) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

#### CLAUSE 45

1. On page 28, from line 4, to omit “Except where this Act, the Divorce Act or the Maintenance Act expressly provides otherwise” and to substitute “Subject to section 1(4)”.

#### CLAUSE 46

1. On page 28, from line 48, to omit subparagraph (ii).
2. On page 28, in line 50, to omit “(iii)” and to substitute “(ii)”.
3. On page 28, in line 51, to omit “(iv)” and to substitute “(iii)”.

#### CLAUSE 47

1. On page 29, in line 52, after the second “of”, to insert “the Administration Amendment Act, 1929 (Act No. 9 of 1929),”
2. On page 29, in line 53, to omit “or” and to substitute “,”.
3. On page 29, in line 54, after “(Act No. 116 of 1998),” to insert “or the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998),”.

#### CLAUSE 63

1. On page 34, in line 30, to omit “professional” and to substitute “suitably qualified”.

#### **Part 3 of CHAPTER 4**

1. On page 35, in line 34, to omit “Part 3”.
2. On page 35, in line 35, to omit “*Clerks of Children’s Courts*”.

## NEW HEADING

1. On page 36, after line 4, to insert:

*Part 3**Pre-hearing conferences, family group conferences, other lay-forums and settling matters out of court*

## CLAUSE 73

1. Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause to follow Clause 72:

**Other functions**

**73.** The clerk of the children's court may attend every children's court hearing.

## CLAUSE 75

1. On page 37, in line 19, after "courts" to insert " and the powers, duties and functions of clerks of the children's court in as far as they relate to the proceedings of children's courts;"

## CLAUSE 119

1. On page 40, in line 19, after "person" to insert ", if available".

## CLAUSE 120

1. On page 40, in line 31, to omit "either as a party or a witness".
2. On page 40, in line 43, to omit "sexual abuse" and to substitute "indecent assault".
3. On page 40, in line 50, to omit "sexual abuse" and to substitute "indecent assault".
4. On page 40, in line 52, to omit all the words after "rape," up to and including "abuse" in line 53 and to substitute "indecent assault".

## CLAUSE 122

1. On page 41, from line 18, to omit subsection (2) and to substitute:

(2) The Director-General must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal proceedings have been instituted or not.

(3) If, after appeal or review proceedings have been concluded, a finding in terms of section 120 that a person is unsuitable to work with children is reversed, the Director-General must forthwith remove the name of the person from the Register.



## CLAUSE 123

1. On page 41, in line 34, to omit “, kinship care-giver”.
2. On page 41, in line 37, to omit “or”.
3. On page 41, after line 37, to insert:
  - (e) be employed in terms of the Public Service Act in a position where that person works with or has access to children;
  - (f) be employed in terms of the Municipal Systems Act in a position where that person works with or has access to children; or
4. On page 41, in line 38, to omit “(e)” and to substitute “(g)”.
5. On page 41, after line 49, to insert:
  - (5) The head of a state department may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.
  - (6) The municipal council of a municipality may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.

## CLAUSE 124

1. On page 42, in line 10, to omit “or”.
2. On page 42, in line 13, to omit “.” and to substitute “;”.
3. On page 42, after line 13, to insert:
  - (d) is employed in terms of the Public Service Act in a position where he or she works with or has access to children, that person must disclose that fact to the head of the state department in which he or she is employed; or
  - (e) is employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, that person must disclose that fact to the municipal council of the municipality concerned.

## CLAUSE 126

1. On page 42, in line 39, to omit “or”.
2. On page 42, in line 42, to omit “.” and to substitute “;”.
3. On page 42, after line 42, to insert:
  - (d) to be employed in terms of the Public Service Act in a position where he or she works with or has access to children, the head of the state department in which he or she is to be employed must establish whether or not that person’s name appears in Part B of the Register; or
  - (e) to be employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, the municipal council of that municipality must establish whether or not that person’s name appears in Part B of the Register.

4. On page 42, in line 50, to omit “and”.
5. On page 42, in line 53, to omit “.” and to substitute “;”.
6. On page 42, after line 53, to insert:
  - (d) the head of every state department must establish whether the name of any person employed in terms of the Public Service Act in a position where he or she works with or has access to children appears in Part B of the Register; and
  - (e) the municipal council of every municipality must establish whether the name of any person employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children appears in Part B of the Register.

#### CLAUSE 128

1. On page 43, from line 40, to omit subsection (4) and to substitute:
  - (4) The name and particulars of a person convicted more than once of an offence with regard to a child may not be removed from Part B of the Register.

