

**Submission on the Children's Bill [B70 of 2003]**

To the  
Portfolio Committee on Social Development

**The National Alliance for Street Children**

**27 July 2004**

**This submission is endorsed by:**

- Gauteng Alliance for Street Children
- Western Cape Street Children's Forum
- Kwa Zulu Natal Alliance for Street Children
- East Rand Alliance for Street Children in Gauteng
- Tshwane Alliance for Street Children
- Johannesburg Alliance for Street Children
- Sedibeng Alliance for Street Children
- Member Organisations in the Regional Alliances for Street Children
- Ons Plek – Cape town
- National Health and Welfare Council of Full Gospel Church of God in S.A.
- RAPCAN
- SASPCAN
- Molo Songololo
- Children's Institute

**Introduction**

The National Alliance for Street Children (NASC) is a National umbrella organisation of Provincial Alliances. The Provincial Alliances are made up of Regional Alliances where all projects working with Street Children are encouraged to belong and to participate in the protection of street children, the preservation of their rights and in improvement of delivery services to children living and working on the streets. Organisations receive training on programmes, effective management of projects and during the past two years special emphasis has been given to prevention work and early intervention.

Annually a National Conference is hosted by a Province and on the 16<sup>th</sup> September 2004 a Census is being conducted to determine the number

of children on the streets and in projects and programmes – we will look at children playing on the street, working on the street, living on the street and those affected and infected by HIV/AIDS and plans are in place to reach rural areas as well as urban areas. The Management Committee of National Alliance for Street Children consists of two representatives from each Province and at present we have representation from eight provinces and are endeavouring to add two representatives from Limpopo. Our annual conference also attracts representatives from neighbouring countries.

The Children's Bill marks a big step in the right direction for Street Children. It also presents us with an opportunity to do more for Street Children. We therefore welcome the opportunity to make a submission to Parliament. In our submission we make suggestions for improvements that if accepted, would reduce the numbers of children who leave home to live on the street. Our suggested improvements would also help ensure that children who are living on the street are provided with adequate shelter, care, protection, and social development services.

In the old Child Care Act shelters were barely acknowledged, and there was no mention of the plethora of other services which have developed over time. Street Children shelters were seldom able to access funding from the state. When funding was made available for shelters in the 1980s there were large discrepancies between the subsidies provided to Children's Homes versus the subsidies provided to shelters. Police cells and prisons were routinely used as "places of safety" for Street Children arrested for all manner of perceived or real infringements of the Law. 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 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), the HIV/AIDS pandemic will certainly lead to increased numbers of children finding themselves on the street. For this reason NASC is conducting a Census during September 2004 in an endeavour to remedy this lack of information.

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 many areas, which could still be improved.

### **Comment on the s.75 Bill [B70 of 2003]**

#### **Section 1 - Interpretation**

**“primary care-giver”**, in relation to a child, is defined to mean:

- “(a) a person who has the parental responsibility or right in caring for the child and who exercises that responsibility and right;
- (b) a person who cares for a child with the implied or express consent of a person referred to in paragraph (a);
- (c) a foster parent;
- (d) a child and youth care worker at a child and youth care centre where a child has been placed; or
- (e) a person who cares for a child whilst the child is in temporary safe care, but excludes a person who receives remuneration other than a social security grant to care for the child;”

Section 129 specifies that the parent or primary care giver must consent to medical treatment or a surgical operation for a child under 12 years of age. The definition of “primary care-giver” does not include a child and youth care worker at a shelter. This leaves a situation where there is no clarity as to who should be required to give consent for street children under 12 years of age.

We recommend that the Principal of the Shelter should be allowed to consent the child receiving medical treatment or a surgical operation. If a street child under 12 arrives at a clinic or hospital on their own and requests medical treatment or an operation we recommend that the medical practitioner or senior nurse in charge of the hospital or clinic be authorised to provide such consent. This would either necessitate a change to the definition of primary care giver to include the principal of the shelter or an amendment to section 129.

