



## Nelson Mandela Children's Fund Submission on the National Children's Amendment Bill 27 November 2020

### 1. CHILDREN'S AMENDMENT BILL [B 18 – 2020]

Date	27 November 2020
Topic or Bill	CHILDREN'S AMENDMENT BILL [B 18 – 2020]
Name of Committee (if applicable)	Portfolio Committee on Social Development

### 2. State whom the Submission is from:

The submission is from the **Nelson Mandela Children's Fund** represented as indicated in the details below:

Name and Surname	Organisation	Position in the Organisation	Contact Details
1. Ms Konehali Gugushe	NMCF	CEO	011 274 5600 <a href="mailto:konehalig@nmcf.co.za">konehalig@nmcf.co.za</a>
2. Ms. Shadi Nyokong	NMCF	CSD Programme Manager	011 274 5600 <a href="mailto:shadin@nmcf.co.za">shadin@nmcf.co.za</a>
3. Ms. Eunice Seleke	NMCF	CSD Project Officer	011 274 5600 <a href="mailto:tebogoss@nmcf.co.za">tebogoss@nmcf.co.za</a>
4. Ms. Bontle Lekgoathi	NMCF	CSP Project Officer	011 274 5600 <a href="mailto:bontlel@nmcf.co.za">bontlel@nmcf.co.za</a>
5. Mrs. Charity Nsah	NMCF	CSP Project Officer	011 274 5600 <a href="mailto:charityn@nmcf.co.za">charityn@nmcf.co.za</a>
6. Ms. Phumla Dyantyi	NMCF	CSP/CSD Project Officer	011 274 5600 <a href="mailto:phumlad@nmcf.co.za">phumlad@nmcf.co.za</a>
7. Mr. Thabiso Tsietsi Lakajoe	NMCF	M&E Officer	011 274 5600 <a href="mailto:tsietsil@nmcf.co.za">tsietsil@nmcf.co.za</a>
8. Ms. Refilwe Ledwaba	NMCF	Youth Programme Manager	011 274 5600 <a href="mailto:refilwel@nmcf.co.za">refilwel@nmcf.co.za</a>
9. Ms. Zamajozi Sithole	NMCF	Youth Secretariat	011 274 5600 <a href="mailto:zamajozis@nmcf.co.za">zamajozis@nmcf.co.za</a>
10. Ms. Chumani Nkwinti	NMCF	Youth Secretariat	011 274 5600 <a href="mailto:chumanin@nmcf.co.za">chumanin@nmcf.co.za</a>

### 3. State whether you wish to appear before the Committee

Yes, we would like the opportunity to address the Committee in person.



## Table of Contents

1. Background to the Nelson Mandela Children's Fund.....	3
2. The Nelson Mandela Children's Fund Programme Work.....	3
3. Introduction.....	4
4. Key Findings.....	4
5. Recommendations, Comments on Specific Clauses of the Bill.....	6
6. Conclusion.....	18
ANNEXURE A.....	19
ANNEXURE B.....	23
ANNEXURE C.....	24



## 1. Background to the Nelson Mandela Children's Fund

The Nelson Mandela Children's Fund (the Fund) is an advocacy development agency and a leading champion for the general well-being of children. Founded in 1995 by former statesman Mr Nelson Mandela, the Fund celebrates 25 years of implementing its mandate of addressing issues affecting children and youth, particularly those living in disadvantaged environments that place them in vulnerable circumstances. The Fund's advocacy work includes child-rights based engagements, particularly legislative and public policy development with an impact on children's well-being. In line with our vision to Change the Way Society Treats its Children and Youth, the Fund services children through communities and partnerships, by identifying critical interventions at various stages of child development. As an organisation, we continue to embrace partnerships in areas of research and innovation with the aim of advancing the organisation's work in successfully navigating societal challenges affecting children and youth.

## 2. The Nelson Mandela Children's Fund Programme Work

The Fund's strategic programme work focuses holistically on the wellbeing of children and the empowerment of youth. Through our Child Safety and Protection Programme the Fund promotes safety and protection within the schooling environment. In creating safer schools, we believe learners are capacitated to ensure safety in their schools through programmes that enable them to work with their educators and parents to shape their school safety policies. As a result, these policies allow children to initiate safety campaigns that deal with issues of bullying and violence in schools and around the community, including sexual violence.

