

Summary of Children's Institute Submission to Gauteng Public Hearings October 2006

State obligations and children's entitlements

International Law- special protection for children on the street

One of the guiding principles of the UNCRC is the non-discrimination article, article 2. This article states that **State Parties must respect and ensure the rights set forth in the Convention without discrimination.** General Comment No 5 "General Measures of Implementation"¹ states that this article requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. This has also been endorsed by the Human Rights Committee. The Committee on the Rights of the Child recognizes **children who are living and/or working on the streets as one of the most disadvantage groups** and has pointed out that they are exceptionally vulnerable to exploitation. Therefore, they are entitled to special measures of protection and **resources should be prioritized** to provide quality protection for this vulnerable group.²

The Constitution – services for all children equally

The Constitution states that everyone has the right to equality³, dignity,⁴ and basic education.⁵ There is also a special section giving all children under the age of 18 special protection by applying the best interest principle⁶ and giving children additional rights:

- to family care or parental care, or appropriate alternative care;⁷
- to nutrition, shelter, basic health care services and social services;⁸
- to be protected from maltreatment, neglect, abuse or degradation;⁹
- to be protected from exploitative labour practices.¹⁰

The Constitutional Court interpreted some of these rights in the *Grootboom* case, it stated that the rights in sections 28 (1) (b) and (c) must be read together and ruled that "The State thus incurs the obligation to provide shelter to those children, for example, who are removed from their families."¹¹

To fulfil these rights the State:

- It must ensure an adequate spread of quality services that are accessible;
- Fund services.

The Children's Act No. 38 of 2005

For the first time children on the street are legally defined as children in need of care and protection:

150. (1) A child is in need of care and protection if, the child—

(c) lives or works on the streets or begs for a living;

Thus recognising the duty of the State to care for and protect children on the street.

Why shelters should be child and youth care centres?

Historical precedence

The Child Care Act, No. 74 of 1983 clusters shelters and children's homes together. They are both regulated under chapter 5 section 30.¹²

Shelters deal with children in statutory protection

Shelters are places of temporary safe care¹³ and provide care for children placed in temporary safe care by the courts. The strict provisions regulating children in alternative care apply to these children. In practice few children wander into shelters by themselves, in practice most children are brought in to shelters by outreach workers or social workers who complete form 4, or by police officers with a detention order. As children on the street are now legally defined as 'children in need of care and protection' they must be investigated by a designated social worker pending a children's court inquiry. During this period efforts will be made to reintegrate the child with his or her family, and if this succeeds the social worker will report to the court on the actions taken, and any orders for support to the family that are required. If the child cannot be reintegrated with

his or her family in during this period the court will carry out a full inquiry and place the child in a children's home.

Shelters should provide the same residential care services and programmes as child and youth care centres. Contrary to the Constitution and the Convention on the Rights of the Child the spirit of equality is not upheld in the Bill in relation to children on the street. There are differences between the level of protection given to children placed in to child and youth care centres (provisions set out in chapter 13 of the Bill) and the protection given to children living on the streets who use shelters (provisions set out in chapter 14). Separate chapters mean separate regulations, separate norms and standards and in all likelihood separate treatment. The comparison of the two chapters below illustrates the differences in the degree of protection for children living on the streets who make use of shelters.

Chapter 13: Child and youth care centres	Chapter 14: Shelters and Drop-in centres
* 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
* 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	* Assigns functions to the Municipality

Recommendations vote in favour of the following amendments to the Children's Amendment Bill:

Redefine shelter in section 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-

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

It is recommend that all the provisioning and strategy clauses in the Children's Bill should be along the follow lines:

192 (1) The MEC for social development of a province [**may**] must, from money appropriated by the relevant provincial legislature, provide and fund child and youth care centres for that province.

This would require further amendments to sections 77, 93, 106, 145, 193, 214 and 87(2), 92, 104, 146, and 224(2)

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¹ Committee on the Rights of the Child *General Comment 5: General measures of implementation of the Convention on the Rights of the Child* (Thirty-fourth session, 2003) UN Doc CRC/GC/2003/5 (2003).

² See reporting guidelines at paragraph 23 d

³ *Constitution of the Republic of South Africa Act 108 of 1996*, section 9

⁴ *Constitution of the Republic of South Africa Act 108 of 1996*, section 10

⁵ *Constitution of the Republic of South Africa Act 108 of 1996*, section 29

⁶ *Constitution of the Republic of South Africa Act 108 of 1996*, section 28 (2)

⁷ *Constitution of the Republic of South Africa Act 108 of 1996*, section 28 (1)(b)

⁸ *Constitution of the Republic of South Africa Act 108 of 1996*, section 28 (1)(c)

⁹ *Constitution of the Republic of South Africa Act 108 of 1996*, section 28 (1)(d)

¹⁰ *Constitution of the Republic of South Africa Act 108 of 1996*, section 28 (1)(e)

¹¹ *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) Para 77

¹² The Child Care **30. Registration and classification of children's homes and places of care.**—(1) No child may be received in any children's home (other than a children's home maintained and controlled by the State) unless that children's home is managed by an association of persons consisting of not fewer than seven members and has been registered under this section, or otherwise than in accordance with the conditions on which that children's home has been so registered.

(2) No child may be received in any place of care (other than a place of care maintained and controlled by the State) unless that place of care has been registered under this section, or otherwise than in accordance with the conditions on which that place of care has been so registered.

(2A) No child may, save as prescribed, be received in any shelter unless that shelter has been registered under this section, or otherwise than in accordance with the conditions on which that shelter has been so registered.

[Sub-s. (2A) inserted by s. 11 (a) of Act No. 96 of 1996.]

(3) Application for the registration of a children's home, a place of care or a shelter shall be made to the Director-General in the prescribed manner, and the Director-General may—

(a)

before considering any such application, require that he or she be furnished with any information in connection with the application concerned or the proposed children's home, place of care or shelter which he or she may desire to obtain;

(b)

reject any such application or, if he or she is satisfied that the children's home, place of care or shelter complies with the prescribed requirements and that it will be so managed and conducted that it will be suitable for the reception, care and bringing-up or for the reception, care and custody of children, grant the application either unconditionally or on such prescribed and other conditions as he or she may deem fit, and issue to the applicant a certificate of registration in the prescribed form.

(4) The Director-General may, at the time of registration of any children's home, place of care or shelter or at any time thereafter, classify any such children's home, place of care or shelter or may after due notice to the person in whose name the relevant certificate of registration was issued, amend any earlier classification, and any such classification may differ according to the sex or age or to the physical, mental or spiritual needs of the children in respect of whom the children's home, place of care or shelter is being maintained and according to whether it is children who were dealt with under this Act or under the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)).

¹³ Section 1“**temporary safe care**”, in relation to a child, means care of a child in an approved child and youth care centre, shelter or private home or any other place, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell;