



NATIONAL ALLIANCE FOR STREET CHILDREN

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Children's Amendment Bill 2006 and Children's Act 38 of 2005

Children who live or work on the streets or beg for a living

Presentation to the Provincial Legislature,
KwaZulu-Natal Provincial Parliament,
5th October 2006

There can be no keener revelation of a society's soul
than the way in which it treats its children - Nelson Mandela

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Role of government in terms of legislation

Children who live or work on the streets or beg for a living, live outside of the family environment or are at risk of doing so. They have been designated as children in need of care and protection.¹ Therefore the state is obliged under the Constitution and international law to put measures in place to provide appropriate alternative care.²

1. What has changed?

For some decades, such children have been categorized as 'children in especially difficult circumstances'. There were no specific provisions for them in the South African Child Care Act.³

The intention is now to include them in the new Children's Act by

- defining children in need of care and protection more precisely, and by
- ensuring service provision for them.

This a step in the right direction to ensure their entitlement to children's rights as enshrined in the Constitution.

It is not clear exactly how many children there are living on the streets and at risk of doing so. No thorough census has been undertaken nationally, but it appears that the children are more prevalent in KwaZulu-Natal than in most other provinces. Many children from KwaZulu-Natal also relocate to the streets of other provinces.

In 1999, 2,253 children from the streets were in shelters in KwaZulu-Natal.⁴ The numbers of children on the streets were unknown. In 2004, a census survey⁵ in seven localities⁶ revealed 5,964 children in shelters, drop-in centres, and on the streets.

Very few of the children who beg on the streets and whom NGOs assist, are foreign children. Child Care Act 38 of 2005 does not allow for NGO assistance to foreign children found on the streets. This contravenes international conventions.

2. What are the problems? The solutions?

2.1 *Problems of terminology, and solutions*

Problems in service provision for the children derive partly from established terminology.

¹ Children's Act 38 of 2005, section 150

² Convention on the Rights of the Child (Article 20)
African Charter on the Rights and Welfare of the Child (Article 25)
South African Constitution (Ch2 Section 28 1(b)).

³ Swart-Kruger, Jill. (1996). An imperfect fit: street children and state intervention -- the South African case. *Africa Insight* 26(3):231-236

⁴ *Children in 2001: A report on the state of the nation's children*. Ch 8.5: Street children, by Jill Swart-Kruger. Pretoria: The Presidency, Office on the Rights of the Child. (p.130)

⁵ Conducted by the KwaZulu-Natal Alliance (KZNASC) for Street Children.

⁶ The areas surveyed were Durban, Howick, Ixopo, Mooi River, Pietermaritzburg, Port Shepstone and Richmond.

2.1.1 'Street child'

Key concerns:

The term '**street child**' identifies children as vulnerable to abuse and exploitation. Children have a constitutional right to protection from maltreatment, neglect, abuse or degradation⁷. The Children's Act gives effect to this right; it is enshrined in the Objects of the Act.⁸

The term 'street children' only explains where children sought refuge. It does not clarify their rescue and developmental needs, which vary according to whether they left home due to poverty, abuse, sexual abuse, mental or learning disability, or for other reasons.⁹

Key recommendation:

- The term 'street child' should be replaced with the phrase: 'child who lives or works on the streets or begs for a living', as is already used in **Children's Act 38 of 2005, section 150**.

The definition in Children's Act 38 of 2005 then needs to be altered:

Children's Act 38 of 2005: Chapter 1: "street child"

The definition for "street child" should be deleted and replaced with the phrase: 'child who lives or works on the streets or begs for a living'

(Delete: **(a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or**
(b) because of inadequate care, begs or works on the streets but returns home at night;)

The term 'street children' is used in only twice in the Children's Amendment Bill, i.e. when defining shelters and drop-in centres. These definitions are also problematic.

2.1.2 'Shelter'

Key concerns:

The term '**shelter**' does not inspire respect and it fails to convey understanding of the services provided. 'Shelter' is used extensively in Children's Act 38 of 2005 and cannot be replaced. But we can increase our insight about services rendered.

⁷ South African Constitution (Ch2 Section 28 1(d)).

⁸ Children's Amendment Bill. Memorandum on the Objects of the Children's Amendment Bill 2006 Objects 3(f) Children's Act 38 of 2005, Objects of Act 2(b)(iii)

⁹ Richter, L. and van der Walt, M. (2003). The Psychological Assessment of South African Street Children 13(1) www.colorado.edu/journals/cye (reprint).

Gebbers, P.E. (1990). Health of Street Children in Cape Town. *The Child Care Worker* 8(9):11-14.