Through our Child Survival, Development and Thriving Programme the Fund's mission is to strengthen child and community health. This includes a focus on supporting the first 1000 days of life for children and supporting pregnant mothers to ensure the survival and development of their children. The support of community health workers is central to this approach which facilitates antenatal and neonatal care classes of both mother and child and adherence to vaccinations.

Our Sustainable Livelihood programme, which is a cut across element, underpins all our programmes to empower children, families and communities to respond to challenges of building a better livelihood through income generating activities.

The Fund's Youth Leadership Programme focuses on child and youth participation in different spheres of South Africa. The Fund has provided a space for encouraging active civic participation that allows for youth to find solutions on issues facing them. This has been made possible through the child and youth participation framework such as the youth summit and children's parliament. Through these platforms the Fund has encouraged children and youth to engage in democratic and legislative processes of the country.



In strengthening child policy framework the Fund believes in capacitating children to analyse legislative documents such as the Children's Act No.38 of 2005, South African Constitution and the Convention on the Rights of the Child as active documents that children can participate in enthusiastically.

Through this process the Fund has facilitated spaces where children and youth come together to voice their concerns around these documents. This has enabled children to share their perspective on policy issues that govern our country. This process provides a space to have legislation that speak to one another and put the interest of the child first.

### 3. Introduction

The Fund welcomes the opportunity given by parliament to make its submission on the Children's Amendment Bill No 18 of 2020. We acknowledge the efforts made by the Department of Social Development in reviewing this legislation as a formidable step towards changing the narrative of children's rights and well-being in the country.

We recognise the policy's inclusion of Stateless Children, Unaccompanied Minors, Children and the Justice System. We urge that the instruments of the Act need to facilitate the Harmonisation of Laws is required.

In order to enable, the inclusion of legislation that speaks to each other across all departments has a significant role to play in supporting all children living and residing in the Republic of South Africa.

### 4. Key Findings

It is stated that this Children's Amendment Bill (2020) is amending the Children's Act 38 of 2005, however, there have been so many other Acts that have made amendments to this Act 38 of 2005 (i.e. Act 41 of 2007, Act 7 of 2013, Act 17 of 2016, Act 18 or 2018).

**We propose that a whole new updated Children's Act be enacted, instead of having all these "piecemeal" amendments.**

In 2019 we made a submission to parliament commenting on the Draft Children's Amendment Bill 2019 (**Annexure A**), and these statements made in this submission remain relevant.

We have noted that some elements of the Children's Act do not align with children's own views as reflected in our own work as an organisation, through the Children's Manifesto (**Annexure B**) or the Nelson Mandela Children's Parliament declaration (**Annexure C**), as well as national



children's rights frameworks such as the Nation Plan of Action on Children and Child Participation Framework.

We therefore pose the questions: How do our country's legal frameworks become more aligned with what children are saying about the issues that affect their everyday lives and how can legislation best address these?

Following the Fund's review of the Children's Act Amendment Bill, we would like to summarise the following key findings of concern to our organisation related to the Bill in its current form:

- The Amendment Bill focuses more on the area of child protection rights and not enough on the other pillars (survival, development and participation). Which means that this piece of legislature does not holistically represent or safeguard the rights of the children.
- We propose the inclusion of the terms "child development" and "child survival" and not to be used interchangeably because they don't mean one and the same thing. By only using the term "child protection" we are not recognising other pillars of the UNCRC, NPAC and Children's Manifesto which are child participation, child survival and child development.
- The Children's Act does not guarantee good implementation, it is far removed from the reality on the ground or in communities. Therefore, more clear measures need to be put in place to ensure accountability.
- Children without documentation experience serious challenges in other sectors such as health and education. It is hard for them to access education, legal documents, health services and other amenities or resources enjoyed by South African children.
- The constitution of RSA and Immigration laws need to be enhanced to ensure that non-citizen children thrive and have access to amenities that will ensure their development, protection, survival and participation.
- Certain traditional practices outright infringe on the rights of children and should not be promoted.





## 5. Recommendations, Comments on Specific Clauses of the Bill

The Children's Act Amendment Bill introduces various clauses. In the table below, we would like to highlight those specific clauses where special comments need to be highlighted as well as where our organisation has put forward recommendations. Where specific clauses have not been directly highlighted, it should not be inferred that that the Fund either supports or contents these. Instead, they can be deemed as outside of the scope of this particular submission by the organisation.

