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## CHOICES WHICH CAN AFFECT THE COST OF THE CHILDREN'S BILL

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July 2007

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### Introduction

In late 2005 Parliament passed the Children's Act (no 38 of 2005), which covers functions for which national government is responsible with regards to the protection and care of children. Currently, Parliament is considering the Children's Amendment Bill (B19B-2006), which was passed by the National Council of Provinces on 29 May 2007. This Amendment Bill will add new clauses to the Children's Act to cover social welfare services for which provinces share responsibility with national government. To simplify things, we refer to the Act plus the Amendment Bill as the Children's Bill in this pamphlet.

The purpose of the Children's Bill is to give effect to the constitutional rights of children to:

- a) family care, parental care or appropriate alternative care;
- b) social services; and
- c) protection from abuse, neglect, maltreatment and degradation.

The Bill also emphasises the core international and constitutional principle that, in every matter affecting a child, the child's best interests should be of paramount importance. The Act that the Children's Bill will repeal, the 1983 Child Care Act, was not written from a child rights perspective. It was written in the 1980s by the apartheid government when South Africa did not have a Bill of Rights or democracy. It therefore did not take into account issues such as equality for all children.

When the new Children's Bill is implemented, both national and provincial governments will need to provide some new and different services. When national legislation places obligations on provincial governments, the provinces must be given information on how much the new obligations will cost. For this purpose, the government commissioned Cornerstone Economic Research to calculate the total cost of implementing the Bill. Cornerstone worked closely with all the government departments which are given responsibilities by the Bill. The costing will help national parliament and the provincial legislatures to plan and ensure that sufficient money is

budgeted in coming years to meet the care and protection needs and rights of children in the best and fastest way.

The costing was based on the 2003 version of the Children's Bill. Some parts of the Bill have changed since 2003, and this will change some of the costs. Nevertheless, the costing provides a reliable picture of the likely overall costs of the Bill, as well as of the costs of different elements.

This year, the provincial legislatures and national parliament are debating and making decisions about various amendments to the Children's Bill. These amendments could either increase or decrease the cost of the total Bill. **This pamphlet provides more information on the choices facing Members of Parliament (MPs) and the cost implications of these choices.**

The pamphlet first summarises the approach used by the costing team to arrive at minimum and maximum estimates of costs and looks at the current needs of children in South Africa. We then discuss some of the key choices which will affect costs. Before we look at the Children's Bill, we describe other policies that will help reduce the costs of the Bill and which should be strongly supported and monitored. We then suggest ways in which the Bill should be changed so that it is both efficient in providing care for children, and cost-effective.

## **How the costing was done**

To calculate likely costs of the Bill, the costing team first needed estimates of 'demand' (how many children need services) for each service as well as estimates of whether and how the need would be met through 'delivery'. For example, in respect of child and youth care centres, the demand would be the number of children who cannot be cared for by their families.

The costing team considered four different scenarios. The four scenarios, starting from the lowest and ending with the highest total cost, are:

- Implementation Plan (IP) low scenario
- Implementation Plan (IP) high scenario
  
- Full Cost (FC) low scenario
- Full Cost (FC) high scenario

The names of the scenarios may seem confusing, but they can be explained quite simply.

The **IP and FC scenarios** use different estimates of demand. For the **IP scenarios**, the costing team asked each government department to describe current levels of delivery for each service and how they planned to increase delivery in line with the Bill. Thus these levels do not measure total demand or actual need. Instead, they mainly measure *current service delivery*. There are weaknesses in this approach. For example, Northern Cape reported a rate of referral of children to social welfare services that was five times higher than the rate for KwaZulu-Natal. It is not possible that there is such a big difference in level of need between the two provinces.

For the **FC scenarios**, the costing team used other evidence to estimate how many children *actually need services*. For example, it used the model of the Actuarial Society of South Africa (ASSA) to estimate the likely number of orphans. The ASSA model is used widely by the government, donors and others and its estimates for 2005 match very closely the results of the Human Sciences Research Council's large-scale household survey of 2005. It was thus seen as the most reliable source of estimates. For other issues, the team also looked for the most reliable sources. The FC scenarios are intended to provide for equitable distribution of social welfare services and facilities rather than continuing with existing inequitable patterns.