The same problem arises in relation to consent for HIV testing of a street child under the age of 12 years. Section 130 allows the person in charge

of the hospital or clinic to consent if the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child. We recommend that the Principal of the Shelter should be allowed to consent to the child being tested. If a street child under 12 arrives at a clinic or hospital on their own and requests testing, we recommend that the medical practitioner or senior nurse in charge of the hospital or clinic be authorised to provide such consent. This would either necessitate a change to the definition of primary care giver to include the principal of the shelter or an amendment to section 130.

## Section 2 – Objects of Act

Research and our collective experience as Street Children organisations shows that many children leave home to live and work on the street due to poverty, alcohol or drug abuse by parents, lack of space at home, lack of food at home, or abusive parents. If we take this into account, it becomes obvious that we need to concentrate more resources on poverty alleviation and early intervention services that are designed to assist families to care for their children. With this in mind, we recommend that the Objects section of the Bill should be amended in order to include an express objective to assist families to care for and protect their children.

Suggested amendment:

- 1) The objects of this Act are -
  - a. To make provision for structures, services and means for promoting the sound physical, mental, emotional and social development of children;
  - b. To assist families to care for and protect their children<sup>1</sup>**
  - c. To utilize, strengthen and develop community structures which provide care and protection for children;
  - d. To prevent, as far as possible, any ill-treatment, abuse, neglect, deprivation and exploitation of children;
  - e. To provide care, protection and for children who are suffering ill-treatment, abuse, neglect, deprivation or exploitation or who are otherwise in need of care and protection; and
  - f. Generally, to promote the well-being of children.

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<sup>1</sup> The SALC Discussion Paper refers in many places to the need to support families to look after their children so as to prevent abuse and neglect from occurring. We recommend that this should be a core object of the Bill. Chapter 9, the chapter on primary prevention and early intervention does include this provision, however, to give it prominence, we suggest that it be included in the objects clause as well.

### **Chapter 3 - Children's Rights**

We support the inclusion of a comprehensive list of rights for children in the Bill as a means to ensuring that all roleplayers are aware of their obligations towards children. We were therefore concerned to see that the Bill no longer contains a comprehensive list and simply restates the Constitutional rights in some instances.

#### *Case study illustrating the importance of the right to property being re-instated*

Organisations in the Gauteng Alliance have been dealing with child – headed households who no longer have parents or relatives. Prior to the death of their parents they were living in RDP housing which was given to the parents by the State. Subsequent to the death of their parents these children have been faced with the possibility of being evicted by members of the community, or even officials from local government structures.

By reinstating the right to have property administered in the best interests of the child, the necessary mechanisms will need to put in place to realise this right. We will therefore be providing these children with a measure of security that can prevent them from being evicted from their homes and becoming Street Children or otherwise vulnerable.

It is conceded that in including a comprehensive list of rights, the Bill may have to be delayed in order to bring all affected departments on board, and that there will be cost implications that could be outside the budgets of all the affected State Departments. However, we are bound by the Constitution and International Law to provide for the promotion and protection of children's rights and a rights chapter would be a giant step forward in our country's commitment to put children first and ensure that the protection of children becomes everybody's business.

We therefore recommend that the Bill should be amended to include a comprehensive list of rights for children and that these rights should be formulated in a way that fleshes out the scope of the protection provided by the Constitution and that clarifies each roleplayers' obligations.

We support the specific formulations of the rights set out in the submission by the Children's Institute.

