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## Committee Report No 10

### ***Children and social security in South Africa***

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#### **10.1 Introduction**

Studies have shown that a strong link exists between adverse circumstances experienced early in life and future success. The nature of this link is of fundamental importance to overall social policy. Understanding and removing adversity for families with children must become the priority of any government. Some of the main issues highlighted by these studies indicate the following:

- There is a significant relationship between adverse social and economic conditions in childhood and later success in life. Independent impacts are detectable from family structure and income.
- The educational levels of mothers are particularly important and have an impact independent of income.
- A life of poverty is statistically associated with higher rates of activities detrimental to individuals and society, such as crime, violence, underemployment, unemployment, and isolation from the larger community.
- The chances of unemployment later in life are greater for children who experience periods of poverty than for those that don't.
- Increased incomes for single mothers with children through social transfers have a significant impact on educational performance of children.
- Family stress, induced by unemployment, can have permanent effects on childhood cognitive development.

#### **10.2 The Constitution**

##### **10.2.1 Constitutional obligations**

Section 28(1) of the Constitution deals specifically with fundamental rights of children. Unlike other socio-economic fundamental rights that grant a “*right of access*” to the right, subject to progressive realisation by the state within its available resources, the rights pertaining to children (everyone under the age of 18 years) do not have any such limitations. The special vulnerability of children and their protection is in this way recognised. Section 28 grants children *inter alia* the right to the following core rights to:

- Family care or parental care, or to appropriate alternative care when removed from the family environments.
- Basic nutrition, shelter, basic healthcare services and social services.
- Be protected from maltreatment, neglect, abuse or degradation.
- Be protected from exploitative labour practices.

In all matters concerning children, the child's best interests are of paramount importance. (Section 18(2)). In terms of section 27 of the Constitution everyone has the right to have access to social security, including, if they are unable to provide for themselves and their dependants, appropriate social assistance. The special constitutional protection, alongside other more general forms of social protection available to children, informs the debate on social security for children.

In a recent Constitutional Court case (*Government of the Republic of South Africa and Others v Grootboom and Others*, 2000(11) BCLR 1169 (CC)), the court found that basic economic and social rights must be provided for in government policy and legislation and it is the state's responsibility to allocate adequate resources and to ensure effective implementation. The core of the *Grootboom* judgement is that social programmes will not be considered to be "reasonable" by the Constitutional Court if they do not cater for "those whose needs are most urgent and whose ability to enjoy all rights therefore is most in peril". The Constitutional Court also, for the first time, discussed the issue of enforceability of socio-economic rights contained in the Constitution and concluded that budgetary constraints will not be an excuse for a lack of reasonable measures. In the initial judgement the court *a quo* found that children have a special, unqualified rights to shelter which will compel the state to provide suitable shelter for children and one parent or caregiver. This view was not upheld by the Constitutional Court, which concluded that the primary responsibility to provide shelter rests with the parents of children.

## **10.2.2 International instruments**

South Africa is also bound by various international law instruments pertaining to the welfare of children.

### **10.2.2.1 African Charter on the Rights and Welfare of the Child**

South Africa signed this Charter on 10 October 1997 but is not yet under any obligations in terms of the Charter as it has not yet come into operation. State parties are required to take measures to eliminate harmful social and cultural practices. The responsibilities of the child towards his/her family is also stressed.

State parties must see to the provision of necessary medical assistance and healthcare for all children, with particular emphasis on the development of primary healthcare.

### **10.2.2.2 Convention on the Rights of the Child**

South Africa signed and ratified this Convention in 1995. This is an international convention applicable to *inter alia* the social security rights of children. This Convention contains a set of rights and freedoms to be enjoyed by all children, all over the world. A child, as defined in this Convention, is any human being under the age of 18, unless a particular nation's laws set an earlier age for the attaining of majority status. Article 6 of the Convention places state parties under an obligation to ensure the survival and development of the child to the maximum extent possible. This provision gives rise to numerous derivative social security rights, such as the right to healthcare necessary for survival and a standard of living that meets the needs for food, clothing, shelter and

education. The fact that this Convention has been ratified by South Africa places South African courts and other adjudicating bodies under an international obligation to comply with the duties placed on member states. In terms of one of these duties the state is expected to report regularly to the supervising body under the Convention on the Rights of the Child on the compliance with the duties bestowed on South Africa as a member state.

The overriding principle of the Convention on the Rights of the Child is that all action concerning children shall have the best interest of the child as a primary consideration (Art. 3). Amongst the various rights of children listed in the Convention, the most important for the purposes of social protection are:

- The state should support the principle that both parents have common responsibilities for the upbringing of the child (keeping in mind the best interests of the child). The state should therefore provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and take all the appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities (Art. 18).
- Article 23 refers to the right of a mentally or physically disabled child to a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. The state therefore has the responsibility to extend, subject to available resources, appropriate assistance to the disabled child and those responsible for his or her care.
- Every child has the right to benefit from social security, including social insurance, and the state should take the necessary measures to achieve the full realisation of this right in accordance with national law. Social security benefits should be granted, taking into account the resources and the circumstances of the child and those responsible for the maintenance of the child (Art. 26).
- Linked to the above is the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. The primary responsibility to ensure this lies with the parents or other persons responsible for the child. The state's duty is to (within the means available) assist the parents with this responsibility, by taking measures, which could include material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Art. 27).
- The state must undertake all appropriate measures for the implementation of the rights contained in the Convention on the Rights of the Child. As most of the rights listed above are economic and social rights, the state is only required to undertake such measures to the maximum extent of available resources (Art. 4). It does, however, mean that the state is obliged to ensure minimum essential levels in the standard of living of children and is prohibited from allowing living standards to slide downwards.

The UN Convention on the Rights of the Child stipulates that state parties must respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination

of any kind, irrespective of the child's or his/her parents legal guardians' race, nationality, ethnic or social origin, birth or other status. (Art. 2)<sup>1</sup>.

