**Submission to the UN Committee on the Rights of the Child on matters relating to ‘Children’s Rights and Alternative Care**

**By**

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1. **Introduction**

The Constitution of the Republic of South Africa and the Children’s Act 38 of 2005, remain to be the two main legal framework that explicitly dictate provisions for alternative care in South Africa. However, despite South Africa’s comprehensive legislation and policy framework for children in need of care and protection, the sad reality has been that these children have become the “forgotten children” of South Africa as the implementation of the remains largely dissonant from legislation. Children, most of whom have been removed from abusive, neglectful and traumatic circumstances, are still left vulnerable in many ways due to operational challenges for both the children as well as the Child and Youth Care Workers (CYCWs). These challenges have become especially evident in times of crisis such as the COVID-19 pandemic.

In contribution to the 2021 UN Day of General Discussion, the submission that follows aims to highlight key issues and areas of concern that children in Child and Youth Care Centres (CYCCs) face, with recommendations thereof. This submission has been drafted by Save the Children following consultative sessions with 15 children, as well as, 3 Child and Youth Care Workers (CYCWs) at Kids Haven, a CYCC based in Benoni, Ekurhuleni Metropolitan Municipality, Gauteng Province, South Africa.

1. **South African legislative framework regarding alternative care**

In brief, the following summarizes the current legislative framework that exist to stipulate the rights that children in South Africa possess and what is required of the State to support children that are to be placed in alternative care:

* Section 28(1) of the Constitution of the Republic of South Africa states that “every child has the right…(b) to family care or parental care or to appropriate alternative care when removed from the family environment [and] (c) to basic nutrition, shelter, basic health care services and social services.”[[1]](#footnote-1)
* Chapter 9 of the Children’s Act 38 of 2005, defines the circumstances that would regard a child as being in need of care and protection. Furthermore, the Chapter stipulates the process of removing a child that is proven to be in need of care and protection and the placement of said child into temporary safe care.
* Chapter 12 of the Children’s Act 38 of 2005, sets out foster care as a form of alternative care that children who are in need of care and protection, as determined by the Act, may be placed in by the children’s courts.
* Chapter 15 of the Children’s Act 38 of 2005, details the adoption process for children who are adoptable which included children who are in need of a permanent alternative placement.

In each case of legislation, it is noted that the best interests of the child must be the determining factor in any decision regarding the child. This is in clear alignment with both the Convention on the Rights of the Child (CRC) as well as the African Charter on the Rights and Welfare of the Child (ACRWC). From this brief background we can determine that the care pathways are in place and it is the responsibility of the State to make such provisions available to children in need of care a protection.

1. **Challenges raised by children in CYCCs and recommendations**

The table below details the challenges children in Kids Haven face. These areas of concern have been raised by the children and CYCWs workers of Kids Haven. Recommendations have also been provided that will work towards alleviating the noted concerns and to improve the alternative care system for children:

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| **Challenges children face in alternative care** | **Recommendations** |
| The right to privacy is violated in CYCCs. The children have noted that cameras are installed in their sleeping areas, which subjects them to no privacy as they carry out private, daily tasks such as undressing. | This challenge indicates a lack of understanding of children’s rights and highlights the need of training on children rights and alternative ways of monitoring children.  |
| The readiness of individuals selected to be foster parents was flagged by the children. Some foster parents are not equipped to take on the foster child leading to a breakdown in the caregiver-child relationship and the child not being adequately cared for. The children have reported being returned to the alternative care system due to this. The children have also indicated that the process of transitioning a child from a CYCC to a foster home is rushed and therefore, inadequate. | Increased oversight on the appointment of foster parents is necessary. Clear guidelines and support for foster parenting is needed, especially for parents who have never had children before. The age of foster parents needs to be considered as younger adults have been seen to be ill equipped to care for foster children.*“(I) am 17 and my foster mom was 22 that is equally my peer I had no choice but to leave because I feel I need a family too”* |
| Family strengthening and reunification efforts are lacking. Efforts to keep children in contact with their families – via family visits - and efforts to equip parents to care for their children with the aim of reunification are minimal.*“I have been in the shelter for three years without vising home or my family visiting me I tried calling them but they making promises they can’t keep”* | Family strengthening programmes must be prioritised. Parents must be supported to care for their children for over time reunification can take place.*“I think when am at the shelter we should have care workers and social workers who develop the programme for my family and update them on my successes, that might motivate them”* |
| Allocation of resources to alternative care centres are insufficient. CYCCs are dependent on the social grants from government and donations. Such funding streams are insufficient to pay workers, leaving them underpaid. Furthermore, as is the case in Kids Haven, one CYCW is responsible for caring for more than 16 children. CYCWs are therefore overworked in addition to being underpaid, and unable to adequately care for all the children they are responsible for. Children then feel neglected and so this negatively impacts their wellbeing as well. | Social grant assistance to CYCCs need to be increased as the need for such services increase by the day. CYCC must be capacitated to deal with the number of children to care for by increasing the number of CYCW staff available. |
| The COVID-19 pandemic greatly affected the children in the following ways:* The children reported having no access to education as there are no internet services or computers available within the CYCC and children are not allowed to have their cell phones with them. This has left the children worried and concern for their futures as they have not been able to access educational resources to further their studies.
 | The Department Basic of Education needs to provide virtual learning equipment for children in CYCC’s as they do for all schools in the country including internet connectivity. The CYCC should relax regulations that relate to children having access to cell phones for educational purposes.  |

1. Breen, N. (2015). Policy Brief: Foster Care in South Africa: Where To From Here? [online] Jo’burg Child Welfare. Available at: <http://www.jhbchildwelfare.org.za/>. [↑](#footnote-ref-1)