The **high and low scenarios** reflect different levels of quality of service delivery. The **high scenario** costs 'good practice' standards for all services. The **low scenario** uses 'good practice' standards for services classified by the costing team as priority, but lower standards for services classified by the costing team as non-priority. The costing team did the classification into priority and non-priority services at a workshop with officials from national and provincial Departments of Social Development and representatives of civil society. The low scenario places much less emphasis than the high scenario on prevention and early intervention services.

The table below summarises how the **IP/FC** and **low/high** distinctions work together to give the four scenarios.

<p><b>Implementation Plan (low scenario)</b></p> <p><i>Coverage:</i> some children in need <i>Quality of service:</i></p> <ul style="list-style-type: none"> <li>▪ priority services: 'good practice' standards</li> <li>▪ non-priority services: lower standards</li> </ul>	<p><b>Implementation Plan (high scenario)</b></p> <p><i>Coverage:</i> some children in need <i>Quality of service:</i></p> <ul style="list-style-type: none"> <li>▪ priority services: 'good practice' standards</li> <li>▪ non-priority services: 'good practice' standards</li> </ul>	<p>Based on current levels of service delivery</p>
<p><b>Full Cost (low scenario)</b></p> <p><i>Coverage:</i> all children in need <i>Quality of service:</i></p> <ul style="list-style-type: none"> <li>▪ priority services: 'good practice' standards</li> <li>▪ non-priority services: lower standards</li> </ul>	<p><b>Full Cost (high scenario)</b></p> <p><i>Coverage:</i> all children in need <i>Quality of service:</i></p> <ul style="list-style-type: none"> <li>▪ priority services: 'good practice' standards</li> <li>▪ non-priority services: 'good practice' standards</li> </ul>	<p>Based on actual need for services</p>

## How far is South Africa today from meeting children's needs?

### The government is not meeting its obligations under the existing Act

The Cornerstone Economic Research costing revealed that existing government budgets covered only 25% of the services set out in the Child Care Act, which the Children's Bill will replace. Yet the Child Care Act is currently the law of the land. So even before the new Children's Bill comes into effect, the government is not meeting its legal obligations under the old Child Care Act.

There were further differences between provinces. For example, in the Western Cape the costing found that the 2005/06 budget covered 34% of services required by the Child Care Act, compared to only 10% in Limpopo. Average spending per child in the Western Cape was 7.5 times as high as spending in Limpopo despite the fact that both provinces fall under the same legislation.

Some of the costing scenarios perpetuate this problem because they cover only a small proportion of the legal obligations required by the law. For example, in 2005/06 the IP low scenario (which reflects the government's actual and planned delivery) meets only about 30% of the total demand for services provided for in the new Bill when using the most-reliable estimates available of objective need.

### Money is not the only problem

The costing report says that there are many other problems, besides lack of budget, that are currently preventing the government from ensuring that children are well cared for. These problems include:

- **Scarce skills:** There are, for example, too few social workers in the country. Many are being attracted to work in other countries or in other jobs because of the impossible burdens being placed on them. Too few new social workers are being trained.
- **Poor collaboration:** Different parts of the government are not working well together. For example, courts waste a lot of time waiting for reports from social workers, while social workers waste a lot of time waiting in courts for children's cases to be heard.
- **Inefficient approach to service delivery:** Services are often not provided in the most cost-effective way.

### Other policies that will help reduce costs

#### More vulnerable children will be reached if the Child Support Grant (CSG) is extended to 18

Extending the CSG to 18 will reduce the demand for the Foster Child Grant (FCG) and give social workers more time to devote to the care and protection of abused children. It will also ensure that orphans and other vulnerable children receive the material assistance they need more easily and speedily.

Statistics South Africa surveys show that:

- more than two-fifths of South Africa's children live in a household where neither parent is employed;
- two-thirds of all children live in poverty; and
- over half of all children live in households with a monthly income of R800 or less.

In short, South Africa's children are bearing a large part of the burden of poverty.

