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SUBMISSION³⁵
Number 2
ON THE
CHILDREN'S BILL

From the **Children's Institute**, University of Cape Town
To the Portfolio Committee on Social Development
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Introduction

The Children's Institute's main submission focusses on the Children's Rights Chapter of the Bill. This is a supplementary submission on the following aspects of the Bill:

- Chapter 1 – Objects and Implementation
- Chapter 9 – Primary prevention and early intervention
- Chapter 4 – Parental rights and responsibilities
- Chapter 8 – Protection of Children

Chapter 1 – Interpretation, Objects, Application and Implementation

The SALRC 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. However, despite the SALRC's recommendations, the tabled Bill is focussed on secondary and tertiary interventions after a child has been abused or neglected. While secondary and tertiary interventions are essential and need to be improved, if the Bill does not adequately provide for greatly improved provision of primary prevention and early intervention services, the second and tertiary layers of care will continue to operate in crisis mode as more and more abused and vulnerable children need to be taken up into the formal child protection system. The White Paper on Social Welfare of 1997 was very clear that the Department's new philosophy included a shift towards a social developmental approach and away from a residual welfare approach. However, the tabled Bill does not reflect this shift in policy direction.

³⁵ Written by Solange Rosa and Paula Proudlock

Secondary and tertiary interventions are easier to legislate for, while the promotion of substantive equality through primary prevention is difficult to legislate and requires considerable resources. However, our Constitution and Policy Documents such as the White Paper on Social Welfare oblige us to promote substantive equality and the prevention of abuse and neglect.

We therefore recommend that the Children's Bill should also play its part towards our country's equity transformation agenda and unambiguously provide for the promotion of substantive equality and primary prevention.

We therefore recommend that a clear focus on primary prevention needs to come through stronger as a primary principle of the legislation. An important ingredient for such an approach would be to include the principle of primary prevention as an object of the Act. We also provide comments on how chapter 9 can be strengthened to ensure improved delivery of primary prevention and early intervention services.

Recommended amendment:

Objects

- 1) The objects of this Act are -
 - a. To make provision for structures, services and means for promoting the **survival**³⁶ and sound physical, mental, emotional and social development of children;
 - b. **To assist families to care for and protect their children**³⁷
 - c. To utilize, strengthen and develop³⁸ 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 **treatment**³⁹ 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 **all** children.

³⁶ Article 6 of the UN Convention on the Rights of the Child obliges state parties "to ensure to the maximum extent possible the survival and development of the child". South Africa has a high child death rate, particularly in rural areas where children have limited access to social development and health services. The legislation needs to take cognisance of the need to promote the equal distribution of services and structures and to provide for interventions that are designed specifically to target children in rural areas where courts, social workers and NGOs are scarce. The inclusion of the word "survival" will ensure that structures, services and resources are dedicated to addressing the basic survival needs of children living in remote rural areas.

³⁷ Chapter 9 does include this provision, however, to give it prominence, we suggest that it be included as a core principle we well.

³⁸ Will this be interpreted to place an obligation on the Department to develop existing community structures or to also enable community structures to be set up? Many community structures could be set up if the Department took a pro-active approach of encouraging such initiatives through publicizing the availability of technical and financial support and providing such support in an accessible manner.

³⁹ Article 39 of the UN Convention on the Rights of the Child obliges state parties "to take all appropriate measures to promote physical and psychological recovery and social re-integration of child victims...". The word "treatment" may not be the most appropriate word to convey this article, but our recommendation is that this intention must be included as an object of the Act. Primary prevention requires that child victims be given appropriate psychological counselling to ensure that they can recover from the abuse or neglect to prevent the cycle of abuse from continuing.

Chapter 9

We are concerned that the chapter does not make the provision of early intervention and primary prevention services compulsory for provincial departments. "Social services" currently receives under 7 % of provincial social development funding. This 7% includes the main poverty alleviation funds that are channeled to state and NGO run projects, funds for children's homes and street children shelters, funds for old age homes, funds for victim empowerment and diversion programmes for children in trouble with the law, and funds for alcohol and drug rehabilitation centres and programmes.

