



**SUBMISSION ON CHILDREN'S AMENDMENT BILL [B 18—2020]**

Submitted by

Consortium for Refugees and Migrants in South Africa (CoRMSA)

To

The Portfolio Committee on Social Development

**Attention:** Ms Lindiwe Ntsabo at [childrens-amendment-bill@parliament.gov.za](mailto:childrens-amendment-bill@parliament.gov.za)

27 November 2020.

## 1. Background:

Consortium for Refugees and Migrants in South Africa (CoRMSA/the Consortium) is pleased to make this submission to the **CHILDREN'S AMENDMENT BILL [B 18—2020]**. CoRMSA is a national network with the current number of twenty-six (26) member organisations in good standing whose main objectives and mission are the promotion and protection of the human rights of asylum seekers, refugees and other international migrants in ways that promote the well-being of all in South Africa and the region. The Consortium has over twenty years of experience working on migration and refugee protection engaging in advocacy and lobbying, including policy submissions; coordination and network building; capacity building; community engagement and dialogue; rights awareness and information sharing. Our member organisations include legal practitioners, community-based refugee- and migrant-led organisations, advice offices, academic institutions, and social service providers amongst others.

The CoRMSA model is such that through our members and partners, collectively we cover work at local, provincial, national, sub-regional, regional and global levels to ensure that the daily challenges faced by non-nationals are addressed through policy and practices. CoRMSA has over fifteen years of experience working on migration engaging in advocacy and lobbying; coordination and network building; capacity building; rights awareness and information sharing. CoRMSA's overall objective is the protection and promotion of asylum seekers, refugees and migrant's rights in South Africa, regionally and internationally.

CoRMSA welcomes this opportunity and below makes recommendations (submissions) on specific sections on the Children's Amendment Bill.

Furthermore, CoRMSA is available to make oral presentations regarding this submission should such an opportunity arise.

In our submission, the word "Department" refers to the National Department of Social Development (DSD).

Below are our submission and comments to the Bill:

## **2. Amendment of section 1 of Act 38 of 2005.**

### **2.1. Section 1. (b) (a)**

CoRMSA recommend the inclusion of “*care-giver*” on this subsection to read: counselling of a parent, guardian or care-giver of the child and, where applicable, the child;

We believe that the Act must be consistent in using the three parties (a parent, care-giver and legal guardian) concerned on the affairs for effective practical application of this Act.

### **2.2. Section 1. (b) (h)**

This subsection must include “*Department of Social Development District Office*” for the sub-section to read: by the substitution for the definition of “cluster foster care scheme” of the following definition: “ ‘cluster foster care scheme’ means a scheme providing for the reception of children in foster care, managed and operated by a designated child protection organisation, department of social development district office or the provincial department of social development and registered by the provincial head of social development for this purpose;”;

The reason is based on the fact that the department of social development district offices are easily accessible and are seen as the direct point of reference to many designated child protection organisations as compared to the provincial department. At the district level, it is where social workers or social service managers and coordinators seat. Therefore, their involvement can enhance the effective application of this Act.

### **2.3. Section 1 (b) (k)**

CoRMSA proposes the inclusion of “*religious*” on this subsection to read: by the substitution for the definition of “early childhood development services” of the following definition: “ ‘early childhood development service’ means a service or support provided to children from birth to school-going age or a service or support provided to a child’s parent, guardian or care-giver with the intention to promote the child’s emotional, cognitive, sensory, spiritual, religious, moral, physical, social and communication development;”;

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Constitutionally, section 15. (1) states that “Everyone has the right to freedom of conscience, religion, thought, belief and opinion”. By including religious in this subsection makes this sub-section inclusive of all children’s childhood development as all children belong or come from different social backgrounds.

The above argument is further supported by section 28 (2) of the Constitution which states that “A child’s best interests are of paramount importance in every matter concerning the child”. In many instances, children’s best interest may be affected by the religious affiliation and belief. Hence, CoRMSA proposes the insertion of religious in this sub-section.

#### **2.4. Section 1 (b) (v).**

CoRMSA submits that subsection (v) be reviewed to include “*valid registration certificate*” to read: **‘social service practitioner’** means any person registered and with valid registration certificate in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise and render a service within the social service sector;”;

The South African Council for Social Service Professions (SACSSP/ Council) requires and compel all social service practitioners to renew their practice certificate annually for them to officially practice within the profession. It is for this reason that CoRMSA submits to the Department to include “*valid registration certificate*”. CoRMSA would like to argue that it may not be a secret that we may have many social service practitioners with certificate that are not valid on different grounds either they did not pay the annual affiliation fees, or no longer practising in the sector or qualifications were obtained fraudulently. To avoid all unnecessary challenges, the SACSSP/Council practice certificate must be valid.