To monitor the progress made by states in realising their obligations under this Convention, a Committee on the Rights of the Child, consisting of experts elected by the state parties to the Convention from among their nationals, has been established (Art. 43). The states that are parties must submit reports to the Committee (within two years of entry into the Committee, thereafter every five years), regarding the measures they have adopted to give effect to the rights of the child and the progress made as regards the enjoyment of those rights. These reports must indicate the factors and the difficulties affecting the degree of fulfilment of the states' obligations imposed under the Convention on the Rights of the Child (Art. 44). In the case of children's rights dealing with basic health and welfare, the Committee's General Guidelines Regarding the Form and Contents of the Initial Reports to be Submitted by States Parties under Article 44, state the information required, which includes principal legislative, judicial, administrative or other measures in force, institutional infrastructure for implementing policy in this area as well as difficulties encountered and progress achieved in implementing the provisions of the Convention. The state also has to specify the nature and extent of co-operation with local and national non-governmental organisations (NGOs).<sup>2</sup>

The Committee on the Rights of the Child (monitoring compliance with the provisions of the Convention) expressed concern (at their 23<sup>rd</sup> session) about the present South African welfare system. They were particularly concerned about the lack of prioritising budgetary allocations and distributions to ensure implementation of the economic, social and cultural rights of children to the maximum extent of available resources. Some of the other concerns related to:

- Inadequate distribution of resources allocated for children's programmes and activities
- High incident of child and infant mortality as well as maternal mortality
- High rate of malnutrition, vitamin A deficiency and stunting
- Poor situation of sanitation; and insufficient access to safe drinking water, especially in rural communities
- Inadequate legal protection, programmes, facilities and services for children with disabilities, particularly mental disabilities
- A lack of effective measures to ensure compliances with maintenance orders and the recovery of maintenance for the child.

### **10.2.2.3 The Hague Convention on the Civil Aspects of International Child Abduction, 1980**

South Africa has acceded to this Convention, which seeks to protect children internationally from the harmful effects of their wrongful removal and retention.

#### **10.2.2.4 International Convention on the Protection of the Rights of all migrant workers and members of their families**

Children of migrant workers are, on the basis of being members of the migrant worker's family, entitled to a variety of universal, indivisible, interconnected and interdependent basic rights accruing from international instruments dealing with migrant workers and their families. Such fundamental rights include the children's right to basic education (Art. 30), protection from discrimination (Art. 7), freedom from forced labour (Art. 11 (2)), and medical care that is urgently needed for the preservation of their life and avoidance of irreparable harm to their health (Art. 28).

The state's duty to protect these rights can also be found in the South African Constitution. Since the Constitution does not discriminate on the basis of origin, nationality or citizenship, it may be said that the state is under an obligation to provide and protect the basic rights of migrant worker's children in the same way it does with South African children. Any uneven treatment would be in breach of the obligations imposed by international instruments—relating to migrant workers and their families—as well as the Constitution.

#### **10.2.2.5 Convention relating to the status of refugees and the Organisation of African Unity (OAU) Convention governing the specific aspects of refugee problems in Africa**

South Africa is bound by the Convention relating to the status of refugees and the OAU Convention governing the specific aspects of refugee problems in Africa. These two important instruments provide asylum-seekers and refugees (who often are children) with a series of rights while they are in the country. South Africa has an obligation to provide refugees the same treatment as that available to its nationals or alternatively “the most favourable treatment accorded to nationals of a foreign country in the same circumstances”. They have the right to the same treatment as nationals in respect of rights such as the right to access to education, the right to access to legal assistance and the right not to be discriminated against (see Articles 16, 22, 23 and 24 of the Convention relating to the status of refugees). Article 22 of the Convention on the Right of the Child, in addition, imposes an obligation on South Africa to:

take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance...

Cases of discrimination and denial of fundamental rights to non-citizen children in South Africa have been reported on numerous occasions. Discrimination and denial of basic rights to non-citizen children is rife—especially when it comes to access to education and healthcare. The same applies to the exclusion of non-citizen children from the social grant system. Government must ensure that appropriate measures are in place, which provide effective protection and humanitarian assistance to non-citizen children.

### **10.2.2.6 Recommendations**

To avoid unnecessary infringement of South Africa's international obligation as regards children (both citizen and non-citizen), the following recommendations are notable:

Comments of the Committee on the Rights of a Child

The response of the Committee on the Rights of a Child should be the starting point if South Africa is to comply with its international obligations relating to children. The Committee, comprehensively and extensively, elaborated on areas that are in need of urgent attention. What is more, it raised several recommendations, which the state should implement as a matter of urgency. In this regard the following have been suggested:

- The co-ordination between ministries responsible for the social security rights of children.
- Addressing the problems of inadequate distribution of resources allocated for children's programmes and activities.
- Re-examining the viability, in particular, of the possible extension of the Child Care Grant for children up to 18.
- Addressing healthcare as a contingency of social security for children in order to ensure the survival and development of children who are continually threatened by early childhood diseases such as acute respiratory infections and diarrhoea; the high incidence of child and infant mortality as well as maternal mortality.
- Addressing the problem of inadequate food and water and services as a contingency of social security to prevent the high rate of malnutrition, vitamin A deficiency and stunting; the poor situation of sanitation; and insufficient access to safe drinking water, especially in rural communities.
- Addressing disability as a contingency of social security to ensure the adequate legal protection, programmes, facilities and services for children with disabilities, particularly mental disabilities.

## **10.3 Socio-economic evaluation**

### **10.3.1 Introduction**

Given the importance of early childhood circumstances and the chances of future success in life, high levels of socio-economic distress affecting children have to be regarded as one of the most significant factors affecting the future success of the country as a whole. This section reveals the existence of substantial and increasing poverty levels among children. The extent of the problem probably represents the most serious obstacle to the social and economic development of South Africa and the region.

