

Draft Submission to the Department of Social Development on the Children's Bill

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NB. The referencing in this submission is based on the June 2003 Departmental Version and may differ in some instances from the August, 12th Version.

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Preamble

It needs to be said at the outset that the Children's Bill marks a big step in the right direction for Street Children (however see proviso at the end of this submission). In previous legislation there were very few provisions made for these children.

Shelters were barely acknowledged and certainly there was no mention of the plethora of other services which have developed over time. Discrepancies in funding between Children's Homes and Shelters (even when Shelters were eventually funded) were enormous. Police cells and prisons were routinely used as "places of safety" for children arrested for all manner of perceived or real infringements of the Law. The most readily invoked were the loitering or "slenter" Laws.

There were few regulations governing services for Street Children and registration was not mandatory. There was no screening of service providers and this led to many "fly by nights" setting up projects which fundraised quantities of money but failed to provide any proper services to these children.

Street Children are considered to be amongst the most damaged, deprived and marginalized of all South Africa's Children. Although up to now services have more or less kept up with the number of children on the street (reliable statistics are impossible to obtain because of the peripatetic nature of these children). However, the HIV/AIDS pandemic will certainly lead to increased numbers of children finding themselves on the street.

In South Africa a multi-faceted model of intervention with Street Children is emerging; a cost effective indigenous model which acknowledges the many stages of becoming Street Children, and the slow and painful process of reconstructing shattered lives.

The work of the IMC (Interministerial Committee on Children and Youth at Risk) paved the way for much which is positive for Street Children in the new Children's Bill. This being said, there are however, some aspects of the new Bill which are causing a great deal of consternation in the sector.

Definition

Interpretation, objects, application and implementation of this act

“**street child**” means a child who –

- (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 for survival; or
- (b) Because of inadequate care, begs or works on the streets for survival but returns home at night;”

It is assumed that age provision is left undefined for a particular reason.
The definition is acceptable.

Definitional provision: Shelters and Drop-in centres

233. (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) A drop-in center 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.”

Should read ... “to street children” not ... “to children, **including** street children”.

It is not appropriate to admit other children to street children projects. Shelters, Drop-in centres, etc. are especially designed and run to meet the needs of Street Children. Other children would normally not benefit from their services. Emergency homes and homes for runaways are a more viable alternative for them.

Shelters and Drop-in Centres

One of the shortcomings of the Bill is that it fails to recognize that there is a range of services besides shelters and drop-in centres which are currently being offered to Street Children by a number of different organizations in all provinces.

These would include **prevention services** for example income generating projects for families, activity centers and after-school clubs, **outreach** to children at risk of becoming Street Children, school liaison, **street work**, drop-in centers, shelters, children's homes, **alternative education** programmes, skills training, and family mediation and reunification initiatives.

Minimum norms and standards for shelters and drop-in centres

- 239.** (1) *“Premises used as shelter or drop-in center 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 center;*
 - (f) *a hygienic area for the preparation of food for the children.*
- (2) *Premises used as shelter must, in addition, have –*
- (a) *Safe sleeping facilities; and*
 - (b) *Staff available at the shelter around the clock.”*

Whilst the physical requirements for these facilities are very basic they are in line with the unelaborated model of services to Street Children.

However they make no mention of programmes for children at the facility. Shelters need to have entrance and exit points for children or else they are simply warehouses. It is not enough to keep children in clean, well-ventilated spaces. There has to be provision for programmes which provide for education, recreation, social work, services and permanency planning. In fact all the services which are offered in any other child and youth care centre.

Shelters and drop-in centers to be registered

- 234.** *“Any person or organization may establish or operate a shelter or drop-in centre provided that the shelter or drop-in center –*
- (a) *is registered with the provincial head of social development in which that shelter or drop-in centre is situated;*
 - (b) *is managed and maintained in accordance with any conditions subject to which the shelter or drop-in centre is registered; and*

(c) *complies with –*

- i. *the minimum norms and standards for shelters and drop-in centres contemplated in section 239; and*
- ii. *the structural, safety, health and other requirements of the municipality.*

The section on registration is comprehensive (this is just the introduction) and is welcomed by the sector with the proviso that proper child care programmes are in place at shelters, drop-in centres and other services to Street Children. Examples of these are listed under section 239.