Scharf, W., Powell, M. and Thomas, E. (1986). Strollers: Street Children of Cape Town. In *Growing Up in a Divided Society* edited by S. Burman and P. Reynolds. Johannesburg: Ravan.

Swart, J. (1990). Malunde – The Street Children of Hillbrow. Johannesburg: University of the Witwatersrand Press.

Donald, D., Wallis, J. and Cockburn, A. (1997). An exploration of meanings: Tendencies towards developmental risk and resilience in a group of South African ex-street children. *School Psychology International* 18(2):137-154.

Shelters are the only residential facilities for children that are not included in Chapter 13 as 'Child and Youth Care Centres'. Children's Homes, places of safety, secure care facilities, schools of industry and reform schools are all included in chapter 13.¹⁰

Key recommendation:

- Shelters should be relocated from Chapter 14 to Chapter 13. They would then become a type of Child and Youth Care Centre.

Relocating shelters to Chapter 13 would require the following re-definition:

Chapter 1

Section 1. Interpretation

A definition of "shelter" should be entered, as follows:

"shelter" means a child and youth care centre providing programmes to children living, working or begging on the streets.

(Delete: **213 (1) A shelter is a facility located at a specific place which is managed for the purpose of providing basic services, including overnight accommodation and food, to children, including street children, who voluntarily attend the facility but who are free to leave.**)

2.1.3 'Drop-in Centre'

Key concern:

There is some ambiguity in the current definition (clause 213, Ch14) of a **Drop-in Centre**.

Key recommendation:

- As a partial care service offering early rescue services for children who have left home or who are at risk of doing so, Drop-in Centres should be re-defined as follows:

Chapter 14 - Shelters and Drop- in Centres

Clause 213

(Delete clause **213(1)** entirely)

(Clause **213(2)** becomes **213**)

The definition for 'drop-in centre' should be deleted and replaced with:

213. A drop-in centre is a facility located in a place accessible to children at risk which is managed for the purpose of providing basic services, excluding overnight accommodation, to children who voluntarily attend the facility.

(Delete: **213 (2) A drop-in centre is a facility located at a specific place which is managed for the purpose of providing basic services, excluding overnight accommodation, to children, including street children, who voluntarily attend the facility but who are free to leave.**)

¹⁰ Children's Amendment Bill Ch13: Child and Youth Care Centres 195, 196, 197.

2.2 Problems of service provision, and solutions

2.2.1 Inequitable service provision

Key concerns:

Chapter 14 of the Children's Amendment Bill, which makes provision specifically for children who have left home for the streets, or who are at risk of doing so, does not offer these children services that are equitable to those offered to other children in need of care and protection.

Children have often protested about the poor standards of service or of abuse in certain state, municipal, and NGO shelters.

Nevertheless, Chapter 14 enables virtually anyone to run shelters for children found living on the streets and it provides for a minimal degree of care, protection and personal development. Its precepts are open to challenge in terms of the objects in the Children's Amendment Bill and in Children's Act 38 of 2005.¹¹

Chapter 13 makes provision for professional staffing, varied programmes in addition to assessment, development and counselling, and assured financing. Chapter 14 does not provide for these.¹²

Chapter 13 makes provision for a children's forum as part of the management board of child and youth care centres. Chapter 14 has no such provision.

Special features of sheltering programmes such as the voluntary admission of children and continuum of care programmes, can be accommodated in Chapter 13.¹³

Key recommendations:

- To enable professionalisation of this sector, shelters should be relocated from Chapter 14 to Chapter 13.

The title for Chapter 14 would then become: DROP-IN CENTRES
(Delete from the original title: **[SHELTERS AND]**)

A short addition to the norms and standards would document the continuum of care programmes run by shelters. Only minor alterations are technical.

Section 1 (n) (in the principal Act)

(Delete: **["shelter" means a facility referred to in section 213(1)]**)

¹¹ Memorandum on the Objects of the Children's Amendment Bill 2006 3. Objects.
Children's Act 38 of 2005, Objects of Act 2

¹² Children's Amendment Bill Ch13: Child and Youth Care Centres Part 3 Regulations 212 (h) (i) (j) (k) (p) (v)

¹³ Children's Amendment Bill Ch13: Child and Youth Care Centres Part 3 Regulations 212 (i) (j) (k) (w)

Chapter 13: Child and youth care centres, Part 2

209 (1) Norms and standards for child and youth care centres must include professional assessment of children, therapeutic and developmental programmes.