No.	Amendment Clause Refence	Comment	Recommendation
2.1	<b>Clause 1</b> seeks to amend section 1 of the principal Act by substituting and inserting new definitions i.e. “early childhood development centre”; “family counsellor”, “inter-country adoption”, “regional court”, “separated migrant child” and “unaccompanied minor child”. This will align the principal Act with current family and child law practice.	<p>Section 1 deals with the definitions and many definitions have been amended. The amendments to the definitions appear to be reasonable.</p> <p>Generally, the reasons for the removal of certain definitions is not explained, and therefore makes it difficult to assess whether we agree with these or not.</p>	<p>S1(a)(b): the period set for a child to have no contact with the parent / guardian / care giver before they are considered abandoned is 3 months. Our recommendation is to assesses whether this period reasonable, or should a shorter period be prescribed to ensure early intervention in the cases of abandoned children.</p> <p>S1(b)(a): The counselling referred to here not include the “caregiver” as another category to receive</p>



			<p>counselling where applicable in relation to adoption service.</p> <p>S1(e): The deletion of paragraph (e) in the definition of caregiver, which related to “the person at the head of a shelter”. It should be clearly defined why it is necessary to not cater for head of shelters for children that are cared for at a shelter, who neither have a parent/ guardian? “Shelter” and any reference to the word has been removed from the entire act. Please clarify reasons.</p> <p>S1(j): adds a definition of “early childhood development centre”, which is a centre contemplated in S91(3) of the CAA (2007). However, the CAA(2007) does not make provision for the registration / regulation of these centres, and as a result children have been taken to centres that fail to protect their basic rights,</p>
--	--	--	---



			<p>have no minimum standards of operation and standard of the facility.</p> <p>Section 91(3) Should be amended to require that all early childhood development centres be registered.</p>
2.3.	<b>Clause 3</b> seeks to insert a new section 6A that provides for protection of a child's right to privacy and information.	This clause is supported. It is however important that children be allowed to meaningfully participate in their own development and be informed about everything that concerns their well-being as it relates to their privacy and information.	
2.6	<b>Clause 6</b> seeks to amend section 12 which is intended to align the prohibition of genital mutilation with the new definition. The clause further prohibits any marriage of a child.		<p>S 12(2)(b) has been left the same (i.e. no amendment has been made). However, this is not consistent with the amendment on S12(2)(a) where "may" has been replaced with "must". The same should be done in S12(2)(b)</p> <p>S12 (2)(b) still allows for children "above the minimum age set by</p>





			<p>law” to still be given to marriage, albeit with their consent. To avoid abuse and bullying, marriage of any child (i.e. person under age 18) should be prohibited.</p> <p>S12(5) continues to allow virginity testing for children older than 16. By its nature virginity testing is only applicable to girl children, and not to boys, which is prejudicial to the girl child. It is also invasive and may impede the dignity and privacy of the child. A key question is “What is the reason of allowing it to take place? What benefit does it give to the child? “</p> <p>Virginity testing should be prohibited for <u>ALL</u> children (i.e. persons under age 18).</p> <p>It is very important for a child to have access to information concerning traditional practices, so that they are able to make their</p>
--	--	--	--



			own decisions on whether or not they want to take part in such practices.
2.23	<b>Clause 23</b> seeks to amend section 44 to provide for the jurisdiction of a court, where a matter is transferred from one children's court to another, in accordance with the prescribed procedure and if it is in the best interest of the child.	This clause is supported to ensure that the courts are child friendly. All procedures must serve the best interest of the child.	
2.24	<b>Clause 24</b> seeks to amend section 45— (a) by extending the jurisdiction of the children's court to include "guardianship of an orphaned or abandoned child"; (b) by excluding matters arising in a shelter from the jurisdiction of the children's court; (c) by including an unaccompanied or separated migrant child, or the child of an asylum seeker or refugee, as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998), under the children's court's jurisdiction; (d) by adding to the powers of the children's court to refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction; (e) by removing all references to the divorce courts and to clarify that the children's court and the High Court have jurisdiction over guardianship of a child. The High Court,	Agreed with the changes, but need clarity on the removal of "shelter"  S24(b) removes the word "shelter" from the provisions of matters that can be adjudicated upon by the courts in relation to a child. Is this because "shelters" are no longer included in the definition of "care giver" as per S1(e) of the Amendment Bill	



