



20 May 2020

The Chairperson of the Portfolio Committee on Social Development

Honourable Mondli Gungubele

Parliament of the Republic of South Africa

Dear Honourable Mondli Gungubele

Department of Social Development's compliance with Pretoria, High Court order granted on 26 November 2019

Introduction

1. On 26 November 2019 the High Court, Pretoria, made a settlement agreement an order of court (**the court order is attached – Annexure 1**) after the Minister of Social Development (the Minister) filed an urgent application for the extension of the order granted on 28 November 2017.
2. The Centre for Child Law (the Centre) and Counsel for the Minister negotiated a settlement, which was made an order of court, that took into account both the need to ensure that foster care orders do not lapse and the Centre's concerns around the development and finalisation of a comprehensive legal solution. What follows is an explanation of the contents and impact of the court order:
 - 2.1 The court order retained the declaration in the 2017 order that the delay by the Minister to prepare and introduce before Parliament, amending legislation to produce a comprehensive legal solution as well as the delay in putting in place the necessary mechanisms to implement such legal solution is unconstitutional. It however extended the suspension of the declaration by a further 12 months. This means that the Minister has been granted a short reprieve within which to table before Parliament amending legislation to produce a comprehensive legal solution.
 - 2.2 The Minister, DSD and MECs are required to report every 3 months to the Centre and the Court (26 February 2020, 26 May 2020 and 26 August 2020). The report must include progress on tabling of the Children's Amendment Bill and any difficulties experienced with implementing the interim solution set out below.
 - 2.3 The interim solution, while the comprehensive legal solution is developed and finalised, is as follows:



- (a) All foster care orders that expire after 28 November 2019 and before 26 November 2020 are deemed by the High Court to be extended until 26 November 2020.
 - (b) SASSA is ordered to continue paying all foster care grants, including those that have individual expired court orders.
- 3 The first report, of the 3-monthly reports, that was supposed to be submitted by the Department on 26 February 2020, is yet to be filed. On 11 March 2020, the Centre wrote a letter to the Minister (**attached as Annexure 2**) drawing her attention to this missed deadline, highlighting the importance of these reports and enquiring as to when the first report will be submitted to the Centre and to the High Court. We have not received a reply to the letter.
- 4 The Department is scheduled to report to the Portfolio Committee on Social Development, on 21 May 2020, on its compliance with the High Court order. The Department is also due to submit what is supposed to be its second 3 monthly report to the Centre and the Court on 26 May 2020 on its progress towards a comprehensive legal solution.
- 5 The Department's report to the Committee on Thursday is a very important opportunity for the Department to present on progress being made to put in place a comprehensive legal solution to the foster care crisis and address foster care backlogs. The long term impact of these measures will be particularly important as South Africa prepares to take stock of the impact of Covid19 on vulnerable communities, which include orphaned children living with extended family, who are at heightened risk of food insecurity and other deprivations of basic services.
- 6 The Centre, to this end, looks forward to the Committee's engagement with the Department of Social Development on 21 May 2020. The Centre will be observing it with keen interest and hopes of hearing from the Department measures that will be taken to comply with the High Court judgment.

Yours Faithfully



Karabo Ozah

Director: Centre for Child Law