(2) Premises used as a shelter must, in addition, have –

(a) an outreach programme for children on the streets;

(b) prevention and early intervention programmes; and

(c) after-care programmes, family and community re-integration programmes.

(3) The management of a child and youth care centre must take all reasonable steps to ensure that the centre complies with the norms and standards for child and youth care centres as prescribed.

(Add underlined sections.)

CHAPTER 13: Child and youth care centres

191 (1) ...

(a) ...

(b) ... a [**shelter or**] drop-in centre

(Delete: words in bold and brackets)

CHAPTER 14: Drop-in centres

(Delete: all clauses dealing solely with shelters and all references to shelters. For deletions, see Appendix 1)

Key concerns:

In terms of **CHAPTER 14 220 (1)** of the Children's Amendment Bill

- no professional staff or services are required for drop-in centres, and
- the minimum norms and standards that must be met, are:

- Safe play space;
- Adequate ventilation;
- Potable water;
- Toilet facilities;
- Refuse disposal;
- Hygienic food preparation.

The minimum norms and standards do not take into account that a Drop-in Centre is the first point on a child's route to reintegration in the community.

Key recommendation:

- Norms and standards should reflect fundamental development plans:

CHAPTER 14: Drop-in centres

220 (1) Premises used as a drop-in centre must -

(a) make an immediate assessment of the needs of the child and the possibility of family re-unification;

(b) attend to referral of child to external developmental agencies;

(c) keep a daily register of all children with monthly reporting to the department of social services;

(d) have suitably qualified staff available during opening hours.

220 (2) A drop-in centre must provide, in accordance with the prescribed standards, programmes for the children in its care. These programmes must include:

- (a) a development and treatment plan;
- (b) a family reunification or other appropriate placement programme;
- (c) access to education;
- (d) access to health services;
- (e) access to social development services; and
- (f) any other prescribed programme or service.

220 (3) Premises used as a drop-in centre must have—

- (a) a safe area for the children to play;
- (b) adequate space and ventilation;
- (c) safe drinking water;
- (d) hygienic and adequate toilet facilities;
- (e) access to disposal of refuse services or other adequate means of disposal of refuse generated at the shelter or drop-in centre; and
- (f) a hygienic area for the preparation of food for the children.

(Insert underlined sections)

2.2.4 Death of children in alternative care

Key concerns:

Inquests are not opened when children in alternative care die from 'natural causes'.

When only 'unnatural deaths' are investigated, patterns of institutional neglect could be overlooked in cases of treatable chronic illnesses.

Although any concerned person can call for an inquest, this is unlikely to happen in facilities where children have been neglected.

Chapter 14 226(1) requires that a child's death be reported to a police official (who will investigate it) and the Director-General.

There are concerns in the sector regarding collusion between certain organisations and SAPS officials in regard to obscuring cause of deaths.

No clause addresses the abuse and serious injury of children in alternative care.

Key recommendations:

- Clauses dealing with child deaths should be broadened to include serious injury and abuse.
- A wider range of officials and other persons should be notified of child deaths. The Department of Social Development should be satisfied that a child died of natural causes that were not preventable.
- Amendments should be made in the chapter on Alternative Care as well as the chapter on Drop-in Centres:

CHAPTER 11: Alternative care

Death, serious injury or abuse of child in alternative care

178. (1) If a child in alternative care dies, the **[management of the child and youth care centre or person]** alternative caregiver in whose care the child has been placed must immediately after the child's death report such death to-

(a) a police official; [and the Director-General]

(b) the provincial head of social development;

(c) the parent or guardian of the child, if he or she can be traced;

(d) the social worker dealing with the matter; and

(e) the department of home affairs (where the child is a foreign child).

(2) The police official and the provincial department of social development must investigate the circumstances of the death of such child and, unless such police official or person within the department of social development is satisfied that the child has died of natural causes he/she must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service.

(3) If a child in alternative care is abused or seriously injured, the manager of the child and youth care or centre or person in whose care the child has been placed must immediately report the matter to the provincial head of social development, who must cause an investigation into the circumstance of the abuse or serious injury to be conducted.

(Delete: bold. Add underlined sections.)

CHAPTER 14: DROP-IN CENTRES

Death, serious injury or abuse of child in **[shelter or]** drop in centre

226. (1) If a child dies on the premises of a **[shelter or]** drop-in centre or following an occurrence at the **[shelter or]** drop-in centre the person operating the **[shelter or]** drop-in centre must immediately after the child's death report such death to-

(a) a police official; [and the Director-General]

(b) the provincial head of social development;

(c) the parent or guardian of the child, if he or she can be traced;

(d) the social worker dealing with the matter; and

(e) the department of home affairs (where the child is a foreign child).