	children's court and regional court have jurisdiction over assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.		
2.33	<b>Clause 33</b> seeks to amend section 75— (a) by adding paragraph (1)(bA). The amendment intends to give the Minister of Justice and Correctional Services the power to make regulations regarding the procedures for determining the age of a child; (b) by deleting the word “and” at the end of paragraph (1)(j) and inserting a new paragraph (1)(jA). The amendment intends to give the Minister the power to make regulations regarding the responsibility for defraying costs relating to investigations and reports contemplated in section 62.	Agreed but clarity needed on what is meant by “procedures to determine the age of a child” and instances where this would be applicable. For instance, would this be for cases where the birth certificate of a child is not available and therefore needs other procedures to be determined?	
2.34	<b>Clause 34</b> seeks to amend section 76 by including a reference to guardians and providing for the registration of a partial care facility under section 80 if there are less than six children.		S76(2): The word “may” should be substituted with “must”, which will oblige any partial care facility to register, thereby ensuring that no unregistered and therefore unregulated facilities operate.
2.35	<b>Clause 35</b> seeks to amend section 78— (a) by deleting superfluous wording and by the insertion of a new subsection (3A) which allows funding for a conditionally registered partial care facility notwithstanding only partial compliance with the prescribed national norms and standards	This clause is supported. While the rationale for the funding of partially compliant facilities is sound, there needs to be safeguards to ensure that this is	



	to qualify for funding. This amendment is necessary to allow the provincial head of social development to provide support for a conditionally registered partial care facility to enable it to comply with national norms and standards so as to acquire full registration status; (b) by amending subsection (4) to enable an MEC to prioritise the funding of partial care facilities as prescribed; (c) by amending subsection (4)(a) to clarify that the MEC may prioritise and fund partial care facilities in poverty-declared wards.	not abused. This is both applicable to S35(b), (c) and (e)	
2.44	<b>Clause 44</b> seeks to amend section 90 to allow the Minister to make regulations regarding inspections and monitoring of partial care facilities and services and the assignment of functions to municipalities.	We welcome this clause and believe that monitoring should take place regularly.	
2.46	<b>Clause 46</b> seeks to amend section 92— (a) by inserting a new subsection that the Minister must, after consultation with any other relevant Ministers, relevant stakeholders and relevant civil society organisations, develop a comprehensive national strategy aimed at securing a properly resourced, coordinated, managed and inclusive early childhood development system. Furthermore, MECs must ensure that their provincial strategies are inclusive and provide for children with disabilities and special needs; (b) by amending subsection (2)(a) to require the MEC for social development to maintain a record of registered early	We support this clause. Interested persons referred to in Section 92 (1) should include Civil Society working in the ECD space.	The ECD Strategy contemplated in S92 must include the following:  The ECD Staff must be well trained to support children with disabilities.  More ECDs that are well equipped are needed to take in children with special needs e.g. right infrastructure and trained staff.



	<p>childhood development programmes in the province with specific mention of inclusive programmes.</p>		<p>Assessments must be developed to ensure that the ECD practitioners have the right qualities and attitudes to work with children e.g. personality tests, vetting, reference checks etc.</p> <p>These must also be clearly defined in the act. ECD curriculum to align with the Department of Basic Education requirements or curriculum.</p> <p>The criteria for the registration of ECDs must be stated explicitly in the Act. This criteria must also speak on the quality of food that is served at ECDs and the transport that is used to pick up the children and any other matter where quality needs to be assured and monitored for the safety of the children.</p>
--	--	--	---