The evidence points to the fact that approximately 20-25 per cent of South Africa's children live in desperate circumstances. They are as a consequence, the victims of physical and emotional abuse that will permanently impact on their levels of social integration and future mobility.

In a number of areas, South Africa can be regarded as being in contravention of the rights of children as defined in the Constitution and in international agreements. (See discussion above.)

### **10.3.2 Child health outcome and poverty indicators**

According to current estimates, between 25 and 30 per cent of South Africa's total population composes of children aged 0-18 who are poor due to insufficient income. According to (what can be regarded as conservative estimates) there are at least 3 834 184 poor children aged 0-6 in South Africa. A more realistic estimate is regarded as 4 601 026. For the age category 0-18 the estimates are 10 285 396 and 12 342 475 respectively (Cassiem *et al*, 2000, p.7). Haarman (1999) estimates the total poverty rate of children aged 0-6 to be in the region of 72 per cent. His study defines a child as poor if he/she receives less than R319 per month (1997 prices). Children are seen as not having the minimum means to guarantee a healthy and secure life if they receive less than R319 per month.

According to a detailed study by Bonti-Ankomah (2000), the food expenditure of many South Africans is far below that necessary to meet recommended dietary requirements. Although there are feeding schemes in existence (according to the 1999 October Household Survey [OHS]) about 11 per cent of households with children under 7 went hungry in 1999 due to lack of money to buy food. Another 2,3 million households with people aged 7 years and older went hungry due to an inability to purchase food. The percentage of households reporting hunger in 1999 was 21,9 per cent. There is significant provincial variation in the figures with Mpumalanga and Eastern Cape showing the greatest percentages (31,9 per cent and 30,9 per cent respectively [OHS 1999]).

In the case of children aged 1-4 years, the most common cause of death is injury (24 per cent), followed by diarrhoea (16 per cent), malnutrition (13 per cent), and lower respiratory infections (9 per cent) (Bradshaw *et al*, 2000, p.100). In 1995 the most common causes of death for infants were perinatal conditions (22 per cent), low birth weight (19,7 per cent), diarrhoea (15,9 per cent), and ill-defined (10,4 per cent) (Bradshaw *et al*, 2000, p.100). Malnutrition remains one of the biggest contributors to child morbidity and mortality in South Africa. According to the national Food Consumption Survey of 1999, nearly 20 per cent of children aged 1-9 are affected by stunting, which is by far the most common nutritional disorder in South Africa. Around 23,3 per cent of children 1-6 are stunted, which is an increase from 22,9 per cent surveyed in 1994 (Bradshaw *et al*, 2000, p.104). Ten per cent of children aged 1-9 are underweight (Shung-King, 2000, p.383).

It is estimated that approximately 10 000 children live or work on the streets in South Africa. Around 9 per cent of children live in households without either parents or grandparents. Around 8,3 per cent of children aged between 5-9 years spend about five hours per day on economic child labour activities.

The South African National Council for Child and Family Welfare reports of child abuse and neglect from 1994-1998 shows a steep increase, particularly for sexual abuse, from the previous three years.

Children constitute one fifth of all reported tuberculosis cases annually, totalling more than 5 000 cases in 1999 (Shung-King, 2000, p.370).

### **10.3.3 HIV/AIDS**

The HIV/AIDS epidemic has shown no signs that preventive interventions are having any impact. The growth in prevalence, according to antenatal clinic surveys, has appeared to follow model projections without significant deviation.

Increasing numbers of South African children are born with HIV infection, acquire it later due to sexual abuse, or are affected by AIDS and other chronic diseases, which befall family members. As many as 2,5 million children under the age of 16 years stand to be orphaned by AIDS in the year 2005. Studies have shown that particularly vulnerable children are children living in conditions of poverty and children in rural areas. Children affected by HIV/AIDS may also be infected or at the very least, are particularly vulnerable to becoming infected because of their socio-economic circumstances. Children affected by HIV/AIDS mainly fall into three groups (Barrett C, McKerrow N & Strode A. Consultative Paper on Children living with AIDS/HIV. Prepared for the South African Law Commission, January 1999).

- HIV infected children
- Children with an HIV infected family or household member
- Children of uninfected households within an infected community.

The following are some of the reported trends and figures:

- The number of people infected with HIV/AIDS is projected to grow from 3,75 million in 1999 to 5,5 million in 2004.
- The number of people dying from AIDS is expected to grow from 175 000 in 1999 to 400 000 in 2004 (Department of Health, 2000).
- In South Africa around 3 000 children are abandoned each year (Shung-King, 2000, p.383).
- In the year 2000 it is estimated that around 75 000 infants are expected to be born with HIV. In the absence of a suitable intervention, this trend will continue into the future (Shung-King, 2000, p.383).
- By 2005, it is estimated that over 1 million children will have lost one or both of their parents to AIDS (Shung-King, 2000, p.382).

- The ASSA 600 HIV/AIDS model projects that if mother-to-child transmission of HIV is not prevented, child mortality rates will double in the next 10 years. This will largely be due to increases in the deaths of 1-4 year old children (Bradshaw *et al*, 2000, p.103).
- Young black women face the greatest risk of contracting HIV/AIDS.
- There would be a 2,5% reduction in productivity by 2010 due to the AIDS epidemic.
- An estimated 120 000 children were HIV positive in 1999.
- A third of the children who are HIV positive would have died by their third birthday, another third by their eighth birthday and another third by age 18 years.
- By 2015 labour supply will be 27% lower and an average of two children per household will be HIV.

#### 10.3.4 Nutrition

An analysis carried out by the National Institute of Economic Research (2001) indicates that despite several feeding schemes in South Africa, many households go hungry every day due to lack of money to purchase food. According to the 1999 OHS, about 1,13 million households with children under 7 years old went hungry due to lack of money to buy food. This is about 11 per cent of all households. The situation is even worse in rural areas, where 16 per cent of households with children under 7 years old went hungry as a result of their inability to purchase food. Another 2,3 million households with people aged 7 years and older could not afford to purchase food and consequently went hungry. This represents about 22 per cent of South African households. In other words, 22 per cent of households could not feed themselves. As expected the ratio is relatively higher in rural areas where 26 per cent of households with people aged 7 years and older went hungry as a result of lack of money for food.