The yearly shrinking of this budget compared to the growing numbers of vulnerable families is of great concern to all the organisations working in the sector. Families under stress from poverty, unemployment, and HIV are cracking under this triple burden and the children in these families often bear the brunt of the strain experienced by their parents. Neglect and abuse are more likely to occur in families under stress from dire poverty, unemployment and HIV than in families that have do not have to carry the stress of worrying whether they will be able to eat and feed their children every day.

In order to improve the allocation of money towards social services and to ensure that provinces prioritise the delivery of these services when divvying up the equitable share, we recommend the following changes:

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. 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 struggling under the burden of HIV/AIDS. It is a futile exercise for the Department of Social Development to develop strategies that would also affect other government departments if these government departments aren't obliged by legislation to participate in the development of such strategies. By

legislating for an inter-departmental and inter-sectoral strategy that falls under the umbrella of the National Policy Framework we can better ensure that all relevant State departments are compelled to work together and eradicate the duplication of services and funding. We therefore recommend that s161 of the SALRC Bill should be re-inserted into the Bill.

National policy framework to include strategies for securing provision of prevention and early intervention services

161. The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing the provision of prevention and early intervention services to families, parents, care-givers and children across the country, including strategies –

- (a) to ensure an integrated approach among all spheres of government in the planning of sound and stable family structures;**
- (b) to establish an equitable distribution of resources among all spheres of government to ensure the involvement of all such spheres in the provision of prevention and early intervention services;**
- (c) to build the capacity of government in all spheres to cope with the need for prevention and early intervention services where such capacity is lacking; and**
- (d) to develop an efficient and adequate infra-structure for the provision of prevention and early intervention services.**

Chapter 4 - Parental Responsibilities and Rights (PRR)

The diversity of family forms in South Africa

Although South African law has no single definition of a 'family', various pieces of legislation present the perception that the 'nuclear family form', based on the relationship of a married man and woman and their biological or adopted children is the dominant form of family.⁴⁰ This does not reflect the reality of South African society where responsibility for children is by no means only linked to biological parenthood. The South African Law Reform Commission (SALRC) in their review of the Child Care Act discussed this issue in depth and recommended that it is important and necessary to recognise a broader concept of 'family' than the traditional nuclear

⁴⁰ See Child Care Act 74 of 1983; Children's Status Act 82 of 1987; Guardianship Act 192 of 1993.

family.⁴¹ The SALRC Discussion Paper comments that it is currently difficult for a caregiver to obtain legal recognition of their parenting role as a 'social' or 'psychological' parent, despite the wide diversity of family forms in existence.⁴²

The nature of family life is far from static and is shaped by the historical and socio-economic conditions in society, amongst other things. In South Africa, the history of colonialism, the creation of a migrant labour system, the complex system of apartheid laws, and more recently the scourge of the HIV/AIDS pandemic, has had enormous impact on family life.⁴³ It is common for children to live apart from their parents in many types of family arrangements. An analysis of the General Household Survey 2002 in fact shows that 24% of African children under the age of 18 do not live with either of their parents, 11% of coloured children, 3% of Indian children and 2% of white children – with an overall average of 21%.⁴⁴

The AIDS pandemic is likely a causal factor for larger numbers of children living without their parents. As a further consequence, children increasingly have to assume more significant roles of responsibility. Though not a new phenomenon, more children have to take care of younger siblings or other children while caregivers are sick and dying or when they have died already. These children have to perform all or some of the functions of a 'primary care-giver' in a family environment, including procuring food, preparing it, dressing and feeding younger children, earning money and performing other household chores.

It is these considerations that must be taken into account when examining the provisions in the Children's Bill related to parental responsibilities and rights (PRR) so that we may assess them in the light of the different family forms which exist in South Africa and thereby adequately provide for children in these various contexts.

Parental rights and responsibilities provisions in the Children's Bill

The new Children's Bill will modernise South African Law as it takes a child rights approach, promotes mediation rather than conflict and recognises flexible and diverse family forms. These aspects converge to provide a shift in emphasis from parental power to parental responsibilities and rights (PRR). Parental power is historically rooted in private law and was used more to reduce conflict between

⁴¹ South African Law Commission, Project 110, *Review of the Child Care Act* Discussion Paper, Chapter 8, 183 (hereafter 'SALC Discussion Paper'). It showed that, for example, in South African case law only in exceptional circumstances will the High Court be prepared to award guardianship or custody of a child to a non-parent to the exclusion of the natural parents and that it is highly unusual for the court to appoint non-parents as guardians or custodians to act as such *together* with the parents of the child in question.

