

SUBMISSION ON THE CHILDREN'S AMENDMENT BILL
8 MARCH 2007
MPUMALANGA PROVINCIAL PARLIAMENT

BACKGROUND TO NATIONAL ALLIANCE FOR STREET CHILDREN

The National Alliance for Street Children (NASC) as an association of Provincial bodies, is committed to the development of holistic, comprehensive, integrated and coordinated services for children who are/were living and working on the streets. The mission of NASC shall be to protect the interests and the wellbeing of its beneficiaries in the Republic of South Africa through empowering its member organisations to provide quality services and operate with best ethical standards and practices.

EXECUTIVE SUMMARY OF SUBMISSION:

NATIONAL ALLIANCE FOR STREET CHILDREN

PROBLEM:

Children on the street are extremely vulnerable and need intensive services. Children's rights to equality and alternative care are not being fulfilled by the State.

Case study: The consequences of Substandard Services to Street Children. Former Street Child. "I Spent time living in an extremely substandard shelter. The centre was supported financially by a broad sector of organisations. It had a governing board of respectable members of society. The facilities were inadequate. Electricity wires were open and children were at risk of being electricuted. We had to prepared our own food and many times there was no adult supervision at the centre. Many youth are dealing with the trauma of what happened to them at the shelter. Basically most people felt that street children needed to be happy with whatever was given to them. In other words, beggars cannot be choosers. There have been many failures like this and no-one seems to take note."

Concern with the Bill: Standards for shelters are not adequate and fall way below those required for child and youth care centres.

Recommendation: Incorporate shelters into chapter 13, by deleting clause 191 (1)(b).

TECHNICAL COMMENTS AND DISCUSSIONS

The Constitution guarantees for everyone, including children, the rights contained in the Bill of Rights. These rights ensure certain entitlements for children and create various obligations for the state. The general obligations placed on the State in respect of all rights are that the state has to respect, protect, promote and fulfil the rights in the Bill of Rights. The State has to take legislative and other measures to give effect to the rights in the Bill of Rights. The Children's Amendment Bill aims to give affect to various children's rights guaranteed by the Constitution. This is confirmed in the principle Act (Children's Act 38 of 2005). Section 2 of the principle Act states the following:

2. The objects of this Act are—

(a) ...;

(b) to give effect to the following constitutional rights of children, namely—

(i) family care or parental care or appropriate alternative care when removed from the family environment;

(ii) social services;

(iii) protection from maltreatment, neglect, abuse or degradation; and

(iv) that the best interests of a child are of paramount importance in every matter concerning the child;

(c)

Our analysis of the Children's Amendment Bill exposed certain concerns which would create difficulties in achieving the objects of the Bill. Only one of these concerns will be explored here. The spirit of equality is not upheld in the Bill particularly in relation to children on the street.

For over two decades in South Africa, children have repeatedly attested that they choose the option of self-care and habitation in public spaces -

- following their rejection or abandonment by caregivers;
- to escape living in situations of neglect and abuse that adults in positions of responsibility fail to address;
- as a solution to crises in the home, whether through death, unemployment or for other reasons.

Children in self-care on the streets have long attested that adults from all walks of life abuse them, and neglect to help them in times of need and crisis. They are also abused and neglected within many care organizations.

The Children's Amendment Bill

In the same way that apartheid policies created divisions of entitlement within South African society, the Children's Amendment Bill entrenches and legalises discrimination against children who have left home and who are in self-care.

They are separated out from other children and dealt with in Chapter 14 of the Children's Amendment Bill, regardless of whether they are abused physically or sexually, neglected, traumatized, seeking a solution to a crisis in the home, etc.

Ensuring adequate protection for children living and working on the street

The rights to social services, protection from abuse and neglect and family care and parental care or appropriate alternative care are guaranteed to all children in terms of section 28 of the Constitution. The Bill thus has to ensure that all children have equal access to the programmes and services provided in order to give effect to these rights.

The Bill provides children on the street with a lesser degree of protection than other categories of children in need of care and protection.

Children living or begging on the street are a particularly vulnerable group and in need of extra protection from the state. These children generally live outside of the family environment and therefore the state is obliged under the Constitution and international law¹ to provide them with appropriate alternative care. The provision of shelters, drop-in centres and child and youth care centres as alternative care facilities is thus a duty placed on the State.

Chapter 13 and 14 of the Children's Bill make provision for establishment and regulation of these alternative care facilities. Chapter 13 deals with children in child and youth care centres and Chapter 14 concerns children who use shelters and drop-in centres (i.e. children living on the street). The following points illustrate the inequities of the Bill in relation to children living on the street.

Comparison of services for children in need of care and protection:

Chapter 13: Child and youth care centres (excludes "street children")	Chapter 14: Shelters and Drop-in centres (for "street children")
* Provides for a strategy framework for ensuring an appropriate spread of child and youth care centres throughout the Republic	* does not make provision for ensuring an adequate spread of shelters and drop-in centres throughout the Republic
* Ensures that the MEC for social development carries the responsibility of maintaining a record of all available child and youth care centres in the province.	* Fails to place such obligations on the MEC in respect of shelters and drop-in centres
* Ensures that the MEC plan strategies for the establishment of an appropriate spread of child and youth care centres in the province.	* Fails to place such obligations on the MEC in respect of shelters
* MEC must establish and operate Child and Youth Care Centres	* No obligation to operate shelters
* Makes provision for therapeutic programmes to be offered at the child and youth care centres	* only makes provision for basic services
* Makes provision for prevention and aftercare services to be offered by child and youth care centres	* only makes provision for basic services (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) adequate means of refuse disposal; (f) hygienic area for food preparation for the children
* Makes provision for prevention and aftercare services to be offered through the child and	* Only makes provision for basic services (as above)

¹ Article 20 of the Children's Convention and article 25 of the African Charter.

youth care centres	
* Makes provision for a Management board	* No such requirement in respect of shelters
* Requires suitably qualified staff and ratios of staff to children	* Does not require qualified staff for shelters and drop-in centres
* Does not assign functions to the Municipality* Does not assign the provision of services for any category of children officially designated as “in need of care and protection”, to Municipalities.	* Assigns functions to the Municipality* Although “street children” have been identified as “in need of care and protection” in Child Care Act 38 of 2005, enables provision of services to be assigned to Municipalities.
* Provides for children to make input to Management Boards in structured ways	* Makes no such provision

RECOMMENDATION

Redefine shelter in chapter 1 as follows:

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

Take out the exclusion of shelters in section 191 (1) as follows:

191. (1) A child and youth care centre is a facility for the provision of residential care to more than six children outside the child’s family environment in accordance with a residential care programme or programmes suited for the children in the facility, but excludes-

- (a) a partial care facility
- [(b) a **[shelter or]** drop-in centre

CONCLUSION

- All children who need residential care should be able to access Child and Youth Care Centres.
- Shelters should be located in Chapter 13 and become Child and Youth Care Centres.
- Assessment, therapeutic and developmental programs are essential in Drop-in centres that serve children who have left home or who are in the process of doing so.
- All shelters should be registered as child and youth care centres. Having them in a separate chapter perpetuates the incorrect notion that children of the street are a category of children in need of a lesser standard and quality of care and protection services.