The Children's Bill is a remarkable step forward in the protection of children. It will provide many social services to children, ranging from community-based prevention services for all children, to alternative care in residential facilities for children who have suffered abuse or neglect at home or are on the streets. However, the Children's Bill needs to be supported with changes to the social security system in order to be effective.

The loss of one or more parents makes a child vulnerable, but does not mean that they need statutory protection services. Most poor children who have been orphaned by AIDS are cared for by relatives. Many of these relatives go through a long court process to claim the FCG, not because the child needs protection services, but because the family is living in poverty and needs a social grant to support the child. As a result, the formal child protection system is being used as a poverty alleviation mechanism, leaving fewer resources to provide support and protection to children who have been seriously abused or neglected.

In May 2000 there were less than 50 000 children in court-ordered foster care. By May 2007 the number had reached 418 608. This means an increase of more than 700% in seven years, and long waiting lists for social work services and court dates. This situation has created a major crisis in the country's child protection services.

To address the crisis, we need to lift the age ceiling of 14 years on the CSG and reduce or eliminate the gap in monetary value between the CSG and the FCG. In addition, the CSG means test must be adjusted as it has not changed since it was introduced in 1998, despite significant inflation. These changes in the CSG would mean that relatives and other caregivers would not have a reason to prefer the FCG. Instead, they would apply for the CSG, which does not require a court order. This would remove the extra, unnecessary burden on the courts and social workers and free them up to help children who have suffered serious cases of abuse.

*The Department of Social Development will soon gazette the final regulations to the 2004 Social Assistance Act. These regulations set the age limit for the CSG and give the details of the means test. This is therefore a good time to extend the grant to 18 and amend the means test.*

### **The new No-fee Schools policy may reduce the costs of the Children's Bill**

The costing report includes the cost of a school fee subsidy to be paid by the provincial Departments of Education to schools for all school children who have been placed in the State's care. These included, for example, children in foster care and

children's homes. In the FC high scenario, the cost to provincial Education Departments for these fees increases from R564,4m in 2005/06 to R1 045,5m in 2010/11. In the IP low scenario, the cost is R87,7m in 2005/06 and R227,3m in 2010/11. Since the government's No-fee School policy came into effect at the beginning of 2007 and is already covered by the national Education Department's budget, this extra subsidy in the costing report may not be needed for as many children.

### **More prevention of HIV/AIDS and treatment of caregivers with HIV/AIDS will reduce the cost of the Children's Bill**

HIV/AIDS is one of the big 'drivers' of the need for services for children. For example, HIV/AIDS hugely increases the need for foster care orders as well as the need for places in children's homes. Overall, about two-thirds of the cost of the FC high scenario reflects services to children orphaned by HIV/AIDS. These costs can be reduced if the government vigorously implements its HIV/AIDS prevention and treatment strategy. For example, if more adults can access anti-retrovirals, there will be fewer children with ill caregivers who cannot earn enough to provide for them adequately, and fewer orphans needing placement in care.

*Improving access to anti-retrovirals and care and support for HIV-positive parents will reduce the cost of the Children's Bill over time.*

### **Some changes to the Bill that will reduce the cost in the long term and realise children's rights more effectively**

#### **Strengthening families and communities to care for children will reduce the costs in the long term**

Children are best cared for in families and within their own communities. This approach is promoted in many government policy documents.

Programmes and services which strengthen families and communities to care for children are also cost effective because they reduce the demand for costly services, and especially for alternative care in children's homes. Prevention is clearly better and cheaper than late intervention.

The Children's Bill is in line with this preventative approach. Section 2 of the Act says that one of its objectives is "*to promote the preservation and strengthening of families*". A second related objective is "*to strengthen and develop community structures which can assist in providing care and protection for children*".

Chapters 5, 6 and 8 of the Children's Amendment Bill focus on these two objectives. These chapters cover partial care (for example crèches), early childhood development (ECD), and prevention and early intervention services.

Before the National Council of Provinces (NCOP) made amendments on 29 May 2007, the Bill did not state clearly that government is obliged to provide or fund the services. It also did not say which sphere of government (national, provincial or local) has the obligation. Without clear 'provisioning clauses', the Bill was weak.