⁴² *Ibid*, SALC Discussion Paper, 183. The Law Commission also goes on to discuss in some depth a comparative review of recent law reform endeavours in the area of child law in other countries. The Commission reported that the law in other African countries is beginning to reflect an increased recognition of both a broad range of family forms and the role of 'social parents', viz. persons who are not biological parents but who fulfil parental functions by taking care of children or being otherwise involved in their upbringing. See 184-187.

⁴³ S Burman (1991) 'Capitalising on African Strengths: Women, Welfare and the Law' 7 *SAJHR* 2, 215; M Ramphela (1993) *A Bed Called Home* Cape Town: David Phillip, Chapter 6, for a discussion of the impact of migrancy on families; Goldblatt & Liebenberg (n 4).

⁴⁴ D Budlender & H Meintjes, *Children's Family/Household Context in Contemporary South Africa* (2004). Paper presented at the Workshop on the provisions for Parental Rights and Responsibilities in the Children's Bill, Children's Institute, Cape Town, 24 February 2004 (unpublished and on file with the author).

parents on divorce; however this did not recognise the emerging self-determination of the child and the varied roles of 'care-givers' in the lives of children.

Chapter 4 on Parental Responsibilities and rights proposed in the new Children's Bill is thus a welcome change to the law. Below is specific commentary on the various provisions in Chapter 4 with particular comments and suggestions for refining those sections which highlight problems with application to the reality of children's lives, in particular in the context of HIV/AIDS and poverty. The comments are based on views shared and conclusions reached at a workshop held by the Children's Institute in Cape Town in February 2004.⁴⁵

Section 21 and 22 - Parental responsibilities and rights of unmarried fathers and parental rights agreements

A particularly controversial provision in the Bill is the PRR of unmarried fathers. The Bill provides for a biological father to have rights and responsibilities over his child if he is married to the child's mother or if he was married to her at the time of the child's conception, the child's birth or any time between the child's conception and birth. For those biological fathers who do not fall into the above categories, section 21 provides that unmarried fathers may acquire such PRR in respect of the child if the father has lived with the child's mother for a period of 12 months or more consecutively or for periods which together amount to 12 months; or if he has cared for the child with the mother's informed consent for 12 months or more consecutively or for periods which together amount to 12 months.

Section 22 further provides that unmarried biological fathers may acquire PRR by entering into an agreement with the mother or the person having PRR over the child. The agreement must set out which PRR are acquired, must be registered with the family advocate or made an order of the High Court, a divorce court or a children's court.

The controversy relates to unmarried fathers acquiring automatic rights and responsibilities in respect of their children when they have lived with the mother or cared for the child for a period of time but thereafter may no longer play a role in the child's life and have acquired PRR over the child. On the other hand, from a father's rights' perspective, it could be argued that not granting unmarried fathers automatic rights over their children amounts to unfair discrimination based on gender and marital status, as per section 9 of the Constitution of South Africa.⁴⁶

The *Fraser*⁴⁷ case, which dealt with rights of unmarried fathers, tried to carefully balance the rights of biological fathers and mothers and considered that a nuanced approach which accommodated the different roles that mothers and fathers can and do play, was necessary in today's context where men hold unequal socio-economic power. Neither a blanket provision in support of the rights of all unmarried fathers to veto adoption of their children nor a blanket provision against was the answer to the problem. Instead the Court stressed that the guiding principle in each case must be

⁴⁵ Notes from Children's Bill Workshop, Hosted by the Children's Institute, UCT, 24 - 25 February 2004.

⁴⁶ Constitution of the Republic of South Africa, Act 108 of 1996.

⁴⁷ *Fraser v Children's Court, Pretoria North* 1997 (2) BCLR 153 (CC).

the best interests of the child and that the onus should remain on the unmarried father to approach the court as placing this onus on women who did not have equal power in South Africa and who were bearing the burden of child care responsibilities, would not be reasonable and fair . Parliament then passed the Natural Fathers Born out of Wedlock Act 86 of 1997 where the factors that a Court must take into account when deciding what would be in the best interests of the child were listed.