### **3. Amendment of section 13 of Act 38 of 2005.**

#### **3.1. Section 7 (2)**

CoRMSA recommend the inclusion of “*living*” and “*or special needs*” for this section to read “Information provided to children in terms of this subsection must be relevant and must be in a format accessible to children, giving due consideration to the needs of children living with disabilities or special needs”.

This inclusion will therefore, allow and accommodate all children within the republic to access information relating to their need and protection. This will also enhance the constitutional rights of “Equality” section (9) (3) which state that “the state may

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not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, conscience, belief, culture, language and birth.

#### **4. Amendment of section 21 of Act 38 of 2005.**

##### **4.1. Section 10 (a) (e)**

CoRMSA agrees with the proposed amendment proposed therein on subsection (a) as it will allow and provide an opportunity for unmarried father/s to acquire and have the parental responsibilities of the child. This will also reduce the strain on social workers or any social service professional working with this subsection. This is a fact that not all fathers who father their children are in a permanent relationship practically. There are a lot of factors involved between father and mother that leads to conception of the children. This subsection will read:

“If at the time of the child’s conception, or any time between the child’s conception and birth, the biological father is living with the biological mother; or”;

CoRMSA recommend the inclusion of “*Magistrate*” on this subsection (e) as currently most of the children cases are addressed or dealt with Magistrate through the Children’s Court. This subsection must read as follows:

(1A) A family advocate or magistrate may, in the prescribed manner, issue a certificate ...

#### **5. Amendment of section 25 of Act 38 of 2005**

##### **5.1. Section 14.**

CoRMSA submits that the insertion and the use of “*or regional court*” be consistent throughout this amendment to avoid confusions delay of processes in contemplating whether the regional court can be involved in any children’s matter. We propose that this subsection be revised to read:

“Subject to section 45(4), when an application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application if heard in the High Court or Regional Court, may be referred to a children’s court having jurisdiction, to be dealt with as if it was an application for 7 5 10 15 20 25 30 35 40 45 50 an inter-country adoption for the purposes of the Hague Convention on Inter-

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Country Adoption and Chapter 16 of this Act or, in exceptional circumstances, as if it was an application for guardianship.”

## **6. Amendment of section 40 of Act 38 of 2005**

### **6.1. Section 21 (4).**

CoRMSA submits that “**domestic partner**” be defined or explained and included on section 1. In our South African set-up or social settings domestic partner may mean or have different interpretation as guided by our cultural beliefs. To avoid this confusing and contradicting in interpreting and applying this Act, this must be defined or explained.

## **7. Amendment of section 44 of Act 38 of 2005.**

### **7.1. Section 24 (c).**

CoRMSA propose the revision of this subsection and insertion of these proposed categories of children to read as follow in order to include all categories of children in need of care and protection.

"an unaccompanied or separated migrant child or a child who is an asylum seeker or refugee or who is dependant as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998); or”;

## **8. Amendment of section 78 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007.**

### **8.1. Section 35 (c).**

CoRMSA submits that this section be reviewed or rephrased taking into account the powers that are being vested upon the MEC solely. To avoid any mismanagement of funds and for effective and procedural transparency on the apportionment of funds to fund the partially care facilities. This subsection must read as follows:

“The MEC for social development in consultation with relevant stakeholders may prioritise and fund partial care facilities and services—

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The above will definitely and directly impose/compel the financial accountability and transparency to the MEC concerned on this matter.

**9. Amendment of section 150 of Act 38 of 2005, as amended by section 5 of Act 17 of 2016.**

**9.1. Section 82 (d) (j)**

CoRMSA recommend the insertion of “*separated*” for this subsection to include these categories of children.

This subsection should read: is an unaccompanied or separated migrant child from another country;

**10. Amendment of section 194 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007.**

**10.1. Section 98 (b)**

CoRMSA submits that this subsection be reviewed to read as follows in order to accommodate all children within the republic: “access to rehabilitation services for children living with disabilities or special needs.”

**11. Amendment of section 213 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007.**

**11.1. Section 107 (d).**

We recommend the inclusion of “religious” on this subsection in order to include and cover all beliefs and not to discriminate children with different beliefs other than the spiritual belief. This will be in line with section 9 of the South African Constitution.

This subsection must or should read as: cognitive, religious and spiritual;”; and

**12. Amendment of section 292 of Act 38 of 2005.**

**12.1. Section 140 (b) (d).**



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CoRMSA submits that “**ordinarily resident**” be defined or explained for effective application of this Amendment Act. Definition can be included under section 1 of this Act.

End of submission.

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