Malnutrition has been identified as “one of the biggest contributors to child morbidity and mortality in South Africa”.<sup>3</sup>

The Primary School Nutrition Programme (PSNP) introduced, as part of the Integrated Nutrition Programme, by the government to improve:

- Education by enhancing active capacity, school attendance and punctuality by providing an early snack
- Health through micro-nutrient supplementation
- Health through parasite control/eradication
- Health through providing education on health and nutrition; and enhance broader development initiatives, especially in the area of combating poverty”<sup>4</sup>

This could not have come at a better time in South Africa.

Through this programme, a nutritionally rich menu is provided to children at various primary schools. In 1999/2000, it was estimated that 4,7 million learners benefited under the programme. Notwithstanding the progress made under the PSNP to date, there are certain notable shortcomings that require urgent attention:

- The *quality* of the food provided through the programme in most instances leave much to be desired.<sup>5</sup> In fact, it has been recently reported that excessively large doses of aflatoxin, a potentially lethal by-product of fungus affecting peanuts, have been passing unnoticed into peanut butter sandwiches for children on the government's PSNP.<sup>6</sup>
- Poor food *quantity* is another source of grave concern. In most schools, the meal does not meet the original requirement of providing the required 20-25 per cent recommended daily allowance for energy.<sup>7</sup>
- Cases of corruption and the misappropriation of funds from the PSNP have been widely reported in recent times. The most affected provinces are Mpumalanga and the Eastern Cape.<sup>8</sup>
- Valuable teaching time is often lost due to the lack of staff and infrastructure for the purpose of preparing food. In rural areas where there is no electricity supply, schools that wish to provide cooked meal, learners are often asked to bring wood from home or to fetch some in the bush.<sup>9</sup>

According to the findings of the National Food Consumption Survey of 1999,

one out of four children aged 1-9 years are underweight and more than one in five children are stunted; younger children aged 1-3 years were most severely affected; the majority of children consumed a diet deficient in energy and of poor nutrient density to meet their micronutrient requirements and all variables associated with household food insecurity were associated with a poorer dietary intake and poorer anthropometrical status, particularly stunting and underweight.<sup>10</sup>

The foregoing appalling findings of the National Food Consumption Survey of 1999 resulted in the issuing of a directive by cabinet to the Department of Health.<sup>11</sup> The directive required the Department of Health to convene a working group comprising of officials from the Department of Agriculture, Education, Treasury, Water Affairs and Forestry and Social Development to develop a proposal for a coordinated and integrated programme of child support.

The aim of the foregoing intergovernmental working group is the provision of optional childcare delivery for children 0-18 years. The objectives of the working group are to review existing interventions which impact on childcare support across departments, make recommendations on improving interventions on child support for 0-18 years, establish formal and informal communication links between departments and align departments' programme goals.

### **10.3.5 Child Labour**

Three main types of child labour are identifiable in South Africa, i.e. atypical work, child prostitution and work in condition of bondage.

#### **10.3.5.1 Atypical work**

In 2000, over 200 000 children between the ages 10 and 14 years were estimated to be engaged in work.<sup>12</sup> Commercial agriculture and domestic services were cited as the main areas where children were employed (*Ibid*). A vast majority of child workers are employed on farms, in households and informal workshops, in domestic service and on the streets as self-employed traders. It is extremely difficult for protective labour legislation and inspection to reach or detect child labour. Inaccessible sectors of the economy pose greater risks for child workers since “children tend to be exposed to the most serious abuses and the greatest risks”.<sup>13</sup>

#### **10.3.5.2 Child prostitution**

Child prostitution is rampant in South Africa. Child prostitution is more widespread among girls than boys. The risks associated with child prostitution include sexually transmitted diseases (more especially HIV/AIDS), early pregnancy for girls, psychological problems, ill treatment, violence and death. The current state of affairs, in addition to child pornography and information technologies such as Internet, is exacerbated by the lack of appropriate policies and measures aimed at child prostitution.

#### **10.3.5.3 Work in conditions of bondage**

Work in conditions of bondage is very much alive in South Africa. This is the case, despite a clear ban of slavery in domestic laws. Crime syndicates, operating within and outside South Africa, lure children from neighbouring countries with false promises. Upon arriving in the country, blameless as they are, they are treated as pseudo-slaves on farms and similar enterprises.

The causes of child labour are diverse. Despite the diversity, poverty and HIV/AIDS are the highflying causes. While it is appreciated that poverty is not the automatic cause of child labour, many children pushed into child labour are from poor families. They resort to child labour to avert hunger and destitution. Unscrupulous employers offer employment to poverty-struck children under the guise of saving them from the paws of poverty. The truth is that children are preferred above grown-up workers because “...children are less aware of their rights, accept repetitive and dangerous work more readily, and are more obedient”<sup>14</sup>

HIV/AIDS, in addition to poverty, is responsible for child labour. Given the infection rate in South Africa, it is not uncommon to hear of a child-headed household. Children who are orphaned by HIV/AIDS are in most instances compelled to fend for themselves. In certain instances, they are bound to search for work to provide food for themselves and their breadwinner(s) who are too sick to work due to HIV/AIDS.

The following shortcomings in the elimination of child labour in South Africa are notable:

- Enforcement mechanisms as found in various child labour laws are weak and, as a result, need to be strengthened. This can be achieved through the adoption of a partnership approach between government and NGOs and increasing awareness by informing parents and children about their rights as well as making legal and administrative procedures more accessible.
- Measures aimed at the prevention, removal and rehabilitation of child workers are lacking. After removing a child from work, such removal should be coupled with supportive measures such as healthcare, nutrition, education, safe environment and -in some instances—professional services.