With a focus on preventing children from leaving home to live or work on the street, we particularly recommend the inclusion of the following rights that would help ensure that families are better able to care for their children and that would protect children who are living without caregivers:

- Education
- Health care
- Food and nutrition
- Water and sanitation
- Shelter
- Social Security
- Social Services
- Property
- Leisure and recreation

### **Inter-sectoral implementation of the Act (The National Policy Framework) and strategies for children in especially difficult circumstances**

Chapter 2 of the SALC draft bill, provided for a legislated inter-sectoral National Policy Framework that was aimed at guiding the implementation of the Act by all government Departments. The Minister of Social Development's call that children should be considered "everyone's business" could become a reality if Chapter 2 was re-incorporated into the Bill because Chapter 2 would help to ensure that all government departments responsible for delivering services to children, were obliged to plan, budget and deliver services in a co-ordinated and integrated manner.

The SALC also envisaged that the National Policy Framework (NPF) would provide an inter-sectoral umbrella policy for the various strategies aimed at protecting the different categories of children in especially difficult circumstances. Street Children were one of the categories of children that were singled out for special protection and a dedicated strategy in chapter 16. The SALC Draft Bill specified in section 232 that the strategy must be aimed at:

- Preventing children from leaving their home environment to live and work on the streets
- Providing Street Children with access to basic nutrition, basic health care services and shelter, including drop-in centres

- Providing outreach programmes for and counselling to Street Children, rehabilitating them and reunifying them with their families
- Integrating Street Children into the education system, that includes both education and other services to meet the needs of Street Children
- Providing impoverished children free access to primary and basic health care services, including at shelters and drop-in centres and through the use of mobile clinics
- Providing impoverished children with free primary and secondary education
- Setting out the responsibilities of and participating roles for municipalities and provincial organs of state in the development and implementation of programmes and projects giving effect to those strategies; and
- Promoting the engagement of non-governmental organisations in the development and implementation of programmes and projects giving effect to those strategies

However, the Bill currently before Parliament no longer contains these two chapters.

The following examples illustrate the need for better inter-sectoral co-ordination and implementation:

#### *Education for Street Children*

The Street Children sector would welcome a provision that the Department of Social Services and the Department of Education take 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 Social Development and Education Department to collaborate with existing initiatives and provide these with recognition and financial support, rather than themselves, reinvent the wheel. This example shows again why the NPF process is needed. All role players need to get together to work out strategies and solutions.

#### *Child labour*

The Draft White Paper on a National Child Labour Action Programme for South Africa (NCLAP) as presented by the Department of Labour

stresses the need for a National Policy Framework in the Children's Bill (see pages 25,26,72 of the NCLAP).

When examining the "Action Steps" in the NCLAP with particular reference to the Department of Social Development (pages 71 – 74) it is proposed that the Department of Social Development should be the lead institution in 30 instances. However, it must also be pointed out that at least 20 other State Departments are identified as being linked to activities where the Department of Social Development is the lead institution. Without a legislated NPF, it becomes difficult, if not impossible for the Department of Social Development to co-ordinate the input of the various other Departments. Furthermore, the Department of Labour as a National Department without an effective provincial implementing arm is not in a position to roll out its NCLAP at a provincial level. They have consequently acknowledged the need for the National Policy Framework.

If there is no National Policy Framework providing a national umbrella within which sub-strategies such as the Child Labour strategy can be located, it will be impossible to effectively implement the NCLAP.

*Establishment of shelters by Departments other than the provincial department of social development*

SAPS in Gauteng have recently initiated a shelter for Street Children in Soweto as a crime prevention initiative. Community Policing Forums in some Gauteng Metropolitan areas, also work with the local police stations to remove Street Children from the streets as another exercise in crime prevention. In recent months it has been noted that at the behest of the National Minister of Social Development, and the executive mayor of Tshwane, the National Department of Social Development started a shelter for girls.

In these two instances there was no consultation with the Provincial Department of Social Development, nor any of the structures of the Gauteng Alliance for Street Children. This has resulted in both projects incurring costs, and no sustainable funding being made available.