Section 21 appears to be a middle ground between providing automatic PRR for all unmarried fathers, and providing the opportunities and encouragement for fathers to play a stronger caring and support role in the lives of their children. However, we submit that great uncertainty may be created by simply leaving the determination as to whether the conditions listed in section 21 do or don't exist up to the father and mother concerned. Due to the power imbalance in South African society being weighted against women, mothers may be disadvantaged because in reality the fathers are likely to make the decision as to whether the conditions exists or not thereby putting the burden on the mother to challenge the situation in Court if she believes that the conditions do not exist. In the Fraser case mentioned above, the Court was careful to avoid placing the onus on the women to challenge the matter in Court principally because of the current power imbalance and socio-economic status of women versus men.

We therefore recommend the insertion of a clause stating that the acquisition of PRR by an unmarried father should be confirmed by a court order (in High Court, divorce court or children's court) and the burden of proof would be on the unmarried father to show that he satisfied the conditions mentioned above. Unmarried fathers would be in a better position than they currently are under the law in that they would just need to prove that the conditions in section 21 were present, thereby making their burden considerably lighter than at present. A further change would be that they can approach the Children's Court or Divorce Court whereas at present they have to go to the High Court. This would make access to the Court easier and less costly.

Insert the following:

- 21.** (1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section 20, acquires full parental responsibilities and rights in respect of the child –
- (a) if at any time after the child's birth he has lived with the child's mother –
 - (i) for a period of no less than 12 months; or
 - (ii) for periods which together amount to no less than 12 months;
 - (b) if he, regardless of whether he has lived or is living with the mother, has cared for the child with the mother's informed consent –
 - (i) for a period of no less than 12 months; or
 - (ii) for periods which together amount to no less than 12 months.
- (1A) Acquisition of parental responsibilities and rights in terms of this section must be made an order of the High Court, a divorce court or the children's court in order to have validity.**

(2) This section does not affect the duty of a father of a child to contribute towards the maintenance of the child.

Section 22(3) and 23 (2) - Jurisdiction of Courts to adjudicate over applications for the acquisition or termination of guardianship of a child

It is of great concern that the Children's Bill retains the High Court jurisdiction as upper guardian of all children. This means that any matters related to the guardianship of children has to be dealt with by the High Court, which reduces the original aim of improving accessibility to the courts for all. It is submitted that the High Court, divorce court and children's court should have jurisdiction to assign and terminate *all* parental rights and responsibilities, including guardianship. [Please see Community Law Centre submission for more detail.]

In the context of HIV/AIDS, many children are being orphaned and their rights to inherit the property of their parents are often not being upheld. The informal caregivers of orphaned children, such as aunts and grannies need to have easy access to the Courts in order to acquire guardianship of the child which they need as a pre-requisite in order to protect the child's property rights. If guardianship is kept as the sole prerogative of the High Court, the only interests being served will be those of the legal profession and the very few children lucky enough to be wealthy. The majority of children will be disadvantaged and will not be able to access the Courts and therefore the necessary protection needed to protect their rights to their homes and insurance policies when their parents have died.

Delete the following:

- 22. ...**
[(3) Only the High Court may confirm a parental responsibilities and rights agreement that relates to the guardianship of a child.]
- 23. ...**
[(2) Only the High Court may issue an order that relates to the guardianship of a child.]

Section 26 (1) - Assignment of parental responsibilities and rights to parent-substitutes

The issue of passing on guardianship and custody through a document or a formal will is also of grave concern in the context of many parents and care-givers dying due to the AIDS pandemic. The provision in section 26 whereby PRR may be assigned to other care-givers via in a written document or as part of a will is thus welcome and allows parents to plan ahead for the care of the children they will leave behind in the event of their death. It is important that care-givers may be appointed through a mechanism that is easily accessible and does not require the courts.

There is however, an increased need for education of people in order to ensure that they make provisions for their children upon their death. Mere legislation is not enough. We recommend that the regulations provide that home based care-givers

and social workers be instructed to make succession planning part of their duties when caring for and attending to sick and dying parents.

If there is a failure to appoint someone else with PRR through using section 26 or a will, then provision is also made in section 23 for persons to apply to the High Court, a divorce court or a children's court for PRR. The court is also required to take into account certain factors, including what is in the best interests of the child. This provision is supported. However, note our concerns above with respect to section 23(2) restricting guardianship applications to the High Court.