(2) The police official and the provincial department of social development must investigate the circumstances of the death of such child and, unless such police official or person within the department of social development is satisfied that the child has died of natural causes he/she must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service.

(3) If a child in alternative care is abused or seriously injured, the manager of the child and youth care or centre or person in whose care the child has been placed must immediately report the matter to the provincial head of social development, who must cause an investigation into the circumstance of the abuse or serious injury to be conducted.

(Delete: bold. Add underlined sections.)

2.2.5 Delegation of powers to municipalities

Key concern:

The Children's Amendment Bill enables the powers and duties for partial care and early childhood development services to be delegated to municipal officials.

The same powers are not assigned in regard to child and youth care centres which serve children in need of care and protection.

When shelters have been relocated to chapter 13, it will no longer be possible for municipalities to run shelters.

Responsibilities to business and the tourist industry make it difficult for municipalities to put the 'best interests of children' first.¹⁴

Key recommendations:

- The specialised services required in **shelter** programmes equate those of other child and youth care services and it is appropriate that they not be delegated to municipalities.
- The programs of **drop-in centres** provide specialised services for children in need of care and protection. These should not be delegated to municipalities.
- Municipalities are important for the effective functioning of all programs for children through the provision of structural and strategic support. The form of such support can be developed through integrated plans of action with all stakeholders.

Clause 225 in Chapter 14 should be deleted.

CHAPTER 14: Drop-in centres

Assignment of functions to municipality

[225. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 215, 217, 218, 219, 221 and 222 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

(2) The senior official referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to an official in the employ of the municipality.

(3) A delegation in terms of subsection (2)—

(a) is subject to any limitations, conditions and directions which the delegating official may impose;

(b) must be in writing; and

(c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.

(4) The delegating official may—

¹⁴ Children's Act 38 of 2005, Ch2: sections 7, 9

- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and**
(b) at any time withdraw a delegation.

(5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 219, or the conditions on which registration was granted in terms of section 221, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a shelter or drop-in centre in terms of section 222 may—

- (a) lodge an appeal with the municipal council against that decision; or**
(b) apply to the competent division of the High Court to review that decision.]

(Delete: all bold wording, i.e. the whole of clause 225)

2.2.6 *Unrecognised prevention and early intervention services*

Key concern:

Shelters and drop-in centres provide important prevention, early intervention and aftercare services in communities where children are at risk of leaving home for the streets.

These are not subsidized nor are they recognised or recorded in Chapter 8 of the Children's Amendment Bill.

The services meet three objects specified in the Children's Amendment Bill:

- the preservation and strengthening of families;
- the strengthening and development of community structures which can assist in providing care and protection for children;
- the general promotion, protection, development and well-being of children.¹⁵

Shelters and Drop-in centres have found that a range of dovetailed services is needed in prevention and early intervention programmes, and not only social services.

Sport and recreation are important, but health and education components are crucial, in these programmes. Small business and other skills training may be essential to enable families to become self-sufficient.

Key recommendation:

- Chapter 8 should allow for these services which are already in place.

¹⁵ Memorandum on the Objects of the Children's Amendment Bill 2006 Objects 3(a)(e)(i)

- A visionary programme has been developed by the Department of Education and Culture in this province, which will address education needs of children at risk and on the streets, at four levels, in collaboration with stakeholders. This programme is likely to reach a wide range of children out of school and we recommend that it be piloted, with a view to its ultimate introduction provincially and nationally.

The amendments to be made in chapter 8 would be:

CHAPTER 8: Prevention and early intervention services

143. (1) Early intervention services means **[social]** development services which are-

(Delete: social)

CHAPTER 8: Prevention and early intervention services

143. (1) ... Early intervention services ...

(a)

(b) and ;

(c) or provided through drop-in centres or shelter outreach programmes to children who have left home and are vulnerable to, or at risk of, statutory intervention.

CHAPTER 8: Prevention and early intervention services

143. (2) Prevention services means **[social]** holistic development services in terms of appropriate prior assessment--

(Delete: social. Add: underlined words)

CHAPTER 8: Prevention and early intervention services

143. (2) Prevention services means ...

(a) ...

(b) ... capacity and self-reliance

(i) to address problems...; or

(ii) when children who have been in shelters are re-introduced to family and community life through aftercare programmes.

Conclusion

These recommendations conclude our submissions on the key points that the National Alliance for Street Children would like to bring to the attention of provincial parliaments.

We thank you warmly for your invitation to address this gathering.