

7.4 Policy recommendations to address problems, gaps and inconsistencies of the current social security paradigm for children

7.4.1 Dealing with the special needs of children

7.4.1.1 Recommendations pertaining to foster care grants

The foster care grants provide an important support mechanism for children in compromised family environments. However the following issues need to be addressed:

- The process of foster care allocation should be simplified. This will entail that the present children's court procedure be amended in order to shorten the process. It must, however, be kept in mind that the procedure is extensive in order to allow for proper investigation by social workers to serve the best interests of the child. Provision should also be made for financial support (interim foster care payments while the court process is pending).
- Non-South African children should be allowed to access these grants. This means that the Department of Home Affairs should ensure that all resident children are speedily issued with appropriate documents.
- Provinces should have a uniform approach in granting this (and other) grant(s), especially as far as the eligibility of children in daycare centres or LSEN schools for the CDG are concerned.
- Programmes should be run and services be made available at schools and hospitals that have frequent contact with candidates eligible for these grants.

7.4.1.2 Recommendations pertaining to orphans and child-headed households

There is no social assistance specifically intended for orphans. In the past, orphans that have not benefited from social or private insurance payouts

have been cared for by other members of their families, foster parents or orphanages normally run by NGOs. The enormous increase in the number of orphans as a result of adult AIDS deaths is going to place overwhelming pressure on these institutions.

Child-headed households are a rapidly emerging phenomenon in Africa (partly due to the HIV/AIDS pandemic). The extended family as social support mechanism is eroded by factors, such as poverty, HIV/AIDS, urbanisation and over-stretched resources. These eroded family structures are resulting in a shifted burden of care for children orphaned by AIDS. The burden falls on the elderly or on other children, both who are ill equipped to carry this responsibility, financially and emotionally.

If possible, child-headed households should be incorporated into other households, or even adult supervised institutions. The needs of the children, material and otherwise, should be paramount. Siblings should be allowed to live together. At the very least, the Department of Social Development must allocate responsibility for the households to some adult in the community.

The Department of Social Development must, as a matter of urgency, make provision to support the growing number of orphans, especially those left in child-headed households. Short-term measures include the following:

- Extension of the CSG to all children 0-18 years.
- Simplify access to this grant. In order to assist child-headed households, children should be assisted by community-based organisations (CBOs) and NGOs in order to allow for adult supervision in application and spending of the grant.
- Develop skills and vocational training for these children or participation in development projects, e.g. gardening project, small business management etc.

Long-term measures would include:

- Projects aimed at prevention and integration of these children into society
- Encourage of home- or community-based care
- Simplify foster and adoption process, where a mechanism is developed for "informal carers" of children to access foster child grants

- Involve CBOs and NGOs in the identification, assessment and care of vulnerable children.

Set up of childcare centres to increase these children's learning opportunities and psychological skills.

7.4.1.3 Recommendations pertaining to children living with HIV/AIDS

One of the tragic effects of HIV/AIDS is the vast number of children infected and affected by the disease

These children currently fall outside of the social safety net. They would seldom qualify for a CDG (unless in cases of terminal stages of the disease where they might require permanent home care), and if they are older than 7 years they would no longer be covered under the Child Support Grant. As HIV/AIDS orphans are often cared for by family on an informal basis, they do not apply for foster care and do not make use of the foster child grants.

Submissions to the Committee suggested that the situation be addressed in the following manner:²⁴

- Extension of the CSG to all children 0-18 years
- Allow for free health services for all children
- Projects aimed at AIDS awareness and prevention should continue and be expanded
- Simplify foster process, where a mechanism is developed for "informal carers" of children to access foster child grants.

7.4.1.4 Recommendations pertaining to the Maintenance Act

Parents who shy away from their duty to maintain their children, as required by law, place a heavy burden on the state's social services. When parents take responsibility and provide maintenance for their children, the burden on the state is eased. It therefore follows that to ensure that state resources are directed to those children who are vulnerable, not because somebody is not taking responsibility, but who are in need (for example, because their father passed away), the private maintenance system is very crucial.

The following suggestions by Law, Race and Gender Research Unit (UCT) to the Committee

of Inquiry are supported by the Committee:

- Increased personnel are indeed required to deal with the vast number of maintenance cases and lengthy delays. It is a known fact that many private maintenance claimants or would be claimants have lost faith in the system. In addition many elect to stop trying to claim maintenance due to lack of taxi fares to frequent the magistrate's courts.
- Specialised tracers be employed to trace liable persons. The suggestion of setting specialised tracers on liable persons has already been raised by the Lund Committee. Using tracers to track down those liable parents who are avoiding responsibility is to be welcomed.
- The maintenance division of the family court could be required to take direct action on arrears without waiting for charges to be filed by the complainant and make it mandatory, unless good reason is given, for arrears to be recovered with interest.
- Summons and subpoenas used to order respondents to come to court should be standardised. This is more than necessary in the light of the level of illiteracy in South Africa.
- A campaign modelled along the Masakhane Campaign lines to instil a culture of responsibility towards their children in the general population, proposed by the Lund Committee, should be supported.
- There is a need for clear policy guidelines for those involved in the handling of maintenance claims. One issue, which can benefit from the proposed policy guidelines, is the question of second families and multiple parenting. The issue of second families has raised a variety of questions of both legal and moral nature. Should, for example, courts take the non-custodial parent's new obligations to a newly established family into consideration when dealing with a maintenance claim?

7.4.1.5 Recommendations pertaining to adoption

A means test is applied in terms of s17 of the Child Care Act, in terms whereof adoption will be allowed if the adoptive parents possess adequate

means to maintain and educate the child. This means test bears potential prejudice towards poorer applicants for adoption. It should be noted that this means test serves a different purpose than the normal means test. A means test is normally instituted to protect the interests of the state. In the case of adoptions, the means test is applied in order to serve the best interests of the child. Also of relevance here is the fact that foster parents who are financially needy can receive a state foster care grant, but adoptive parents who have the same financial difficulties are not eligible for any grants. This may prevent foster parents from adopting a child in their care and this impacts negatively on permanency planning for the child.

In order to overcome these problems, the Law Commission proposed that the possibility of an adoption subsidy should be made available. The purpose thereof is to enable poor people to adopt children. The relevance of such a subsidy becomes less apparent in the case of a universal child grant, (i.e. until the age of 18 years).

Subsidised adoption may have certain negative implications:

- Parents might tend to adopt children for the wrong reasons
- Adoptive parents would then be treated differently from biological parents
- One would have to bear in mind that disallowing poor parents to adopt children is in order to serve the best interests of the child.

7.4.1.6. Measures to enhance the CSG

There was argument in the Committee that the effectiveness of the CSG is undermined by a lack of nutrition information and inappropriate nutrition education. The Committee therefore recommends that the CSG be supplemented by an appropriate nutrition and child care support programme. In this regard, caregivers of HIV positive children will need particular help.

7.5 Conclusion

It is the constitutional and international obligation of the state to provide social security to children. Through providing social assistance, and with the concurrent development of services and development programmes, the state can and must attempt to improve the standard of living of children.

This chapter, however, does not purport to provide a comprehensive package of social security for children. It is envisaged that the SA Law Commission in its proposed Comprehensive Child Care Statute will make provision for that.