### **10.3.6 Child abandonment**

Child abandonment, especially in South African hospitals is an increasing problem on which data is not freely available. There is a need to develop protocols and policies regarding child abandonment and the management of abandoned children. These are, however, dependent on the support and co-operation of external role-players, e.g. NGOs, specialist police units etc. There is a need for greater inter-sectoral collaboration between the health and welfare sectors, e.g. allowing medical social workers to undertake legal social work. Research is also needed to clarify the link between HIV/AIDS and child abandonment.

### **10.3.7 Findings**

The socio-economic data suggests, overall, a worsening of key outcome indicators over the past decade. This appears to be related to increased poverty as a result of high levels of unemployment. The percentage of households reporting hunger in 1999 was 21,9 per cent. Almost every indicator of serious social and economic distress has worsened over the past five years.

The effect of the current situation is sufficient to substantially hinder the future economic development of South Africa. Even if the position of children can be improved over the next few years, the degree of social distress currently experienced by vast numbers of children suggests that permanent harm has already been done to the majority of South Africa's children.

On the basis of the evidence there can be little option but to conclude that South Africa is not satisfying its obligations in terms of the Constitution and the various international instruments to which it is a signatory.

The importance of addressing the serious difficulties that children in South Africa experience lies not in merely complying with international instrument, but in the fact that children are the future of our country. South Africa must invest in its own future. No country in the world can afford to ignore the needs and difficult circumstances faced by the future generation and leaders of tomorrow, otherwise there might be no tomorrow.

## **10.4 Evaluation of current policies towards children**

### **10.4.1 Introduction**

Based on numerous submissions and documents made available to the Committee of Inquiry, substantial problems exist with the present system of protection for children in South Africa. The inadequacy of the current policy framework appears a valid conclusion based on reviews of the socio-economic indicators above.

### **10.4.2 Social assistance**

#### **10.4.2.1 Child Support Grant (CSG)**

On recommendations by the Lund Committee, the CSG was introduced in 1997 to replace the State Maintenance Grant. The State Maintenance Grant was removed because it provided an unsustainable high level of benefit, which if accessed by the population at large, would prove unaffordable for the state. The CSG was introduced at a value of R100 and is payable to children until the seventh birthday. The nominal value of the grant was not adjusted until the 2001/02 financial year, when it was increased to R110.

In the determination of the nature and value of the grant, fiscal considerations over-rode the social and economic impacts. The CSG was largely to be funded from reductions in the State Maintenance Grant. No real increase in expenditure on child support was envisaged and financial benchmarks reflect observance of a fairly simple fiscal rule. No indication has been provided that any analysis was done to ascertain whether the fiscal rule was or is appropriate given the special priority given to children in South Africa.

The take-up was initially quite slow, but has increased significantly in the 2000/1 financial year. Estimates are, however, that take-up is around 1 million out of an approximately 4,2 million (Cassiem, 2000) eligible children.

According to submissions, the CSG is currently not operating as an effective poverty alleviation measure. This is related both to implementation flaws, the low value of the grant in relation to minimum needs, the lack of an inflation link, and the severe age limit.

The following are specific concerns relating to the grant:

- It is widely accepted that the level of the grant does not come close to meeting the basic costs of childcare.
- The age limit has no real rational basis and is not consistent with the Constitution's definition of a child, i.e. aged 18. No provision is effectively made for children after 7 years of age.
- In stopping the grant at school-going age many children apparently are unable to attend school because their parents cannot afford the costs associated with schooling.
- Many applicants are turned away because their identity documents are not in order.

- There is lack of effective collaboration between the Department of Social Development and the Department of Home Affairs. Home Affairs mobile office visits have been cut back and the service is now reported as being irregular. This situation appears to have arisen due to concerns about where the budget should come from.
- There is a substantial lack of awareness on the part of Social Development officials in relation to the CSG and the requirements for eligibility.
- There are reports that the attitudes of officials are deterring potential applicants from applying for the grant.
- One of the most serious issues identified by organisations and groups is the limitation of back-pay to 3 months. It appears that this provision may be challenged as being unconstitutional.
- The means test as currently applied represents a barrier to many applicants gaining access to the CSG.

Overall there appears to be no clear rationale for the following:

- The financial value of the grant
- The age limitation
- The intended impact of the grant given the various limitations.

#### **10.4.2.2 Foster care grant**

The foster grant is payable to a foster parent in respect of a foster child who has been legally placed in their custody in terms of the Child Care Act. In 2000/1 the foster grant was R390 per month. The number of grants paid per month has increased from 46 496 in April 1999 to 49 600 in April 2000 an increase of 7,2 per cent.

In order to qualify for a foster grant:

- The child must have been legally placed in the care of the foster parent(s)
- The income of the foster child must not exceed twice the annual amount of the foster child grant
- The applicant and foster child must be resident in South Africa at the time of application.

Submissions to the Committee report that accessing the grant is problematic for the following reasons (Giese, July 2000):

- To qualify for a foster grant, the child has to be placed in the care of foster parents through the children's court. The court process is lengthy and inappropriate for many families who are content with caring for children who are not their own, but require some form of support. Support could be made available to these families without them having to

formally and legally foster the children in their care. This is of particular relevance to communities caring for the large numbers of children orphaned by HIV/AIDS.

- Foster grants are not accessible to child-headed households.
- Problems exist with accessing foster grants for non-South African children because of the paperwork required.

Information was also provided suggesting that there are abuses of the system. Many parents who would otherwise be able to care for their own children are abandoning their children with relatives so that these relatives can access the foster grant.

The CSG is available to these biological parents but it pays out far less than the foster grant and it only provides for children under the age of 7 years (Giese, July 2000).

Foster care is intended as a specialised service for children who have been removed from their families with the intent of returning them after a period of no more than two years. One of the reasons why foster placements are renewed repeatedly is the lack of financial support for adoption (Giese, July 2000).