			ECD staff must be vetted before appointment. The role of the local and district municipalities should be clarified to ensure that these facilities are audited, monitored and capacitated and must account for the ECDs operating in their jurisdiction.
2.62	<b>Clause 62</b> seeks to amend section 114 by making minor consequential amendments so that terminology is aligned.		The National Child Protection Register must be extended to other offences, not only sexual (physical abuse, emotional abuse and other forms of abuse to children).
2.64	<b>Clause 64</b> seeks to insert section 117A to provide the procedure for removal of a name from Part A of the Register.		We strongly disagree with the proposal of the removal of any person from any register (a) and (b). If a person were proven to be guilty of infringing a child's rights, he/she should not be allowed to work with children again as you pose a risk to the safety of children.
2.66	<b>Clause 66</b> seeks to amend section 119 by inserting a new subsection (2) which excludes persons, who were children		We recommend that this section of the Bill be extended to other





	during the commission of an offence against another child, from the operational provisions of sections 120 to 128 of the Act.		career fields that indirectly work with children, not only civil society in the child rights sector.
2.67	<b>Clause 67</b> seeks to amend section 122 by effecting consequential amendments.		The act should also clarify how is the Department of Social Development is going to ensure that communities, civil society, business and other sectors are aware of the National Child Protection Register and how to access it, how feedback is given to individuals or entities that have reported people who abuse children.
2.74	<b>Clause 74</b> seeks to amend section 131 by including necessary medical testing for children in need of care and protection or adoption.		As long as Section 131 is done in accordance with Section 6 A of this Amendment and Section 7 of the Principal Act.
2.76	<b>Clause 76</b> seeks to amend section 141 by providing that any person must report instances of child labour and exploitation.	We strongly support this clause.	
2.88	<b>Clause 88</b> seeks to amend section 170 by providing that a child who absconds from alternative care and is apprehended or returns within a timeframe of 48 hours should not appear before the children's court. However, the designated social worker should assess the child to establish the reasons for the child to		In relation to 88 (b) and (c) we recommend the extension of 48 hours to 72 hours.



	abscond and make recommendations to the provincial head of social development.		
2.91	<b>Clause 91</b> seeks to amend section 181 by effecting minor consequential amendments to clarify the principles relating to foster care.		In relation to 90 (c), it should be specified that children should not be allowed to leave the country while they are in alternate care. This might lead to trafficking. Measures must be put in place to ensure the safety of the child first before allowing this section to be implemented.
2.94	<b>Clause 94</b> seeks to amend section 186— (a) by providing that a 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, the court may place a child in foster care with a family member and order that the foster care placement subsists until the child turns 18 years; (b) by effecting consequential amendments to align the Bill with the current terminology; (c) by providing that this section does not apply to a cluster foster care scheme.		It is recommended that the process of transitioning or preparing the child to 'exit' foster care once they turn 18 years old, should begin in the early years (15 or 16 years old). They should be taught life skills or a development programme must be developed, so that the child is ready for the world (if they choose to leave foster care).
2.117	<b>Clause 117</b> seeks to amend section 233 that regulates consent to adoption by providing that a court may dispense with the assistance of the guardian of a parent who is a child		Where consent is granted and rescinded the best interests of the child need to be considered.



	with due regard to the best interests of the adoptable child and parent. The amendment seeks to promote the best interests of a child in the event that the guardian of the parent of the child is not available to give consent for the adoption of the child.		
--	---	--	--



## 6. Conclusion

While the Children's Amendment Bill No.18-2020 has gone some way in improving and strengthening the legislation relating to children, we do note that some matters still remain outstanding. Of particular concern are the provisions relating to Traditional Practices (Child Marriage, Virginity Testing, etc), as well as some provisions that have been introduced relating to the Removal of Names from the National Child Protection Register.

We remain concerned about the practicalities of implementation on the ground, particularly relating to the registration, operation and monitoring of Early Childhood Development Centres, Partial Care Centres, etc.

With regards to efforts of combating child trafficking and protection for foreign children in the Republic, we recommend that consultation is also done with the African Union in terms of the regulations of births and registration of children deemed to be stateless, unaccompanied minors, refugees, asylum seekers and child trafficked across different countries in the continent.

We further, recommend that independent monitoring of children's issues be institutionalised and extend the reach of the children's parliament to be in the presidency. In addition, we recommend the development of a portfolio committee on the rights and welfare of children in parliament, which should be established at local, provincial and national levels. This will ensure the coordination of children's issues and oversee on the application and implementation of children's rights and welfare across government spheres.

Finally we recommend the appointment of Children's Rights Commissioners at all provincial levels. This will assist in ensuring the appropriate focus on Children's Rights issues, as well as provide an avenue to engage with children on a regular basis.



