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**Memorandum from the Parliamentary Office**

**Minister**

**National Assembly Written Reply: 663 of 2019**

**Recommended / Not Recommended**

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**Ms. Conny Nxumalo**

**DDG: Welfare Services**

**National Assembly Written Reply: 663 of 2019**

**Recommended / Not Recommended**

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**Mr. M Toni**

**Acting Director-General: Department of Social Development**

**Recommended / Not Recommended**

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**Ms H Bogopane- Zulu**

**Deputy Minister**

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**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER: 663**

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

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

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

(1) Whether she has been informed of the position expressed by an official of the South African Central Authority at an African regional and international conference held recently that the principle of subsidiarity necessitates that adoptable South African children be institutionalised within their communities rather than adopted into families outside of those communities or internationally; if so, what (a) is the position of Government on the issue, in light of (i) the principle that the child’s best interests are of paramount importance in every case involving that child, (ii) the constitutional right every child has to family life and (iii) the hierarchy of placement options that the Republic has committed itself to by acceding to the Hague Intercountry Adoption Convention in which institutionalisation is seen as the last resort, (b) steps will she take to formally retract the statement made by the official, (c) steps will she take to advise the Hague authorities and conference delegates of this retraction and that such statement is inconsistent with the Constitution of the Republic of South Africa, 1996, and case precedent and (d) steps will she take to ensure that the specified official and all members of the department are empowered with the correct information regarding the applicability of the international legal principle of subsidiarity in the Republic; if not,

(2) whether she will investigate the allegation; if not, what is the position in this regard; if so, what are the relevant details? NW1704E

**REPLY:**

1. The Minister has not been informed of the position expressed by an official who is from South African Central Authority, and represented the department at an African regional and international conference in April 2019 in Cape Town. The said official is holding the position of a Director and is responsible for adoptions and international social services. The official was requested to present to the conference on the situation of intercountry adoptions in the country. The presentation made was authorised by the relevant principals in the department, beforehand.

Amongst other things the presentation touched on the principle of subsidiarity, which basically means that children should be placed with families within the country before intercountry adoption could be considered which is in line with the best interest of the child to retain culture, language amongst other things.

(a)The government of South Africa requires that the principle of subsidiarity should be applied in all cases involving children; which states that “*Children should be raised by his or her birth family or extended family whenever possible. If that is not possible other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions intercountry adoption should be considered.”* This is as per section 47 of Guide no.1 of 2008, which relates to subsidiarity in The Guide to Good Practice on Inter Country Adoptions. This is also the position of the South African Government as signatories of the Hague convention.

(i)The Department’s position is consistent with the Hague Convention on Inter-country Adoptions, the Constitution of the Republic of South Africa and the Children’s Act (Act no.38 of 2005) which are the guiding tools to render adoption services. As a result the Government upholds the principle that the best interests of the child are of paramount importance in every case when adoption is being facilitated.

(ii)The Department complies with the constitutional right as articulated in section 28 (1) (b) that every child has a right to family care or parental care, or to appropriate alternative care when removed from family environment. Therefore when children are adopted this right is respected and upheld by the department.

(iii)The Department applies the hierarchy of placement options for children in a manner that befits the best interests of the children, in line with the principle of subsidiary and measures are taken to place the children within their country of origin first before intercountry adoption is considered. Institutionalisation is considered a last resort for children when suitable families cannot be found in the country. This is in line with the Hague Convention on Intercountry Adoptions.

(b) The presentation done by Director responsible for adoptions and international social services was in line with the position of South Africa, Constitution of the Republic of South Africa, the Children’s Act 38 of 2005 and the Hague Convention on Intercountry Adoptions. The presentation touched on challenges experienced which amongst others included the implementation and compliance to the subsidiarity principle. This challenge sparked the discussion as the Director was requested by the Chair Person of the session Judge Connie Mocumi to clarify what subsidiarity principle means in simple terms. The department is of the view that there is no need to retract the statement or position made at the conference on subsidiarity as it is compliant with the position of South Africa. Here with attached is the presentation done, conclusions and recommendations made at the conference.

(c) The Department adhered to the Hague Convention on Intercountry Adoptions and authorities from the Hague Secretariat were present at the conference and did not object to the presentation made by the Director for adoptions and international social services on behalf of the Department. The department would like to confirm that the officials from Hague Secretariat are aware and understands the South African Government position.

(d) The Hague Secretariat fully understands the position of South Africa in relation to the principle of subsidiarity. South Africa acceded to the Hague Convention on Intercountry Adoption in December 2003. Since then the relationship between the Department and The Hague Secretariat has been good. So far there have not been challenges and concerns regarding the implementation of the Convention. As the result there is no need to take steps to empower officials on the applicability of the international legal principle of subsidiarity.

1. The department has taken a resolution not to investigate the allegations raised since what was presented is in line with The Hague convention guide to good practice and it’s also the position of the department on the principle of subsidiarity.

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**Approved by the Minister of Social Development**

**Date……………………….**