The traditional concept of the “nuclear family” does not reflect the reality of the South African society and this should be kept in mind when analysing possible reforms of the welfare system. According to the OHS of 1996 the household location of children was as shown in table 10.1 and table 10.2 (also see Van Heerden, B “The Parent-Child Relationship” Discussion Paper prepared for the Committee of Enquiry into Social Security Reform” on 2-3).

**Table 10.1: Household location of children under 7 years of age**

Household location of children under 7 years of age					
	African	Coloured	Indian	White	Total
With neither parent	18%	11%	5%	7%	17%
With mother only	43%	37%	16%	10%	40%
With father only	1%	1%	1%	0%	1%
With both parents	38%	51%	78%	83%	42%
Total	100%	100%	100%	100%	100%

**Table 10.2: Household location of children under age of 18 years**

Household location of children under the age of 18 years					
	African	Coloured	Indian	White	Total
With neither parent	22%	14%	5%	6%	20%
With mother only	38%	30%	18%	11%	35%
With father only	2%	1%	1%	1%	2%
With both parents	38%	55%	76%	83%	44%
Total	100%	100%	100%	100%	100%

Of the children under 18 years living apart from their parents, 62% were said to be the grandchildren of the head of the household (Van Heerden).

Family structures and forms are “fluid” and there are many social parents, namely people who fulfil parental functions although they are not biological parents.

A shift away from “parental power” towards “parental responsibility” is necessary. This is not merely because of the outdated model of the nuclear family-concept, but it is also required in terms of the Convention on the Rights of the Child, to which South Africa is a party.

### **10.4.2.3 Care Dependency Grant (CDG)**

A care-dependent child is a child between the ages of one and 18 years who requires and receives permanent home care due to his or her severe mental or physical disability. The purpose behind this grant is to enable parents or foster parents to care for children with physical or mental disabilities in their homes.

The child must not be permanently cared for in a government institution. The combined annual income of the family after all permissible deductions must not exceed R48 000. The grants are awarded until the child is 18 years of age, or until the child is no longer cared for by his/her parents.

In April 1999, 16 835 beneficiaries received the CDG; this increased by 35,4 per cent to 22 789 in April 2000.

The following is a review of problems with the current grant:

- The current purpose of the CDG to enable permanent home care, only for permanently disabled children, is limiting and inadequate, and open to different interpretations.
- There is a lack of clear definitions (disability, severe/moderate, and permanent home care) in the current legislation. This has serious implications for inclusion/exclusion criteria and makes targeting extremely difficult.
- Currently the CDG benefits only severely disabled children permanently at home, and does not cater for the many others with milder disabilities or those in day-care facilities.
- It is extremely difficult for caregivers (non-parents and “non-formal” foster parents) to access the grant.
- There is a lack of clarity regarding the eligibility of children in day-care centres or Learners with Special Needs (LSEN) schools for the CDG, and there exists differing practices among different provinces.
- While means-testing enables targeting of the poorest quintiles, in practice it is rarely used correctly, is administratively demanding and has been reported as demeaning.

- The assessment test can be highly subjective and open to the personal interpretation of the medical officer. The possibility of a multi-disciplinary assessment team should be considered.
- There is lack of training and guidelines in the assessment procedure.
- Delays, inconsistencies and confusion in assessments, demeaning attitudes of officials etc.

### **10.4.3 Maintenance Act**

The Maintenance Act No. 99 of 1998 makes provision for the payment of maintenance by any person who has the legal obligation to support a child or children. There is also the obligation on the part of employers to co-operate with the maintenance court orders in effecting deductions through salaries.

The parental maintenance system in South Africa is in disarray. There is a widespread lack of responsibility shown by many liable parents in terms of their obligations to support their dependants, especially where children are brought up in single parent households. There is perception among some non-custodial parents that custodial parents “abuse” the money they receive and spend it on themselves rather than their children.

There is shortage of financial resources allocated to the maintenance system and lack of personnel to deal with the vast number of maintenance cases and the lengthy delays. Due to these restraints the Family Court Pilot Projects, which were established by the Department of Justice in 1998, are not able to do much.

Other problems relate to the actual amount of maintenance to be paid by non-custodial parents. There is low and inadequate level of awards in parental maintenance. Great variations exist between courts as to the monthly amount, which is awarded.

There is also lack of proper tracing agents to trace liable persons and obtain accurate information about their income and means. Furthermore, the Maintenance Act does not address the problem of those who are self-employed or in informal sector, and whose financial state is often difficult to ascertain. This was also one of the concerns of the Committee on the Rights of the Child, namely that state must take effective measures to ensure compliance with maintenance orders and the recovery of child maintenance.

The private maintenance system, despite being plagued by problems, is an important system and as a result it should not be discarded. Despite the motive behind the non-payment of maintenance or filing of a maintenance claim, there is a legal and moral duty on the part of both parents to provide for their child(ren). This duty operates irrespective of whether the relationship between the parents is still in existence or not. The state’s duty to provide enters the picture only when parents are unable to provide—not because they do not want to.

#### 10.4.4 Adoption

Section 28(1)(b) of the Constitution guarantees every child the right to family or parental care or to appropriate alternative care when removed from the family environment. This is supported by section 28(2), which states that the child's best interests are of paramount importance in every matter concerning children. Article 20 of the Convention on the Rights of the Child states that a child in need of care shall be entitled to special protection from the state. Such protection could include foster placement or adoption. Despite the recent adoption law reforms, introduced by the Child Care Amendment Act 96 of 1996 and the Adoption Matters Amendment Act 56 of 1998, certain key areas of adoption law still need reform.