Reunification of Street Children with their families

- 238.** *“A social worker facilitating the reunification of a street child with the child’s family must –*
- (a) *Investigate the causes why the child left the family home;*
 - (b) *address those causes and take precautionary action to prevent a recurrence;*
and
 - (c) *provide counselling to both the child and the family before and after reunification.”*

Returning children to their families of origin is difficult intensive work. Family reunification requires not only material support, often food, school uniforms and fees (free education for poor children continues to be a myth) but a great deal of counselling and support to rebuild relationships which have, in many cases, irrevocably broken down. Children returned to dysfunctional families without proper support will leave again. There is no evidence that children commit suicide under these circumstances (as suggested in a review of the Bill), they simply leave, go back to the streets. They vote with their feet.

Education for Street Children

117. (1) (e) (x) *“integrating street children into the education system, or into a system that includes both education and other services to meet the needs of street children;”*

This reference is only one of many in the Bill to the Education Department taking responsibility for providing education to Street Children and other out of school children.

The Street Children sector welcomes the provision that the Department of Education takes financial responsibility for providing non-formal educational alternatives for Street Children and other out of school children.

However there are a number of NGOs who have for many years provided non-formal education and skills training programmes for Street Children. In many cases these serve as a bridging stage to mainstream school. The most helpful approach would be for the Education Department to collaborate with existing initiatives and provide these with recognition and financial support, rather than themselves, reinvent the wheel.

Health Care

117. (1) (e) (xiv) *“providing impoverished children free access to primary and basic health care services, including at shelters and drop-in centers and through the use of mobile clinics;”*

In several sections of the Bill reference is made to mobile clinics. These have been unsuccessful in the past. Children are reluctant to present themselves at “official” sites for fear they will be apprehended. They are much more likely to take their health care problems to street workers and staff at shelters and drop-in centers, who use local hospital outpatients, day hospitals and clinics. These service providers are generally satisfactory.

Disclosure of Information in Part C of Register

139. (1) *“Before a person is allowed to work –
(a) With children at a child and youth care center, a partial care facility, a shelter or drop-in center or a school, the person managing or operating the center, facility, shelter or school must establish whether or not that person’s name appears in Part C of the National Child Protection Register.”*

The section on the National Child Protection Register is comprehensive. The above is simply a reference to this provision.

The sector would support this legislation.

Role of municipalities

243. (1) *“A municipality must –*
(a) *Maintain a record of all available shelters and drop-in centers in area; and*
(b) *Conduct regular inspections of shelters and drop-in centers in its area in collaboration with the provincial department of social development to enforce the provisions of this Act.*
(2) *A municipality’s integrated development plan must include strategies for the provision of shelters and drop-in centers in its area, which must include measures –*
(a) *Facilitating the establishment of sufficient shelters and drop-in centers most urgently required; and*
(b) *prioritizing those types of shelters and drop-in centers most urgently required;*
and
(c) *facilitating the identification and provision of suitable premises.”*

Assignment of functions to municipality

244. (1) *The provincial head of social development may assign the performance of the some of all of the functions contemplated in sections 234, 236, 237, 238, 240 and 241 to the most senior official responsible for social welfare services in a municipality if the provincial of social development is satisfied that municipality has the capacity to perform the functions concerned.”*

There is huge concern about giving Local Government responsibility for researching, planning, implementing and monitoring Street Children projects.

Municipalities have a vested interest in “getting rid” of Street Children of “clearing the streets”. Services would tend to serve this agenda and not necessarily be in the best interests of the children. (Central Improvement District (CID) initiatives in CBDs in the Western Cape have attested to this.) Street Children gather in the CBD and there need to be services to deal with them there. Local Government and Business often share the view that Street Children need to be “punished”, “controlled” and “removed”.

The Department of Social Development has historically taken responsibility for Street Children Projects, and within the Departmental ethos and values, as well as their emphasis on Social Work services, Street Children programmes should remain within their jurisdiction.

245. Death of a child in a Shelter

Expanded provision and more prompt action is laid down in the Bill.

Social Security Grants

The Social Security Chapter has been deleted in the last Department of Social Development (DSD) Version of the Bill. This is apparently being transferred to the Social Assistance Bill.

However it must be noted that the statement in the *SALC Review Report Project 110, December 2002* that Street Children over the age of 12 years should be entitled to receive and administer the proposed universal grant without adult assistance, is fraught with problems, not least of which being the number of children who would flood onto the streets if this was the case. Monitoring the grants would be unworkable and crime on the street would escalate if children were in possession of relatively large amounts of money.

The following is an extract from a paper given by Annette Cockburn at a Workshop in Cape Town, August 2003

“Children without Adult Caregivers and Access to Social Assistance”

The SACC Review Report Project 110 December 2002, states
“Street Children over the age of 12 should be entitled to receive and administer the proposed universal grant without adult assistance.”

