

Centre for Child Law

Summary of Centre for Child Law's submissions to the Select Committee on Education & Technology, Sports Arts

Presented by **Moyahabo Thoka**

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1. ABOUT THE CENTRE FOR CHILD LAW

The Centre for Child Law (“Centre/CCL”) is a public interest litigation organization that is registered with the Legal Practice Council as a child law and child rights law clinic, established in terms of the Legal Practice Act. CCL is housed in the University of Pretoria’s Law Faculty and contributes to the establishment and protection of children’s rights through litigation, legislative and policy advocacy, research, as well as education.

Our submissions below are intended to enhance existing provisions of law while aligning the Basic Education Laws with international obligations set out in the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and existing domestic legislation. More specifically, the Children’s Act, as the principal children’s rights statute in the Republic.

2. SUMMARY OF SUBMISSIONS

Our substantive submissions focus on the following aspects:

- 2.1. Inclusion of the words ‘caregiver’ and ‘care’ into section 1 of the South African Schools Act 84 of 1996. Both terms are already defined in the Children’s Act 38 of 2005, to ensure clarity and consistency across different statutes.
- 2.2. Correct use of terminology, specifically removal of the word ‘custody’ as this is not a recognised parental responsibility and right in terms of the Children’s Act. Additionally, not all caregivers have guardianship over a child, and this should be acknowledged to avoid exclusion and undue barriers to entry for children in alternative care arrangements.
- 2.3. Inclusion of all the different types of care arrangements that are already recognised and implemented in terms of the Children’s Act:
 - Admission of children in child-headed households and referrals to social workers where such children do not have a Children’s Court order to act for themselves or on behalf of other children in their care;

- Admission of children by court order in Secure Care Centres(‘SCC’) and Child and Youth Care Centres (‘CYCC’), where no one person is designated to exercise parental responsibilities and rights over the child;
- 2.4.Expansion of the definition of ‘corporal punishment’ to include psychological harms in line with the definition adopted by the Committee on the Rights of the Child.
- 2.5.All children must be admitted to attend school, but where ‘required documents’ are unavailable a copy of the proof of birth, clinic card or affidavit will suffice in line with the *Phakamisa* judgement and DBE *Circular 1 of 2020*.
- 2.6.Removal of the maximum 12-month imprisonment period cap, as this would be outside the scope and functions of the South African Schools Act of 84 of 1996, and runs contrary to the existing criminal justice system. This provision undermines the ability of a judicial officer to objectively consider all the facts of the assault case and to impose an appropriate sanction that is in the interests of justice.
- 2.7.The development and adoption of procedures to facilitate child participation for child victims and witnesses when such children testify in cases where non-teaching/auxiliary staff is involved in a disciplinary inquiry. In a similar vein to the High Court order in the [*Centre for Child Law & Others v South African Council for Educators and Others*](#) (61630/2020) ZAGPPHC. In this 2022 case, the Pretoria High Court ordered SACE to revise its policies to:
- (1) recognise the best interests of the child in its guiding principles, and;
 - (2) to ensure that children and their parents are afforded a meaningful opportunity to make representations on an appropriate sanction.

Ms Moyahabo Thoka

Researcher, Centre for Child Law

Moyahabo.thoka@up.ac.za

012 420 4502 / 6662