Section 149 (Chapter 8) - Parental rights and responsibilities in relation to child-headed households

In 2002 it was estimated that there were approximately 90 000 children under the age of 18 who had lost a mother to HIV. The majority of children who are orphaned are cared for by relatives without any support from the state. A small proportion are adopted or cared for in foster care, or residential care. And a small proportion live in child-headed households. It needs to be recognized that while child headed households do exist, the majority of orphans are not living on their own. However, despite the small extent of child headed households, they do exist and it is predicted that the numbers will increase as more children are orphaned and extended families become full to capacity and unable to take in any more children. The reality of the situation needs to be recognised and therefore we need to recognise the existence of child headed households and provide adequately for their care and protection.

The major problems for these children are that they become vulnerable without an adult to take on the parental rights and responsibilities for them, they are unable to consent to medical treatment (particularly for siblings) and their property rights could be abused.

Currently if both parents die it is unlikely that the children will have guardians or custodians. Without a will there is difficulty with the assignment of PRR and a High Court appointment is very formal and largely inaccessible. Therefore child-headed households are left without guardians or custodians. This has legal implications in that a child can't institute legal proceedings, their property is vulnerable and there is no custodian for the daily activities.

There are three possible solutions to this:

Firstly, the SALC Draft Children's Bill gives legal recognition to child-headed households and allows for an adult mentor who would have access to and be able to administer their grants and social benefits, but would be required to give due weight to the choices of the children. There is thus the possibility of the mentor acquiring some PRR in respect of the child. The household mentor could take responsibility, together with the child-head, for making decisions regarding the child's health, well-being and development. The provisions for household mentor could thus apply in conjunction with s23.

Secondly, a child who is heading a household could acquire some rights and responsibilities under s 32, where the child is *de facto* caring for other children. This

raises the issue and question as to which age a child would be able to acquire PRR, but it is submitted that where a child is de facto caring for other children and it is in the best interests of those children to continue to live together in the child-headed household, that the child-head should – just as everybody else – be able to exercise any PRR as reasonably necessary to care for the other children. In addition, provision may be made for others, such as nurses and physicians, to make the necessary decisions in relation to medical treatment for the children, for example.

Thirdly, if there is a relative living nearby who is caring for the child/ren but is not resident, they could still exercise PRR over the children under s32. They could also have PRR assigned to them by an order of court under s23 as there is no specific requirement that they in fact be living with the child.

Chapter 8 – Protection of Children

Part 3 – Protective measures relating to health of children

When the notice for hearings was advertised, the Bill upon which the hearings were called did not include Chapter 8 and we therefore did not plan for including our comments on chapter 8. However, we were informed on Friday the 23rd of July that the Department of Social Development will be advising Parliament to incorporate Chapter 8 into the s.75 Bill. We did not have enough time to finish our research and consultation on Part 3 in time for the submission deadline of 27 July and therefore would like to request that we be allowed under the circumstances to table a further submission on Part 3 on the 11th of August.

Part 4 – Other protective measures

Section 136 - Child Headed Households

By December 2002, roughly 900 000 children under the age of 18 in South Africa were estimated to have lost a mother, the majority of these to HIV/AIDS, and that figure is expected to rise to roughly 3 million by the year 2015, in the absence of major health interventions⁴⁸.

There is no comprehensive national data on the prevalence of child-headed households at this point in time.⁴⁹ On the basis of their national household survey on HIV/AIDS, the Human Sciences Research Council (HSRC) argues that:

‘Many community-based assistance programmes report an increase in households headed by children, or consisting only of children, i.e. orphans or

⁴⁸ Dorrington, R., Bradshaw, D., & Budlender, D. *HIV/AIDS Profile in the Provinces of South Africa: Indicators for 2002*, Cape Town: Centre for Actuarial Research, University of Cape Town, 2002.