This weakness is not found in other laws such as the South African Schools Act and National Health Act. These two laws explicitly place duties on the provincial ministers (MECs) to provide schools and health-care services respectively.

The NCOP amended the Bill to ensure that the duty to provide is clearly placed on the MECs. This is an important step forward and will help ensure that the services are adequately funded. However, there remains one major problem: The words "may provide" instead of "must provide" are used for four service areas, namely:

- partial care (s78);
- early childhood development programmes (s93);
- prevention and early intervention (s146); and
- drop-in centres (s215).

In contrast, the words "must provide" are used for protection services (s105) and child and youth care centres (s193).

The word "may" gives the MECs discretion with regards to whether they provide and fund partial care, ECD, prevention services, and drop-in centres. This discretion could result in these services not being funded at all or being funded inadequately.

An added problem is that social development services are not currently explicitly included as a component in the formula that is used by Treasury to calculate the equitable share. The Financial and Fiscal Commission (FFC) has recommended that these services should be included in the formula. The National Treasury agrees that this is a good idea, but has not yet followed up on the advice.

The combination of non-inclusion in the equitable share formula and lack of compulsory legislative mandates on the MECs puts social welfare services for children at a definite disadvantage in the budget allocation and decision-making process. In 2006/07, provinces allocated a total of R60 647m for their Health departments, and R91 995m for their Education Departments, but only R5,289m for Social Development Departments. The Health allocation was thus more than 11 times as large as the Social Development one, while Education was more than 17 times as large. Of the total Social Development amount, only R2 244m was allocated for social welfare services. Within this, only R1 103m was allocated for Child Care and Protection Services.

At a meeting of the Portfolio Committee on Social Development on 20 June 2007, Musa Mbere (Director for Children, national Department of Social Development) said that the national Department of Social Development had allocated R2,4bn for ECD to provinces, but the provinces used some of these funds for other purposes. If the provinces have clear legislative mandates obliging them to provide ECD services, this kind of problem is less likely to occur.

*Clear compulsory provisioning clauses in the Children's Bill could help give MECs for Social Development the bargaining power that they need to obtain a bigger slice of the provincial budgets.*

## **Prevention and early action is better and cheaper than waiting for bad things to happen to children before we take action**

The costing team used a 'good practice' approach to work out the cost of prevention and early intervention services covered in Chapter 8 of the Children's Bill instead of sticking strictly to what the Bill says. As a result, the costing allocated much more money to these services than is currently spent on them. For example, the costing says that R644m should be spent on prevention services in 2005/06 under the FC high scenario, and R4 800m (R4,8 billion) on early intervention services. By 2010/11, these amounts increase to R1 178m (R1,2 billion) for prevention services and R8 667m (R8,7 billion) for early intervention services. Emphasising these services may seem to add more money to the total cost than is necessary. But the relatively small amounts of extra money will soon lead to much bigger savings in costs of other services by reducing the number of children in need, and thus the 'demand'. Changing the Bill by strengthening the chapter dealing with prevention and early intervention services will therefore add small-ish costs in the short run that will soon result in savings – and a better situation for children.

*The Bill needs to be changed to place more emphasis on prevention and early intervention services. Clear provisioning clauses which oblige the MECs to provide and fund prevention and early intervention services will strengthen Chapter 8 and help ensure adequate funding is allocated.*

## **Civil society organisations are essential to address service delivery backlogs and ongoing need**

At present there are many non-governmental organisations (NGOs), faith-based organisations (FBOs) and community-based organisations (CBOs) that are providing services for children. In fact, civil society provides the majority of the services for vulnerable children. If these organisations were not there to help, the government would need to provide all the services on its own. Some of the services – such as foster care placements – are services that the government is obliged to provide by law. Other services – such as prevention and early intervention – are not yet required by a specific law, but are required by the Bill of Rights and are necessary for the well-being of the children of the country. The government's obligation to ensure these services are provided will increase when the Children's Bill becomes law.