#### CLAUSE 129

1. On page 44, after line 29, to insert:
  - (8) The Minister may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent.
2. On page 44, in line 30, to omit “(8)” and to substitute “(9)”.
3. On page 44, in line 33, to omit “(9)” and to substitute “(10)”.

#### CLAUSE 150

1. On page 47, in line 8, to omit all the words after “worker” up to and including “155(2)” in line 9.
2. On page 47, in line 10, after “labour;” to insert “and”.
3. On page 47, in line 11 to omit “(b) an unaccompanied foreign child”.
4. On page 47, in line 12, to omit “(c) a child who is a victim of trafficking”.
5. On page 47, in line 13, to omit “(e) a street child; and”.
6. On page 47, in line 14, to omit “(f)” and to substitute “(b)”.
7. On page 47, after line 14, to insert:
  - (3) If after investigation a social worker finds that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), the social worker must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem

solving and referral to another suitably qualified person or organisation.

#### CLAUSE 151

1. On page 47, in line 17, to omit “that presiding officer” and to substitute “the children’s court concerned”.
2. On page 47, in line 22, to omit “to the court”.

#### CLAUSE 152

1. On page 48, after line 33, to insert:
 

(6) Misuse of a power referred to in subsection (1) by a designated social worker employed in terms of the Public Service Act or the Municipal Systems Act constitutes unprofessional or improper conduct as is contemplated in section 27(1)(b) of the Social Service Professions Act, 1978 (Act No. 110 of 1978) by that social worker.
2. On page 48, in line 34, to omit “(6)” and to substitute “(7)”.
3. On page 48, in line 37, to omit “(7)” and to substitute “(8)”.

#### CLAUSE 156

1. On page 50, from line 35, to omit subparagraph (i).
2. On page 50, in line 37, to omit “(ii)” and to substitute “(i)”.
3. On page 50, in line 38, to omit “(iii)” and to substitute “(i)”.
4. On page 50, in line 40, to omit “(iv)” and to substitute “(iii)”.
5. On page 50, in line 42, to omit “(v)” and to substitute “(iv)”.
6. On page 50, in line 44, to omit “(vi)” and to substitute “(v)”.

#### CLAUSE 158

1. On page 52, in line 16, to omit “or programmes”.
2. On page 52, in line 19, to omit “or programmes”.
3. On page 52, in line 21, to omit all the words after “programme” up to and including “programmes” in line 22.

#### CLAUSE 164

1. On page 53, in line 46, to omit all the words after the first “to” up to and including “other” and to substitute “such”.
2. On page 53, in line 46, after “person” to insert “or institution”.

## CLAUSE 165

1. On page 54, in line 3, to omit all the words after the first “to” up to and including “other” and to substitute “such”.
2. On page 54, in line 3, after “person” to insert “or institution”.
3. On page 54, in line 8, to omit all the words after the first “to” up to and including “other” and to substitute “such”.
4. On page 54, in line 8, after “person” to insert “or institution”.

## CLAUSE 231

1. On page 55, in line 3, after “wedlock;” to add “or”.
2. On page 55, in line 4, to omit “; or” and to substitute “.”.
3. On page 55, in line 5, to omit paragraph (f).
4. On page 55, in line 24, to omit “,” and to substitute “or”.
5. On page 55, from line 24, to omit all the words after the second “child” up to and including the first “child” in line 25.
6. On page 55, in line 30, to omit “the clerk of the children’s court or”.
7. On page 55, in line 31, to omit all the words after “child” up to and including “care-giver”.

## CLAUSE 232

1. On page 56, in line 9, to omit “designated”.
2. On page 56, in line 11, to omit “designated”.

## CLAUSE 233

1. On page 56, in line 16, to omit “minor” and to substitute “child”.

## CLAUSE 235

1. On page 57, in line 22, to omit “designated”.
2. On page 57, in line 22, after “organisation” to insert “accredited in terms of section 251 to provide adoption services”.
3. On page 57, in line 28, to omit “designated”.
4. On page 57, in line 28, after “organisation” to insert “accredited in terms of section 251 to provide adoption services”.

## CLAUSE 238

1. On page 58, in line 46, to omit “clerk of the children’s court” and to substitute “presiding officer”.
2. On page 58, in line 47, after “delay” to insert “cause the sheriff to”.

CLAUSE 240

1. On page 59, in line 43, to omit “or kinship care”.
2. On page 59, in line 44, to omit “or kinship care-giver”.

CLAUSE 243

1. On page 60, in line 31, after “time” to insert “but”.

CLAUSE 244

1. On page 60, in line 54, to omit the second “that” and to substitute “the”.

CLAUSE 249

1. On page 62, in line 31, to omit “\*\*\*\*\*” and to substitute:
  - (d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;
2. On page 62, in line 32, to omit “designated”.