*Child headed households*

In the light of the current HIV / AIDS pandemic, it is crucial that there be a comprehensive national strategy to provide for the multiple needs of child – headed households. The responsibility to provide for these multiple needs lies with various government departments at various level



of government. NGOs and FBOs also play an important role in service provision to child headed households. In order to prevent the ineffective re-cycling of government funds from one department to another (for example, social security grants being used to pay for water, electricity and school fees or NGO's using their social development subsidies to pay children's water bills or school fees), it is essential that the affected Departments sit down together and plan how to best provide services to this vulnerable group of children and also how to save everyone time and money.

The examples above demonstrate why we need an intersectoral mechanism to ensure co-ordinated planning, consultation and integrated implementation. A National Policy Framework is of vital importance and must be placed back into the Children's Bill. Failure to restore all clauses relating to a National Policy Framework will encourage State Departments to work independently of each other, as well as encourage unnecessary duplication and replication of services. By implication, human and financial resources are being wasted. With co-ordinated planning, such costs can and will be cut down, while at the same time ensuring effective services to all children throughout the country.

It goes without saying that if there is a National Policy Framework, then there should be a Provincial Policy Framework, and that this can be devolved to a Local Government level. The viability of a National Policy Framework that can be devolved down to a local level is confirmed by the fact that the N.P.A. which is in the Office of the President has been devolved to a Provincial level, and in some instances, it is now being implemented at a local level. If these structures and mechanisms are legislated for, include all relevant state and civil society roleplayers and are properly resourced – they can be very effective.

Provinces need to be brought to a position where they are able to budget for the care of children. Such budgeting cannot be considered as being the sole responsibility of the Department of Social Development. It is only as we implement a National Policy Framework that we can expect State Departments to set aside a portion of their budget to effectively combat the abuse of children.

The portfolio committee, and the Department of Social Development are urged to ensure that the National Policy Framework should be a line responsibility of the Department of Social Development.

Recommendation:

We recommend that chapter 2 and 16 of the SALC Draft Bill be re-incorporated into the Children's Bill.

### **Section 123 - Consequences of entry of name in Part B of Register**

The section provides as follows:

“123. (1) No person whose name appears in Part B of the National Child Protection Register may –  
(a) manage or operate, or participate or assist in managing or operating, a child and youth care centre, a partial care facility, a shelter or drop-in centre, a collective foster care scheme, a school, a club or association providing services to children;  
(b) work with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre, a school, a club or association providing services to children, or in implementing a collective foster care scheme, either as an employee, volunteer or in any other capacity;  
(2) No person managing or operating a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity.”

And s.126 places an obligation on shelter managers to screen all prospective employees to ensure that their names do not appear on the register before employing them.

We support these two sections as important provisions aimed at preventing abuse of children by people working in Street Children projects. However, the office of the Registrar would need to be adequately resourced in order to ensure that responses to request for screenings were not delayed unreasonably.

### **Chapter 22 – Administration of the Act**

**Section 305** makes provision for the outsourcing of services. Whilst the Alliance welcomes this provision there is a need to stress that at this present moment in time the State does not have a realistic uniform financing model. In most instances services provided by the sector are under funded.

At present there is a funding model in existence which points out that the State is currently funding less than 50% of the cost incurred at a children's home. This type of approach must be rejected and the State should be prepared to cover 100% of all costs incurred in children's home programs that relate to meeting the rights of children who otherwise would be regarded as wards of the State.

### **Comments on the s.76 Bill (Certified version September 2003)**

#### **Section 1 - Interpretation**

**"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;

We support this definition and suggest that it be inserted into the section 75 Bill because there are references in the s.75 Bill to Street Children, yet no definition of Street Children.

**"temporary safe care"**, in relation to a child, means care of a child in a child and youth care centre, shelter or private home or any other place of a kind that may be prescribed by regulation, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes a prison or police cell;

We support this definition, but would suggest that shelters only be considered as appropriate temporary placement options for street children and not for other categories of children in need of care and protection. We are particularly pleased to see that the Bill expressly prohibits the use of prison and police cells as places of temporary safe care.