In some cases the government gives a subsidy to the organisations that provide services on its behalf. In many cases it does not give a subsidy. Even where the government provides funding to the organisations, at present it only covers a portion of the cost. Organisations are forced to spend time and energy looking for funding elsewhere. They are also often forced to pay their workers much lower salaries than people doing similar jobs in government. They often struggle to retain their workers because the funding from the government is not guaranteed and predictable. When organisations fail to retain staff, the quality of the service to children deteriorates, for instance when a child's case is passed on from one staff member to the next.

Cornerstone calculated the costs of services that can be provided by either government or other organisations using the full cost of the services if government delivers the service itself. It did the calculations in this way because government

cannot expect civil society organisations to deliver the services with less funding than government itself needs to provide the same service. If the government continues to provide only partial subsidies to NGOs, FBOs and CBOs, it will be weakening the services and support systems that can help to address the service delivery backlogs and provide for children's needs. In the end it will be the children who suffer because the services will either not be provided at all or will be of a poor quality, including long waiting periods.

*Government should cover the cost of delivering services provided for in the Bill. The Bill should say that where these services are delivered by NGOs, government should provide the NGOs with full cost funding. Organisations must also have certainty about funding for beyond the period of a single year.*

### **Using a range of professionals and para-professionals instead of relying only on social workers will help tackle backlogs and save costs**

The Children's Bill that was tabled before the NCOP referred mostly to "social workers". It did not acknowledge that there are different types of indigenous (home-grown) social service professionals and para-professionals who can (and already do) provide protection, prevention and early intervention services for many vulnerable children in a cost-effective manner.

Placing too much emphasis on social workers is not sensible. Firstly, we simply don't have enough social workers in the country. Social workers should therefore be reserved for the tasks for which they are really needed and for which their skills are appropriate. The other social service professionals and para-professionals can do many of the other tasks just as effectively – and sometimes more appropriately – than social workers because the tasks match their training and experience.

In particular, we already have 6 000 child and youth care workers who are providing prevention, protection and alternative care services to children. Many of these workers come from the communities they work in. This helps them provide a good service that is responsive to the local community. Auxiliary child and youth care workers are much less expensive than social workers, take a much shorter time to train and can be trained on the job. They are much less likely to emigrate than social workers as their skills are most appropriate for South Africa. Finally, by expanding the numbers of these home-grown workers we get the added benefit of providing employment to young people in the poorest areas.

The Department of Social Development and the NCOP have amended the Bill and, where possible, replaced references to social workers with the term "social service professionals". The Children's Act defines a social service professional to include a probation officer, development worker, child and youth care worker, youth worker, social auxiliary worker and social security worker who are registered in terms of the Social Service Professions Act of 1978.

The amendments in sections 81, 82, 97, 110, 141, 186 and 220 may reduce the total cost of implementing the Bill as these other categories of workers are less expensive than social workers.

*This amendment by the NCOP will help reduce costs and also ensure that a range of social service professionals can be used to deliver appropriate and community-based services to vulnerable children.*

### **Replacing two-yearly court review of foster care orders with a simpler, cheaper administrative process for children in low-risk placements will reduce costs and promote permanency for children**

The Children's Bill tabled in the NCOP specified that the children's courts must review all foster care placements every two years. The costing team calculated that the cost to the Department of Justice of reviewing these orders is R531m in 2005/06 under the FC high scenario. This equals 24% of the total cost of the Bill for the Department of Justice in 2005/06. And the cost almost doubles over the period 2005/06 to 2010/11.

As discussed above, this cost in time and money is unnecessary where there is no sign of danger to the child. Court review is, for example, not appropriate for many children placed in the long-term care of relatives, including many placed with relatives as a result of being orphaned. Where child protection services are not needed, these children can be supported and monitored through the expanded prevention and early intervention services proposed above.

Taking these arguments into account, the NCOP amended s186(2) to say that a court may under specified circumstances make a permanent order that a child remains in the care of a relative until the age of 18. This order can be made at the first court hearing, and will eliminate the need for a two-yearly review. Where a child is placed in the care of a non-related foster parent, the court may extend the placement until the child is 18 after the first two-yearly review. These long-term foster placements will be evaluated by a social service professional.