## ANNEXURE A

### Previous NMCF Submission (2019)

We believe the bill needs to comprehend the overall wellbeing and welfare of children in the country. Previously there has been no legal uniformity regarding the definition of the child in all areas of the law. The constitution of the Republic of South Africa, of 1996 in Section 28(3) stipulates that any persons under the age of 18 is a child. This is in consonance with the Convention on the Rights of the Child (article 1) and the African Charter on the Rights and Welfare of Children (article 2).

**Article 2**, of the principal act No.38 of 2005, articulates the importance of promoting and the preservation of strengthening of families. To give effect to the constitutional rights of children, namely (i) family care or parental care or appropriate alternative care when removed from the family environment; (ii) social services; (iv) that the best interests of a child are of paramount importance in every matter concerning the child; (c) to give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic.

- The article does not make a provision on parental and family care as an obligation toward primary duty bearers to take responsibility on the overall well-being and development of a child. The secondary obligation to be made by the state and its provinces to support and afford any means given to parents to provide care and support to families to fully care for their children.
- In addition, article 2 further urges for the strengthening and development of the community structures which can assist in providing care and protection for children.
- To protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazard. The principal act does not take responsibility on the part of the provincial and municipal role that need to be played in order to afford communities with such structures, which can assist in providing care and protection for children.



### **Recommendation**

We recommend that in each provincial planning such measures of strengthening community structures be given an opportunity to inform, consult with the province at the beginning of each provincial budget and planning.

Article 3, of the principal act stipulates that any in the event of a conflict between a sections of this Act No 38. of 2005 and provincial legislation relating to the protection and well-being of children, the conflict must be resolved in terms of section 146 of the Constitution; and a municipal by-law relating to the protection and well-being of children, the conflict must be resolved in terms of section 156 of the Constitution. We argue, that the legislation resides into the constitution in terms of the legal definition of a child.

### **Recommendation**

The principal act must remove the legal age of marriage from 16 to 21. Even in the event that the parties entering into marriage are both 16 years of age. It is also our recommendation to further have all the ages of children pertaining to any form of the law be used in accordance to the legal age of a child.

**Article 7**, of the principal act requires the best interests of the child standard to be applied, with the following factors to be taken into consideration; (a) the nature of the personal relationship between the child and the parents, or any specific parent; (b) the attitude of the parents, or any specific parent, towards the child; and the exercise of parental responsibilities and rights in respect of the child; (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs.

### **Recommendation**

The act needs to take into effect the definition of (Best interest of the child) as part of the letter of the law to stipulate what is the best interest of the child. In addition, the requirement of what constitutes best interest for the child in relation to provisions of family, care, protection and welfare of the child need to be determined as best when the following welfare such as food, health, education, shelter and safety are provided to what measure and extent that deems to be best for the child.

**Article 9** of the principal act states that “Every child has the right not to be subjected to social, cultural and religious practices that are detrimental to his or her well-being. Furthermore, the article argues that virginity testing under the age of 16 is prohibited. If the child has given consent to the testing in the prescribed manner. 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. The body of a child who has undergone virginity testing may not be marked.





### **Recommendation**

Virginity testing should only be undergone with the intent to respect, promote and protect the right and dignity of a child, provided the child is of 18 years of age and has consented to the practice. This should be done in accordance to medical professionals and regulated by the medical council body through counselling and informed consultation with the child. This is in effect to the nature of sexual violence that is considered with the practice by religious leaders, traditional leaders and political leaders often subjects children to increased vulnerability due to the practice of virginity testing. Whereby, children are subjects of sexual purity that can now undergo traditional marriage through the use of justified cultural and religious power and authority over the child. Therefore, we recommend that virginity testing practice be subject to medical and psychological wellness before any child can undergo the practice.

Article 10 of the principal act No.38 of 2005 states that “Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration”

### **Recommendation**

We recommend that Child Participation be given the necessary tools and support from the Office of the Presidency, whereby children can engage in platforms such as the Nelson Mandela Children's Parliament as a national child participation platform. These should include school based groups/clubs that are child led and supported by educators, parents and the school management teams. Through the consultations with children, they have advocated for the formal inclusion and hiring of social workers that will be based in the school and be permanent in the schools. The children have further requested the formal inclusion of social workers that will be based in the school and proper training on the constitution of the Republic and the Children's Act for educators and all persons working with children on the act. In addition, to make the Principal Act No.38 of 2005 more accessible to the schools as a curriculum and the libraries in a child friendly manner, this will include its translation in all official languages and translated in braille.