#### **Chapter 8 – Part 3: Protective measures relating to health of children**

**Sections 129 – 134** deal with consent to medical treatment, testing and contraceptives. Parental or primary care giver consent is required for children under 12 years of age in certain circumstances, e.g. for medical

treatment or HIV testing. The definition of “primary care giver” in section 1 of the Act does not include a child and youth care worker at a shelter and it is not clear as to whether section 32 includes child and youth care workers at Street Child Shelters. With regards to HIV testing, section 130 provides that the head of the hospital can provide the necessary consent if the child does not have a parent or care-giver.

Clarity on who can provide consent for medical treatment and testing of Street Children under the age of 12 years needs to be provided.

We recommend that the principal at Street Children shelters be expressly given permission to give such consent if the child is in their care. For children arriving at clinics and hospitals on their own, we suggest that the doctor or nurse be allowed to give such consent.

## **Chapter 9 – Prevention and Early Intervention Services**

We strongly support this chapter and the intentions behind it. Many children resort to living on the street because of poverty at home or because there are no social services available to provide the family with the intervention that they need to adequately care for, their children, e.g. social grants, alcohol abuse programmes and domestic violence counselling.

However, we are concerned that the chapter does not make the provision of early intervention and primary prevention services compulsory for provincial departments. **Section 145 (1)** of the August 2003 version of the Bill provided that the “MEC **may**, from funds appropriated by the relevant provincial legislature for this purpose, provide for (a) facilities and services for prevention and early intervention services to families, parents, care-givers and children; and (b) the subsidisation of facilities and services by non-governmental bodies and other organs of state for prevention and early intervention services to families, parents, care-givers and children.”

However, the Bill no longer contains this provision.

We recommend that the provision be re-inserted into the Bill and that the word “may” is replaced with the word “**must**” in order to ensure that provincial departments budget for and provide prevention services.

We are also concerned that the strategy mentioned in **section 146** is restricted to a national department of social development strategy. Once again it must be pointed out that a National Strategy that only relates to the Department of Social Development will continue to encourage the fragmentation of services and functions of all State departments who are responsible for providing basic services and primary prevention services to families and care givers who are unemployed and in the grip of poverty. It is a futile exercise for the Department of Social Development to develop strategies that would also affect the departments of Health, Labour and Education. By legislating the inclusion of the National Policy Framework we are ensuring that all relevant State departments are compelled to work together and eradicate the duplication of services and funding.

## **Chapter 10 – Child in need of care and protection**

**Section 150** defines what categories of children qualify as children in need of care and protection. Subsection (1) (c) provides that a child who “lives or works on the streets or begs for a living” is a child in need of care and protection. Section 105 provides that certain categories of people, including staff at a Street Children facility or shelter, must report to a child protection organisation, police officer or clerk of the children’s court if they conclude that a child has been abused or deliberately neglected. This report must be followed up by a social worker investigation and taken to court for a children’s court inquiry.

Does section 150 and 105 read together prescribe that all or certain categories of Street Children must enter the formal child protection system or only those that have been abused or deliberately neglected? Formal child protection systems are not accessible to Street children at the present time. This issue needs to be clarified.

If Street Children are considered a category of children that do not fit into the formal child protection system mechanism and due to their nature reside outside the system – this could be seen to perpetuate the attitude that Street Children are different to other categories of children in need of care and protection and as a result they are not afforded the same level of protection and services as these other categories. The formal child protection system has failed them so far - do we put more emphasis on primary prevention and early intervention services or do we call for a protection system that is more flexible and less court based? Clarity is needed here.

Provision is made in **clause 158** for the placement of children in child and youth care centres. We recommend that this be broadened to include shelters who have the capacity to provide permanent placements. It is felt that shelters could suit the needs of Street Children better than child and youth centres seeing that shelters are not perceived as being another form of victimising children for being on the streets as a result of matters beyond their control.