*These amendments by the NCOP are good because they reduce costs, free up social workers' time to deal with child abuse cases and increase stability for children.*

### **Children's homes should receive appropriate support and be adequately funded by government**

The FC low scenario assumes that 5% of children in need of alternative care will be placed in children's homes and 90% in foster care. The FC high scenario assumes that 10% of children in need of alternative care will be placed in children's homes. Having 10% as the 'best practice' and 5% as a 'less good' practice contradicts South Africa's policy approach which says that it is 'best practice' to keep children in the community. Children's homes are expensive. They account for more than half of the total estimated cost for provincial Social Development Departments in 2010/11 under the FC high scenario. Other, cheaper, solutions are possible and will be just as good – or better – for children.

If more emphasis and money is spent on things such as primary prevention and early intervention services, and treatment of caregivers with HIV, the demand for children's homes will decrease.

At the same time, we must recognise that many more children's homes will be needed than we currently have, and that the demand for places in homes will increase over time. Adequate funds must be given to ensure that these homes exist and that they are run properly so that the children who don't have alternative options are cared for properly.

*Adequate funding of primary prevention, early intervention and protection services will reduce the demand for children's homes.*

*Sufficient funds must also be allocated to ensure that all children's homes are adequately funded and well-run. Children's homes which are not registered must be assessed and assisted to register or helped to change into non-residential care prevention and early intervention projects.*

### **Children need discipline, not punishment**

Section 139 of the Children's Bill, entitled Discipline of Child, prohibits corporal punishment, and removes the common law defence of reasonable chastisement. The definition of punishment goes beyond physical punishment to cover psychological humiliation and degradation. This section places an obligation on government to encourage better ways of disciplining children.

These changes are unlikely to bring large new costs. There could be an increase in the number of cases of reported abuse, but experience in Sweden found no increase in the number of prosecutions. The proposed educational activities are already covered in the costing. These include awareness-raising programmes and programmes promoting good forms of discipline at home and in school. Many of these activities will be covered under prevention and early intervention, especially if – as suggested above – these parts of the Bill are strengthened.

*The clause on corporal punishment will not increase costs and will help prevent abuse of children.*

## **Summary of recommendations**

### **Recommended changes to the Children's Amendment Bill [B19B-2006]**

- Include an obligation to fund partial care facilities  
Change "may" to "must" in section 78(1)
- Include an obligation to fund early childhood development programmes  
Change "may" to "must" in section 93(1)
- Include an obligation to fund prevention and early intervention programmes  
Change "may" to "must" in section 146(1)
- Include an obligation to fund drop-in centres  
Change "may" to "must" in section 215(1)
- Strengthen the chapter on prevention and early intervention programmes
- Add the following sub-clauses to section 144:

- (2) *Prevention and early intervention services or programmes ~~may~~ must where necessary include –*
- (a) assisting families to obtain the basic necessities of life and to access government services and grants;*
  - (b) empowering families to obtain such necessities and access government services and grants for themselves; and*
  - (c) providing families in desperate need with the basic necessities of life including food, clothing, and shelter.*

### **Amendments made by the NCOP which should be supported**

- Section 186 measures to decrease the number of court reviews for foster care placements.
- Replacement in sections 81, 82, 97, 110, 141, 186 and 220 of the phrase “social workers” with “social service professionals”.
- Inclusion of clear provisioning and strategy clauses in each chapter.

### **Related activities that will promote effective implementation of the Bill**

- Promoting wage parity for government and civil society social workers through strengthening the provisioning clauses.
- Ensuring adequate transfers to NGOs through review of the Financial Awards Policy.
- Requesting a detailed briefing on the Department of Social Development’s recruitment and retention strategy for social workers and querying the lack of a comparable strategy for child and youth care workers.
- Extending the CSG age threshold to 18 years, bringing the means test up to date with inflation and reducing the difference in value between the FCG and the CSG.
- Supporting implementation of the No-fees School policy.
- Promoting access to anti-retroviral therapy to prevent orphaning.

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*Please see the Children’s Institute website ([www.ci.org.za](http://www.ci.org.za)) for copies of useful documents related to the Children’s Bill, including the full costing report and all submissions made by civil society.*