Current South African adoption law is contained in Chapter 4 of the Child Care Act, 74 of 1983. The standard of adoption is still the best interest of the child. Some of the problem areas that can be highlighted in this regard are (this section is based on submissions made by the South African Law Commission "Project 110: Review of the Child Care Act—Adoption as Substitute Family Care"):

- Section 10 of the Child Care Act does not keep track of the child-rearing practices especially in black communities where informal fostering is prevalent. Section 10 prohibits anyone from receiving a child and caring for him/her for longer than 14 days. This section does not have a penalty for the contravention but it remains a good ground for removal of a child.
- Transracial adoptions are allowed in terms of the current Child Care Act. The right to equality is subject to reasonable limitations as can be justified in an open and democratic society. The best interests of the child would be considered a reasonable limit that might justify a race-sensitive custody decision. Accordingly it is necessary to balance the right to equality of adoptive parents with the best interests of the child. In placing the child the court must have regard to the religious and cultural background of the child concerned and of his parents as against that of the person in or to whose custody he is to be placed or transferred. In South Africa, because of the tradition and socio-economic realities, relatively few black families adopt children. This results in "a-one-way-traffic-of-black-children-into-white-families". The concern is whether a child growing up in an adoptive family of persons who are different from them, in cultural background and physical appearance, will still be able to develop a positive self-identity.
- Inter-country adoptions are still a problematic issue in South Africa. South Africa has not yet signed the Hague Convention on Inter-country Adoption. Law reform measures promoting inter-country adoption should recognise adoption orders made in other countries and encourage open adoption, making it possible for a South African child adopted in another country to maintain links with the extended family members and with his/her cultural roots. Private adoptions under international law should not be allowed.
- There are particular problems with customary law and the best interest of the child. In terms of customary law the husband and his family have full parental rights to any children born to a wife during marriage (provided bride wealth has been paid). Any person who alleges that it would be in the child's best interest not to remain in the father's custody

bears the onus of proving that the father is not a fit and proper person. This is inconsistent with the best interests of the child.

- Adoption is a private arrangement in customary law in terms whereof two families make an arrangement in order to ensure an heir for a family head who has no male progeny. Payment is sometimes made to compensate the natural parents for rearing the child. This raises the question if customary adoption infringes common law prohibition on trafficking in children and if it should take place under auspices of common law. This is arguable in light of the constitutional recognition of customary law as a system of law and there is no reason why recognition should not be given to an adoption under customary law.

## **10.5 Clarifying the conceptual framework**

### **10.5.1 Interpretation of the Constitution**

#### **10.5.1.1 Interpretation of the obligations of government**

As referred to above, the absolute rights of the child provided for in the Constitution are not qualified by progressive realisation and availability of resources.

It is also important to note that, as confirmed in the case of *Grootboom*, parents have certain derivative rights to shelter, through their children. In order to comply with the child's right to shelter, the state has to adopt a comprehensive and co-ordinated response to housing. In terms of such a response, the state must provide an immediate solution to any rights of the child that are not adequately being met. The state is also obligated to ensure the reasonable implementation of any programme. The CSG has, for instance, been criticised on the grounds that it has not been reasonably implemented.

The Constitution also defines a child as all persons up to the age of 18. As such, any strategy must be regarded as incomplete if it does not cater for all children until the age of 18.

As noted earlier, if resource-constraints prevent the state from discharging all of its obligations then:

- It must give priority to the most vulnerable sections of the community. As children are one of the most vulnerable sections of our community they must therefore be given priority in terms of the allocation of available resources.
- It must demonstrate that every effort has been made to use all of the resources that are its disposition. This means that a proper budgetary assessment must be carried out taking into consideration *all government priorities* and not just those of a particular department and the appropriate level of taxation.
- All measures that involve the withdrawal of resources or programmes must be fully motivated as to their necessity in light of the state's obligations.

### **10.5.1.2 The required policy process in light of the Constitution**

Interpreting government's obligations in this way requires a strategic policy approach, which should take the following form. A strategic plan must be developed which identifies the following:

- Gaps in the basic needs of children from the ages of 0-18
- Immediate strategies to deal with the required absolute rights of children
- Medium- and long-term targets and objectives.

### **10.5.2 Comprehensive framework**

This report proposes a comprehensive framework of social protection for children encompassing the following elements:

#### **10.5.2.1 The elimination of absolute poverty amongst households with children**

The elimination of child poverty has to become an explicit policy of government with explicit targets to the period when poverty is eradicated. The focus of policy will, of necessity, be based on general income transfers and generalised programmes. This will be to avoid the fragmented policy measures associated with highly targeted programmes.

#### **10.5.2.2 A policy structure based on dealing with the special needs of children and families with children**

Certain families with children face particular difficulties, which require special forms of support over-and-above the general measures. Households with children with disabilities, single-parent families and child-headed households. A multi-dimensional policy framework including grants and services is required to adequately respond to special needs.

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

#### **10.6.1 Addressing poverty**

South Africa has unacceptable levels of child poverty. There is therefore urgent need for a strategy that seeks as its ultimate goal the complete elimination of absolute poverty in households with children. Extensive evidence reveals that children brought up in situations of poverty suffer permanent disadvantage for the rest of their lives.

The most fundamental attack on poverty will only be possible through a system of general cash grants to households that currently fall outside of the social safety net with priority given to children living in poverty. However, complementary policies are also required in the areas of nutrition support, and income protection from contingencies relating to healthcare needs and the loss of parental support.

Since child poverty cannot be addressed outside of the structural conditions that make children vulnerable, policy interventions must ensure that children's needs as well as the reasons they are in poverty must be addressed. Evidence submitted to the Committee revealed that, even with the problems experienced by people in accessing the CSG and its many limitations, it has become a de facto poverty intervention. Consideration is given here to a broader range of beneficiaries of general grant support including the following categories and the priority status of each:

**Priority 1: Children aged 1-6.** The existing beneficiaries of the CSG.

**Priority 2: Children aged 7-18.** This is the extended group of child beneficiaries that must be considered for the CSG. The value of the grant need not be the same as that for the 0-6 group due to alternative support measures that this group should gain access to, e.g. school nutrition.

**Priority 3: Poor adults.** This allocation should be seen as part of a plan to provide a basic income to all low-income individuals.

The priority status of each grant should not imply that the one type of grant should be considered before the others, but rather that the value of the grant should follow the priority status given.

