

Save the Children South Africa

Submission on Children's Amendment & Second Amendment Bill

[19 August 2015]

Introduction

1. Save the Children South Africa is a recently established non-governmental organisation and a member of Save the Children International, the world's leading independent organisation for children's rights. This new entity was incorporated in November 2012 with a South African Board and South African staff. Globally, Save the Children endeavours to inspire breakthroughs in the way the world treats children and to achieve immediate, lasting change in their lives.
2. The common vision of Save the Children is to bring about a world in which every child attains the right to survival, protection, development and participation.
3. Save the Children South Africa will fulfil its part in this vision by empowering children and communities to demand their rights and engaging with communities, government, civil society and business to foster care and support for the young child. It will advocate for an effective, accountable society in which all children are central to our country's future.
4. We welcome the opportunity to comment on the bill. Whilst the proposed amendments deal with many issues, we will be confining our comments to select aspects of the Bill.

Submission

Amendment of section 151 of Act 38 of 2005

5. The proposed amendments do clarify some of the processes and timelines in terms of temporary care placement of children.
6. For migrant children, however, Children's court tend to issue two years placement order right from the start. This has considerable impacts on the way social workers carry out assessments as there is no sense of urgency to finalize the process and present the results back to the court for the best interest determination.
7. We therefore submit that it would be important to clearly lay out in the Bill the maximum duration of children's stay in temporary care – especially for migrant children as family reunification remains a challenge – and determine a strict timeframe for social workers to complete their documentation and assessment to inform the durable solution that needs to be implemented.

Amendment of section 152 of Act 38 of 2005

8. The obtainment of a court order to place unaccompanied migrant children in temporary safe care often occurs after the placement itself. Migrant children are generally identified by border patrols, the police or community members and are in need of instant protection.
9. We welcome that the amendment puts emphasis on the need to include children in court hearings. This is consistent with the value of child participation in the best interest determination.
10. However, the right to guardianship is never realized in South Africa for migrant children, which most probably has a negative impact on the efficiency and outcome of this process. Because of poor understanding from local stakeholders and courts of international laws and

frameworks, migrant children's cases might be ill-advised and some children who would qualify as refugees risk drifting in the system without appropriate action being taken.

11. We submit, therefore, that the inclusion of children and a guardian in court proceedings is essential to achieve appropriate durable solutions for migrant children.

Amendment of section 171 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

12. We agree that empowering the provincial head of social development is a good approach, especially in terms of accountability. In practice, the distinction between temporary safe care and alternative care is often blurred.
13. We submit that alternative care placement should therefore happen automatically after this period of time.
14. It is also unclear on the bill what kind of centres actually qualify as temporary care facilities, which might confuse Children's Court when issuing orders regarding one kind of placement (temporary) or the other (alternative).

Amendment of section 176 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

15. This amendment clarifies the conditions under which alternative care could be extended beyond the age of majority.
16. This however doesn't solve the problem of the lack of sustainable options for migrant children. Due to the impossibility to access proper documentation and legal status in South Africa, conditions are not met for these children or youth to have a future in the country.
17. We submit that the extension of alternative care therefore doesn't address the need to integration/reintegration programmes that need to be put in place as soon as a unaccompanied child is identified.
18. This, moreover, can constitute an additional pull factor as children will be given the false impression that they will be more able to complete their secondary education and potentially engage in a tertiary curriculum.
19. This might also enter in conflict with the Immigration Act on the detention and repatriation of irregular adult migrants.

General comments

20. We suggest amendment(s) to the Children's Act Section 150 (1)(i) by substituting words "under" with "in" and "control" with "care" as illustrated below.
21.is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person [under] in whose [control] care the child is.
22. We submit that the word "control" could infer an element of force, whilst "care" infers a scenario in the best interests of the child.
23. We would also like to point out that the Bill is completely silent on the issue of the ban of corporal punishment in the home, despite the fact that this was discussed at the GOSA session with the ACERWC at which commitment was made to include this in the Children's Act.

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