## **Chapter 15 - Shelters and Drop-in Centres**

### **Section 213 – Definitional provision**

“(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 centre 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.”

We support this definition

### **Section 214 - Shelters and Drop-in Centres**

This section provides that the “MEC **may**, from funds appropriated by the relevant provincial legislature for this purpose, provide for - (a) facilities and services for the provision of shelters and drop-in centres; and (b) the subsidisation of facilities and services by non-governmental bodies and other organs of state for the provision of shelters, drop-in centres.”

In terms of the Constitution and International Law, the state has an obligation to provide children with shelter [section 28 (1) (c)], and it has an obligation to provide for children’s basic needs such as food, clothing, education and health care if the child’s parents are not providing for the child because they are not willing to do so or because they are unable to do so because they are poor [See the Constitutional Court decisions of *Grootboom* and *Treatment Action Campaign*].

We therefore recommend that the word “may” be replaced with “**must**” to bring the Act in line with the Constitution and International Law.

Section 214 is worded in such a way 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 include **prevention services** for example income generating projects for families, activity centres and after-school clubs; **outreach** to children at risk of becoming Street Children; **school liaison, street work, drop-in centres, shelters, children's homes, alternative education programmes, skills training, and family mediation and reunification initiatives.**

We recommend that section 214 be amended to recognize the existence of such programmes and provide for their subsidisation:

214. (1) The MEC **must** [may], from funds appropriated by the relevant provincial legislature for this purpose, provide for -

- (a) facilities and services for the provision of shelters and drop-in centres **and programmes designed to provide services to Street Children or children at risk of becoming Street Children;** and
- (b) the subsidisation of facilities and services by non-governmental bodies and other organs of state for the provision of shelters and drop-in centres **or programmes designed to provide services to Street Children or children at risk of becoming Street Children**

### **Section 215 - Shelters and drop-in centres to be registered**

**“215** Any person or organization may establish or operate a shelter or drop-in centre provided that the shelter or drop-in centre –

- (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 **220**; and
  - ii. the structural, safety, health and other requirements of the municipality.”

The sections on registration is comprehensive (see sections **215, 216, 217, 218, 219, 222** and **223** for all matters relating to the registration). We welcome these sections with three provisos:

- (1) proper child care programmes must be in place at shelters, drop-in centres and other services to Street Children. Examples of these are listed under our comments on section **220**
- (2) **Section 223** should be amended so that the Court to which a shelter can appeal if registration is refused is changed from the High Court to the Magistrate's Court in order to ensure access to administrative justice for organisations that tend not to have the resources necessary to conduct litigation at the level of the High Court.
- (3) Section **218 (1) (c) (ii)** makes provision for the payment of a registration fee by the shelter operator. The NGOs are essentially providing a service that government is responsible for providing, and it does not seem fair that they be required to pay a fee to provide the service. In fact, one could argue that government should pay the shelter a fee to register. We call for the removal of this provision from the Bill.

### **Section 220 - Minimum norms and standards for shelters and drop-in centres**

- “220 (1)** “Premises used as shelter or drop-in centre 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 centre; and
  - (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 current unelaborated model of services to Street Children.



However there is no mention made 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 needs 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.

We recommend the insertion on sub-sections (3) and (4) specifying that shelters must provide programmes and these programmes must include certain elements:

**(3) A shelter must provide, in accordance with the prescribed standards, programmes for the children in its care. These programmes must include:**

- (a) a development and treatment plan.**
- (b) a family reunification or other appropriate placement programme**
- (c) access to education**
- (d) access to health services**
- (e) access to social development services**
- (f) any other prescribed programme or service.**

**(4) A shelter operator must provide an outreach programme for Street Children not within the shelter operator's care but who are in geographical proximity of the shelter.**

### **Section 224 – Record and inspection of and provision for shelters and drop-in centres**

We welcome the fact that s.224 (the obligation to record, the power to inspect shelters, and the obligation to draft strategies aimed at ensuring there are sufficient centres where needed) remains a provincial function and cannot be delegated to local government. There is huge concern about giving Local Government responsibility for researching, planning, implementing and monitoring Street Children projects. Municipalities tend to have a vested interest in “getting rid” of Street Children of “clearing the streets”. Services 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, “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.