**Article 93.** of the amendment act, Vol. 640, No.42005 stipulates that “The MEC for Social Development may prioritise and fund early childhood programmes. We recommend that the letter of the law be intentional in application of the article to provide funding for early Childhood Programmes indefinitely. This is due to the fact that provincial budget for children be inclusive and intentional about their development, well-fare and protection through early learning programmes.



Furthermore, the amendment bill, in No.52 argues that the Minister must determine national norms and standards for early learning childhood development programmes by regulations after consultation with the Minister responsible for Education, Finance, Health, Transport and Provincial and Local Government, this should include the MEC's of Social Development Across provinces respectively. We recommend the National Council of Provinces to serve as an oversight for the Ministers in this regard.

### **Child Marriage**

#### **Section 12 Amendment**

Forbids any marriage of a child (definition of a child under 18 years Bill of Rights Section 28). Will be superior to the Marriage Act of the Department of Home Affairs which allows a Marriage Commissioner to grant permission for child marriage

#### **Recommendation**

The ages of children in South African Bills which are not harmonised has caused a lot of harm to the children who have been victims of child marriage. Recommendation is for age to be considered for marriage to be 21 years old and above for both boys and girls.

### **Early Childhood Development**

#### **Section 91 Amendment**

Inclusion of children with developmental difficulties and disabilities in ECD programmes. Develop a child friendly curriculum for children with disabilities.

#### **Recommendation**

Department of Social Development and Department of Education needs to finalise the migration as this impacts on services on the ground with clear roles and responsibilities to avoid confusion and blockages.



## ANNEXURE B

### **SOUTH AFRICAN CHILDREN'S MANIFESTO (2019)**

(see separate attachment)



## ANNEXURE C

### THE 9<sup>th</sup> NELSON MANDELA CHILDREN'S PARLIAMENT

#### DECLARATION

We, the children and youth from all nine provinces of South Africa, on the occasion of the 9<sup>th</sup> Nelson Mandela Children's Parliament held on the 06<sup>th</sup> December 2019 in Pietermaritzburg, Kwa-Zulu Natal Province under the theme: **Reflecting on the 25 years of South African Children's Rights: (Challenges and Opportunities)**. Through much discussions and debate about the conditions and circumstances of children and youth in South Africa;

We acknowledge the work that Government has done through legislation to protect children as well as increasing access to basic services that respond to our needs. However, we believe that more still needs to be done. We the children, working jointly with Government, Civil Society and Private Sector have a role to play in shaping our country for the better.

Given the foregoing, the 9<sup>th</sup> Nelson Mandela Children's Parliament resolved as follows:

#### **Portfolio Committee 1: Coordination and institutional mechanisms**

##### **Priorities Recommended:**

- Budget for Child Ambassadors and Parliamentarians to implement their programs.
- Offices on the Rights of Children to be located in highest office. i.e. Presidency and Premier to be able to fulfil oversight role. They should be properly resourced.



- Declaration and Manifesto resolutions to be integrated into departments' Annual Performance Plans and Municipalities IDPs.
- An Annual Progress Report to be shared with all Parliamentarians.

## **Portfolio Committee 2: Child rights and business**

### **Priorities Recommended:**

- Government & businesses to include children in decision-making and letting them participate in discussions on issues affecting them.
- Stricter restrictions through laws and monitoring of business operations in accordance to Child Rights and the Children's Act.
- More positive and inclusive advertisement that is representative of the country's diversity and empowers all.

## **Portfolio Committee 3: Gender**

### **Priorities Recommended:**

- ECDs need to be guided as to how young children can be educated without imposing the societal concepts of gender on them.
- COGTA and Contralesa need to be engaged with providing guidelines and input on legislation.
- More workshops and training must be made available to parents to educate them on matters such as gender equality and identity for implementation in the home.

## **Portfolio Committee 4: Children with Disabilities**

### **Priorities Recommended:**

- Sign language should be taught in schools.
- Increase awareness on disability.



- All government facilities should be made accessible and accommodative e.g. there should be sign language interpreters, ramps etc.
- Victim support programs to be designed for children with disabilities.
- Allocate more funds to ensure quality and accessible education for children with disabilities.