The Service Providers consulted were vehemently opposed to such a proposal for the following reasons.

- Historically the public have been exhorted not to give money to Street Children. Giving a child money effectively keeps him on the street. Children refer themselves to shelters and other services when they find themselves without support on the street.

Providing Street Children with direct access to a cash grant would generate a host of other problems apart from assisting the child to stay on the street.

- More and more children would arrive on the streets of a city in order to access the Grant.
- 3 out of 4 children presently on the street do not live there. They go back somewhere at night. This would change.
- Reintegrating children with their families of origin is difficult, intensive work. If a child was in a manner of speaking being “paid” to stay on the street, the small incentives to return home would fall away.
- Crime on the street would escalate, theft and assault, already endemic, would increase if there were more material possessions, drugs and money.
- Drug abuse would increase if Street Children had the means to buy drugs more sophisticated and expensive than paint thinners and glue.
- Administration of such a grant would be well nigh impossible. Repeated attempts to establish a database of Street Children in this country have been largely unsuccessful. Determination of age, lack of ID documents and the numerous aliases adopted by Street Children, make them pretty well impossible to track.
- That the Department of Social Development has the infrastructure and the capacity to manage Social Assistance Grants to Street Children is highly unlikely.

Issues such as support to street children services and to families whose children have left home to live on the street, are outside the scope of this discussion, but clearly these are critical issues as is the necessity for more financial resources to be allocated to primary prevention.

So, even if it is unworkable for Street Children to directly access social security grants, there needs to be a lot more indirect financial support to this group of children.

Obviously it is not in the best interests of the child to live on the street and paying grants directly to Street Children would without doubt keep them there.

PLEASE NOTE

THE FOREGOING DISCUSSION IS BASED ON THE JUNE 2003 BILL WHICH COMPARED TO THE SALC VERSION COMPROMISED ON SEVERAL CRITICAL SECTIONS, HOWEVER IN THE LATEST VERSION (AUGUST 2003) IT IS ESTIMATED THAT 75% OF ANTICIPATED GAINS HAVE BEEN LOST.

THE SECTION DEALING WITH PROVISION FOR THE PROTECTION OF CHILDREN IN THE DEPARTMENT OF SOCIAL DEVELOPMENT'S STRATEGIC PLAN HAS BEEN SLASHED BEYOND RECOGNITION. THIS SECTION WAS ALREADY FAR WEAKER THAN THAT IN THE ORIGINAL SALC DRAFT, WHICH PROVIDED FOR A LEGISLATED INTER-SECTORAL NATIONAL POLICY FRAMEWORK THAT WOULD HAVE BEEN BINDING ON ALL DEPARTMENTS WITH DIRECT RESPONSIBILITIES FOR CHILDREN. THE INTERMEDIATE (JUNE 2003) DRAFT AT LEAST SPECIFIED CATEGORIES OF CHILDREN IN SPECIAL NEED WHO WERE TO BE PROVIDED FOR IN THE DEPARTMENTAL STRATEGIC PLAN. BUT THERE IS NO LONGER ANY MENTION OF SPECIFIC STRATEGIES TO COMBAT MALNOURISHMENT IN CHILDREN, TO PROVIDE IN-HOME SUPPORT FOR ORPHANED, ABANDONED OR IMPOVERISHED CHILDREN OR THOSE IN CHILD-HEADED HOUSEHOLDS, TO PREVENT CHILDREN COMING ONTO THE STREET AND TO ADDRESS THE NEEDS OF THOSE ALREADY LIVING OR WORKING THERE, TO EMPOWER CHILDREN WITH DISABILITIES OR CHRONIC ILLNESSES AND TO ADDRESS COMMERCIAL SEXUAL EXPLOITATION AND CHILD LABOUR IN GENERAL - TO NAME BUT A FEW OF THE ISSUES IN QUESTION. WITH REGARD TO CHILD LABOUR, AN EARLIER SECTION REQUIRING THE PROVINCIAL MECS FOR LABOUR AND SOCIAL DEVELOPMENT TO CONDUCT ANNUAL SURVEYS OF THE NUMBERS OF CHILDREN CAUGHT UP IN EXPLOITATIVE LABOUR PRACTICES AND TO PLAN AND ALLOCATE RESOURCES ACCORDINGLY, HAS BEEN DROPPED.

(Cos Desmond: Personal Communication)