⁴⁹ Nelson Mandela’s Children’s Fund, *A Study into the Situation and Special Needs of Children in Child-headed households*, 2001. <http://www.mandela-children.com/english/worddoc/Report.doc>, p. 4. Gow, Jeff & Desmond, Chris, *The Current and Future Impact of the HIV/ AIDS Epidemic on South Africa’s Children*, in Cornia, Giovanni Andrea, *AIDS, Public Policy and Child-Well-Being*, 2002, at p.19 <http://www.unicef-icdc.org> also remark on the lack of statistical information available on child-headed households.

children without resident adult guardians. However, no national data on child-headed households has yet been reported.⁵⁰

Other studies also provide anecdotal data of the existence of child headed households in South Africa. The lack of statistical evidence and probable low incidence of child-headed households should not, however, detract from the fact that child-headed households exist. Furthermore, in the context of increasing numbers of orphans as the HIV/AIDS pandemic progresses, it is likely that South Africa will face increasing numbers of children living without adult caregivers. This recognition is important in order to guide equitable, appropriate and effective responses of support.

Children living in child-headed households are particularly vulnerable without the care and support of parents or substitute parents, and require extra support to meet their various basic needs, including financial, emotional, psychological, health, education etc. We are particularly concerned with support (financial and otherwise) to children within the context of living without adult care-givers.

Under the Constitution, the State is obliged to provide social security to everyone, including social assistance if they are unable to support themselves and their dependants. In addition, the State has a responsibility to children who are orphaned and have no parental care. The Government thus has an obligation to provide social assistance to these children, via a mechanism that is practical, reasonable and appropriate.

One of the ways, we recommend, is the mentorship scheme proposed in the SALRC draft of the Children's Bill and section 136 of the Tabled Bill. This scheme should apply to children where it is not in their best interests to be living in a child-headed household without adult supervision, *and* where a potential adult mentor is available. Essentially, child-headed households could be assisted by mentors, as required and available, (individuals working in NGOs or CBOs and other responsible individuals) to provide the necessary adult supervision in the application and spending of the grant. However, it is important to stress that children who are in fact performing the function of primary care-giver should be able to claim and access the CSG on their own behalf and on behalf of children in their care. The mentorship scheme should only kick in when children are too young or immature to perform the functions of a primary care-giver, or where there are no adult mentors available in the community.

The SALRC Draft Bill contained a provision which allowed adult mentors to be appointed by an organ of state, non-government organization or a children's court. This mentorship scheme was incorporated to give recognition to the support that adults (community volunteers) in affected communities already provide to children living in child-headed households and enable them to access grants on behalf of these children. We therefore strongly recommend that the SALRC model be reinstated in order to also allow for an adult to be appointed as a mentor of a child-headed household, as designated by an NGO or organ of state.

We recommend the amendment of s136, in order to protect the rights of child-headed households in relation to access to social grants from the state, in relation to care

⁵⁰ *Human Sciences research council (HSRC) study on HIV/AIDS, Household Survey 2002*, p. 68.

and support more broadly and in order to protect their property interests as raised above.

Child-headed households

136. (1) A provincial head of social development may recognise a household as a child-headed household if –

- (a) the parent or primary care-giver of the household is terminally ill or has died or has abandoned the household;
- (b) no adult family member is available to provide care for the children in the household; and
- (c) a child has assumed the role of primary care-giver in respect of a child or children in the household.

(2) A child-headed household must function under the general supervision of an **[organ of state or non-governmental organisation] adult designated by** –

- (a) **an organ of state or non-governmental organization** determined by the provincial head of social development; or
- (b) a children's court.

(3) The **adult person [organ of state or non-governmental organisation]** referred to in subsection (2) –

- (a) may collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled; and
- (b) is accountable to the provincial department of social development or the children's court, **or to another organ of state or a non-governmental organisation designated by the provincial head of social development,** for the administration of any money received on behalf of the household.

(d) may assist to protect the property interests of children living in the child-headed household;

(e) may exercise any parental rights and responsibilities as reasonably necessary in the provision of care for the children as per section 32.

(4) The **adult person [organ of state or non-governmental organisation]** referred to in subsection (2) may not take any decisions concerning such household and the children in the household without consulting –

- (a) the child at the head of the household; and
- (b) given the age, maturity and stage of development of the other children, also those other children.

(5) The child heading the household may take all day-to-day decisions relating to the household and the children in the household as if that child was an adult primary care-giver.

(6) A child-headed household may not be excluded from any aid, relief or other programme for poor households provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child.

Insert the following definition in section 1 of the Bill:

"mentor" means an individual or organisation who has been appointed by the relevant provincial Department of Social Development, a designated non-governmental organisation, or the Child and Family Court, to apply for, collect and administer a grant on behalf of a street child or a child living in a child headed household.