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**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER: 662**

**DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 30 September 2019**

**INTERNAL QUESTION PAPER NUMBER: 12 - 2019**

**662. Mrs B S Masango (DA) to ask the Minister of Social Development:**

(1) Whether she intends to request that Parliament revives the Children’s Amendment Bill 2019 as gazetted on 25 February 2019;

(2) whether she has found that specific provisions of the proposed Bill will alleviate and/or remedy the foster care crisis identified in the order of the High Court that is to be effected by November 2019; if not, what is the position in this regard; if so, what are the relevant details;

(3) why is her department overhauling the entire Children’s Act, Act 38 of 2005, instead of just effecting the changes to remedy the foster care crisis as required by the High Court?

NW1703E

**REPLY:**

(1)Yes, the Minister intends to request that Parliament revives the Children’s Amendment Bill 2019 as gazetted on 25 February 2019.

(2) The Minister strongly believes that provisions of the proposed Bill as outlined below will alleviate and/ or remedy the foster care crisis identified in the order of the High Court that is to be effected by November 2019. The Bill seeks to amend the Children’s Act No. 38 of 2005 by addressing weaknesses in the broader child care and protection system and the foster care system in particular. It also provides a basis for a comprehensive legal solution as ordered by the Gauteng Division of the High Court in Pretoria in November 2017, in the matter of The *Centre for Child Law vs Minister of Social Development* to deal with challenges relating to the provision and administration of foster care matters.

The clauses inserted in the Bill are informed by an analysis of the problem impacting on foster care that relate to human resources, financial resources and legislative provisions that provide a mechanism to manage the validity of foster care orders. The clauses will put the mechanisms and strengthen the critical points of the child care and protection system, diversifying the options to respond to various needs that children may present with.

These clauses will also benefit the foster care programme by providing various options to be accessed by children minimising the likelihood of some children being placed in foster care unnecessarily, ensuring that the constitutional right to inclusiveness is adhered to by the Bill. Furthermore, they ensure that mechanisms are put in place for strengthening the child protection system that will have a positive effect to the improvement of quality foster care services and putting mechanisms for the management of the duration of foster care orders in a sustainable manner.

Clause 25 seeks to amend section 45 of the Act by devolving guardianship matters for orphaned or abandoned children to children’s court. This clause strengthens accessibility for guardianship by extending the jurisdiction of guardianship matters to be dealt with by both the children’s court and the High Court. This will reduce the burden in the foster care case load as more children will be under the care of guardians.

Clause 57 amends section 105 to strengthen the quality assurance mechanism to improve the quality of child care and protection services. This clause will enhance the monitoring and quality assurance for the management of alternative care orders. By strengthening the quality assurance process, it is envisaged that foster care backlogs will be reduced and properly managed. Furthermore, this will ensure compliance with legislative provisions and also improve the quality of child care and protection services.

Clause 81 amends section 142 to enable the Minister to prescribe a system for quality child care and protection services. It empowers the Minister to put the mechanisms in place for strengthening and ensure the provision of quality child care and protection services including alternative care services.

Clause 89 amends section 156 to empower children’s courts to issue an order to place a child in the care of a parent or family member, if the court finds that that person is a suitable person to provide for the safety and well-being of the child. The administrative procedure for such placement will be outlined in regulations.

Clause 91 amends section 159 to provide a mechanism for the management of the validity of alternative care orders, which include foster care orders. This clause seeks to provide recourse for alternative care orders that lapse due to administrative shortfalls by empowering the courts to issue interim extension of alternative care orders that lapsed. This will ensure that children who were found to be in need of care and protection remain in alternative care while awaiting the full extension of the court order. Regulations will be drafted to outline the process and to ensure the accountability for the management of lapsing orders.

Clause 99 seeks to amend section 186 to make provision for monitoring long-term foster care placements. This clause empowers the children’s court to extend a foster care order for a period of more than two years with the purpose of creating stability in the child’s life. Furthermore, it empowers the court to issue an order for provision of supervision services if the court deems it necessary. This will address the challenges experienced where the courts were very reluctant to grant an order for more than two years without supervision.The clause therefore, empower the courts to monitor the court order issued for long-term foster care placements. Full utilisation of this section will reduce the burden in the system and address the challenges of lapsing orders.

(3) The Children’s Amendment Bill, 2019 seeks to address critical gaps and challenges in the underlying child care and protection system. Furthermore, it identifies several strategies to address these challenges efficiently and effectively. The Department took a broad and holistic approach towards the amendment of the Act and thus seeks through this Amendment Bill, to resolve other areas of defect in the Act.

The department started with the review process of the Act during 2011 and 2012 and subsequently drafted the comprehensive Children’s Amendment Bill in 2013. Policy matters that had legislative implications were halted whilst the Foster Care Ministerial Committee was undertaking an investigation, and the ECD, as well as the Child Care and Protection Policies were being drafted.

However, there were specific sections of the Act which were amended and the Minister Introduced the short-version Children’s Amendment Bill in Parliament. The Bill addressed court orders and urgent amendments that did not have policy or financial implications. The Bill was split and the process culminated in the Children’s Amendment Act, 2016 (Children’s Amendment Act No. 17 of 2016) and the Children’s Second Amendment Act, 2016 (Children’s Second Amendment Act No. 18 of 2016) which were promulgated on 26 January 2018.

The department has been in possession of the comprehensive Children’s Amendment Bill since 2013. Once the Foster Care Ministerial Committee finalised their investigation and the ECD as well as National Child Care and Protection Policy were finalised, the Minister deemed it necessary to proceed with the processing of the draft comprehensive Children’s Amendment Bill. The department cannot afford a piecemeal approach to amending the Children’s Act as there are other urgent amendments required to strengthen the child protection system.