### **Portfolio Committee 5: Child Friendly Communities**

#### **Priorities Recommended:**

- Coordination of children structures with resources within local government
- Institutionalization of child participation in all the municipal processes.
- Implementation of CFC must be embedded with children's Commissioner strategy to ensure local government delivers services for children.

### **Portfolio Committee 6: Coordination of Child participation framework**

#### **Priorities Recommended:**

- Educate parents on child participation.
- Children to be allowed to contribute to curriculum development.
- Develop plans and execute activities and events to accommodate children after school, over weekends and during school holidays.
- The approach of participation to be collaborative not consultative.
- Child-representatives to represent children in parliament, the National Child Care and Protection Forum, Provincial Child Care and Protection Forum, and Municipal Councils.

### **Portfolio Committee 7: Education**

#### **Priorities recommended:**

- Strengthening activism of Learner Representative Councils to hold Teachers/Schools/Departments accountable.





- Better ways to improve the communication between schools and leadership.
- Quarterly Compulsory reports between school leadership and department.

### **Portfolio Committee 8: Child Protection at home, schools and communities**

#### **Priorities Recommended:**

- Campaigns on children and women's issues should be separated.
- Increased focus on the prevention of human trafficking.
- Strengthened focus on prevention of child abuse and bullying.

### **Portfolio Committee 9: Consultation on Strategy by Human Rights Commission**

#### **Priorities Recommended:**

- The four pillars of children's rights be upheld; that is, child survival, child welfare, child participation, and child protection.
- Children be enabled to freely, without hesitation, to report violations of rights to the children's commissioner.
- Children are happy and their needs are met and rights respected.

#### **AS CHILDREN, WE PLEDGE THAT:**

- We will make sure that a Child Rights Unit is created to respond to children's issues.
- We will raise awareness in our communities and schools about the role of the Child Rights Unit and on disability.
- We will hold government accountable in implementing our strategies.
- We will advocate for the protection and upholding of the rights of children with disabilities.



- We will be child rights role models who also model appropriate behavior within communities.
- We will encourage parents of children with disabilities to take their children to school.
- We will organize children's workshops to address issues affecting children.
- We will assist the government in educating communities not to destroy facilities during service delivery protests.
- We will organize parenting workshops for teenage parents to be equipped with skills of taking care of their children.
- We will participate in community-based caucuses, campaigns, science and innovation expos, and take advantage of the 4<sup>th</sup> Industrial Revolution.
- We will participate in junior councils.
- We will share knowledge and information; discuss challenges facing South Africa and propose measures to resolve South African problems.
- We will create other participation spaces at local and provincial level to provide for broader, inclusive participation by the children.
- We will educate and encourage children to walk in groups while going to their respective homes before and after schools.
- We will encourage all children across the country to be able to speak and stand up for themselves.

### **SIGNATORIES OF 2019 NMCP DECLARATION**

**Member of the Provincial Legislature**

**Commissioner: SAHRC**



**Hon. Nontobeko Boyce, MPL**

**Ms Angie Makwetla**

**Speaker of Children's Parliament**

**Acting Premier, KwaZulu- Natal**

---

**Hon. Thato Mhlungu**

---

**Hon. Bongi Sithole- Moloi**

**President of the 2019NMCP**

**National Program Manager (SCSA)**

---

**Hon. Freddy Ramonyai**

---

**Mr. Steve Miller (CEO)**

**Nelson Mandela Children's Fund**

**Deputy Minister: Social Development**

---

**Ms. Sibongile Mkhabela (CEO)**

---

**Hon. Hendrietta Bogopane-Zulu**



## 2019 NMCP Ambassadors

- |                      |                  |
|----------------------|------------------|
| 1. Thato Mhlungu     | Gauteng Province |
| 2. Buhle Mathebula   | Mpumalanga       |
| 3. Otshepeng Babeile | North West       |
| 4. Ceyszar Limburght | Northern Cape    |
| 5. Siviwe Mboyana    | Kwa Zulu Natal   |
| 6. Tshepang Mahladi  | Limpopo          |
| 7. Simamkele Jack    | Eastern Cape     |
| 8. Ayakha Tolo       | Western Cape     |
| 9. Zaeem Zathura     | Free State       |

-----END-----