CLAUSE 250

1. On page 62, in line 38, to omit “designated”.
2. On page 62, in line 42, to omit “designated”.

CLAUSE 251

1. On page 62, in line 52, to omit “designated”.
2. On page 62, in line 54, to omit “designated”.

CLAUSE 252

1. On page 63, in line 6, to omit “designated”.

CLAUSE 253

1. On page 63, after line 21, to insert:
  - (e) prescribing the requirements that a child welfare organisation has to comply with for accreditation as contemplated in section 251 to provide adoption services;
  - (f) prescribing the requirements that a child welfare organisation has to comply with for accreditation as contemplated in section 259 to provide inter-country adoption services;
2. On page 63, in line 22, to omit “(e)” and to substitute “(g)”.
3. On page 63, in line 23, to omit “(f)” and to substitute “(h)”.

CLAUSE 258

1. On page 64, in line 25, to omit “designated”.

CLAUSE 259

1. On page 64, from line 27, to omit “**Accreditation of designated child protection organisation for inter-country adoption**” and to substitute “**Accreditation to provide inter-country adoption services**”.
2. On page 64, in line 29, to omit “designated”.
3. On page 64, in line 34, to omit “designated”.
4. On page 64, in line 37, to omit “designated”.

CLAUSE 260

1. On page 64, in line 46, to omit “**agreements**” and to substitute “**agreement**”.
2. On page 64, in line 47, to omit “designated”.
3. On page 64, in line 50, to omit “designated”.

CLAUSE 261

1. On page 65, in line 1, to omit “**Adoption of children from Republic by persons in convention countries**” and to substitute “**Adoption of child from Republic by person in convention country**”.

CLAUSE 262

1. On page 65, in line 48, to omit “**Adoption of children from Republic by persons in non-convention countries**” and to substitute “**Adoption of child from Republic by person in non-convention country**”.

CLAUSE 264

1. On page 66, in line 38, to omit “**Adoption of children from convention countries by persons in Republic**” and to substitute “**Adoption of child from convention country by person in Republic**”.
2. On page 66, in line 50, to omit “for” and to substitute “to”.

CLAUSE 265

1. On page 66, in line 52, to omit “**Adoption of children from non-convention countries by persons in Republic**” and to substitute “**Adoption of child from non-convention country by person in Republic**”.

CLAUSE 266

1. On page 67, in line 11, to omit “**Recognition of inter-country adoption of children from convention countries**” and to substitute “**Recognition of inter-country adoption of child from convention country**”.

CLAUSE 268

1. On page 67, in line 35, to omit “**Recognition of inter-country adoption of children from non-convention countries**” and to substitute “**Recognition of inter-country adoption of child from non-convention country**”.

CLAUSE 271

1. On page 68, in line 1, to omit “**children**” and to substitute “**child**”.

CLAUSE 283

1. On page 69, in line 48, after “to” to insert “or”.

CLAUSE 84

1. On page 70, in line 2, to omit “**84**” and to substitute “**284**”.

CLAUSE 286

1. On page 70, in line 34, to omit “**a**”.

CLAUSE 287

1. On page 71, in line 1, to omit “**children**” and to substitute “**child**”.

CLAUSE 288

1. On page 71, in line 10, to omit “**a**”.
2. On page 71, in line 14, to omit “288(1)” and to substitute “289(1)”.

CLAUSE 288

1. On page 71, in line 15, to omit “**a**”.
2. On page 71, in line 16, to omit “**288**” and to substitute “**289**”.

CLAUSE 290

1. On page 71, in line 26, to omit “**a**”.
2. On page 71, in line 27, to omit “288(2)” and to substitute “289(2)”.

CLAUSE 304

1. On page 75, in line 41, to omit “officer” and to substitute “person”.

## CLAUSE 305

1. On page 76, in line 3, to omit everything after “12” up to and including “(6)” in line 4 and to insert “(2), (3), (4), (6), (7) or (8)”.
2. On page 76, in line 7, to omit everything after “section” up to and including “134(1)” and to insert “12(5), 12(9), 57(2), 124, 126(1), 134(1) or 232(6)”.
3. On page 76, in line 19, to omit “\*\*\*\*\*”.
4. On page 76, in line 29, to omit “or”.
5. On page 76, in line 39, to omit “, kinship care”.
6. On page 76, in line 40, to omit “kinship care,”.