### **Section 225 – Assignment of functions to municipality**

This section allows the provincial head of department to assign his or her functions under sections 215, 217, 218, 219, 221 and 222 to the most senior official responsible for social welfare services in the municipality. These sections all relate to the registration process and will vest the decision as to whether a shelter can be registered or not in the local municipality. While allowing these functions to be delegated may ensure easier access for service providers to the registration process, concern has been expressed that some local governments tend not to want to register shelters within central business districts, which is where Street Children tend to congregate.

We recommend that the registration function should remain with the provincial department while the local authority should be required to provide buildings and health certificates.

### **Chapter 16 of the SALC Draft Bill – Children in Especially Difficult Circumstances**

Please see our recommendation above with regards to the re-insertion of the National Policy Framework and the Chapter on Children in Especially Difficult Circumstances (Chapter 16). We believe that the NPF and Strategies for children in especially difficult circumstances are section 75 issues as they relate to national government’s responsibility to co-ordinate policy development, set national norms and standards and ensure uniformity across the provinces – hence we have commented on section 232 of chapter 16 in the s.75 section of our submission.

Besides section 232 which provides for a range of strategies designed to provide better services to Street Children, Chapter 16 of the SALC Draft Bill also included other sections relevant to Street Children

**Section 235** provides for municipal monitoring and support of children in especially difficult circumstances.

We are not in favour of monitoring by municipality for street children

**Section 238** provides for social workers to do services aimed at 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 and 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 tend rather to leave and go back to the streets.

The section on reunification needs to be re-inserted as a matter of urgency. Children will continue to come on to the streets unless their basic needs are met at home and proper services needs to be in place in order to effect this.

### **Section 226 - Death of children in shelters or drop-in centres**

This section ensures that deaths are promptly reported to the police and the Director-General and the police must investigate the death in accordance with the Inquest Act.

We support this section.

## Chapter 23 - Funding, Grants and Subsidies

The Social Security Chapter is no longer included in the Bill. The rationale for its deletion was that the necessary reform would be conducted through amendments to the Social Assistance Act. However, besides the extension of the Child Support Grant to age 14, the recently passed Social Assistance Act does not contain the necessary reform that was recommended by the Committee of Inquiry and the SALC. As a result, many categories of children remain unable to access social assistance and no clear policy decision has been made as to how these gaps will be rectified. Poverty within families is a major contributory factor to children leaving home to live on the streets. It is essential that a comprehensive social security scheme be incorporated in the Children's Bill to support families living in poverty and thereby to reduce the need for children to leave home for the streets. We therefore endorse the submission by the Alliance for Children's Entitlement to Social Security (ACCESS) with regards to the call for a comprehensive social security scheme to be included in the Children's Bill.

While it must be noted that certain children without adult caregivers, such as child-headed households, may need to be given access to grants in their own name, the Street Children sector does not support Street Children having direct access to grants.

The recommendation 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.

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.

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- 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 clearly critical issues as is the necessity for more financial resources to be allocated to primary prevention. The move to programme subsidization instead of per capita funding is welcomed by the sector although the transition has been a very slow one. Programme funding will enable a range of services to Street Children to be implemented and funded and the old system of subsidizing “heads on beds” will no longer reinforce the provision of shelters as a first line response to Street Children. 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 through the subsidisation of NGOs and FBOs providing Street Children shelters and programmes.

## Conclusion

Thank-you for the opportunity to present our submission to your committee and we wish you well in the deliberations that lie ahead. May you make decisions that are in the best interests of children.

Please call on us if you need any additional information in order to make your decisions.

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