#### **10.6.1.2 Recommendations**

- Since the CSG has become a de facto poverty grant for poor households with children, the Committee therefore recommends that the title of the grant be changed to that of an “*Income Support Grant*” that in the first instance prioritises the most vulnerable and at risk children, with the above priority groups taken into account.
- That in the short to medium term the existing CSG be changed to a universal, non-means tested grant for all children (younger than 18 years), and a so-called income support grant should be available. This will overcome the lack of provision for poor children over 7 years and also meet the constitutional obligation.
- The value of the Income Support Grant should be re-evaluated in order to ensure that the level of the grant is sufficient to meet basic needs of the children as well as to take into account the full package of measures that are in place to address poverty.
- Synergy should exist between the Department of Home Affairs and Department of Social Development to ensure that programmes and facilities are created to enable people to obtain identity documents, birth certificates, etc. This can be done as part of an awareness campaign or as part of the normal pay point procedures.
- Awareness-programmes and funding for community-based programmes to this effect should be supported by government. People should be educated on their rights as far as social assistance is concerned as well as on the requirements for eligibility and avenues where to obtain the necessary documents, information etc.
- Officials should be trained to assist clients, and a culture of client satisfaction should be nurtured in the Department of Social Development.

## **10.6.2 Dealing with the special needs of children**

### **10.6.2.1 Recommendations pertaining to foster care grants**

The foster care grants provide an important support mechanism for children in compromised family environments. However the following problematic 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 will mean that the requirement of a 13 digit ID-number be done away with, or yet again that there is synergy between departments of Home Affairs and Social Development in order to ensure that all resident permits/birth certificates have a 13 digit number;

### **10.6.2.2 Recommendations pertaining to CDGs**

- The scope of coverage of the grant should be extended in order to allow for children with chronic illnesses, the severely mentally retarded and children with moderate and severe disabilities (who would not require permanent home care) to also qualify for assistance. The eligibility criteria should do away with the qualification of permanent home care. It should instead focus on the disability of the child, which should enable access to additional support from the state. This would entail that children in day-care facilities would also be covered if they have a disability or chronic illness (also see the discussion of recommendations below pertaining to the means test in this regard).
- The aim of the social assistance benefit should be to enable the child to lead a full and dignified life, to promote their development and participation, to improve their quality of life and to realise their full potential (Child Health Unit & Community Law Centre. Social Assistance Policy for Children with Disabilities and Chronic Illnesses in South Africa report of the National Workshop held in Cape Town, 16 May 2000).
- Access to this grant should be simplified. This can be done by involving not just social workers but also teachers at schools/day-care centres for the disabled, or hospital officials.
- Provinces should have a uniform approach in granting this (and other) grant(s), especially as far as the eligibility of children in day-care 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.
- Also see the discussion on recommendations pertaining to the means test below.

### **10.6.2.3 Recommendations pertaining to child-headed households**

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.<sup>15</sup>

Measures to address this issue can elicit a conflicting approach as the phenomenon should not be supported and encouraged by measures dealing with it, although the existence thereof cannot be ignored, entirely. These measures should address the needs of these children, which are:

- Physical and material needs, e.g. food, clothing, shelter etc
- Intellectual needs, e.g. educational needs, food generating skills etc
- Psychological needs, e.g. friends, love, recreation etc.

In 1993 the number of street children was estimated to be about 10 000. Two types of street children can be identified, namely those who are “on the street” and those who are “of the street”. The former have family and community ties but the latter are alienated from their families and communities. These children depend largely on each other for survival.

Most programmes aimed at street children focus on protection and rehabilitation rather than prevention by means of early identification of street children and their families at risk. The main ways of prevention is by reducing poverty, supporting learners at school and addressing the problem of youth coming into contact with the law (Ritchie, M. Children in ‘Especially Difficult Circumstances’: Children living on the Street Consultative Paper prepared for the South African Law Commission February 1999).

The solution would be to distinguish between short-term and long-term measures. Short-term measures should be aimed at immediate support of children in child-headed households, as it is a phenomenon that exists and is going to increase. Long-term measures should be implemented to reduce and prevent its occurrence, implying an emphasis on strengthening supporting of family and community networks.

#### **Short-term measures of dealing with the matter should include the following:**

- Extension of the CSG to all children 0-18 years by means of a universal non-means tested grant.
- 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.
- Allow for free health services for all children, especially for HIV positive children.

- Develop a system of expanding the current PSNP system for children outside the educational system.
- Provide shelters, food, blankets and clothing for these children.
- Allow for counselling for these children.
- Protect them from abuse.
- 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.
- Encouragement of home- or community-based care.
- Poverty prevention and alleviation programmes.
- Simplify foster and adoption process, where a mechanism is developed for “informal carers” of children to access foster child grants.
- Provide HIV positive and pregnant women with anti-retroviral treatment.
- Involve CBOs and NGOs in the identification, assessment and care of vulnerable children.
- Setting up of childcare centres to increase these children’s learning opportunities and psychological skills.

**10.6.2.4 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. It is estimated that 420 000 South African children are orphaned by AIDS.<sup>16</sup>

These children currently fall outside of the welfare 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 Care 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.

It is suggested that the situation be addressed in the following manner:<sup>17</sup>

- Extension of the CSG to all children 0-18 years.
- Allow for free health services for all children, especially for HIV positive 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.
- The amount of the CSG is insufficient to meet the basic needs of a child. The amount should be increased to at least R200 per month.

- It is proposed that HIV positive children up to, and including 18 years of age, be eligible for the CDG on diagnosis.
- Grants should be attached to children. A grant would normally lapse when a caregiver dies or reached the age as from when the grant is no longer payable. This should be amended to allow for the grant to lapse on the last day of the month after the child dies.

#### **10.6.2.5 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 are suggestions by (Law, Race and Gender Research Unit (UCT) Submission to Taylor Commission of Inquiry on need to reform the law relating to maintenance March 2001):

- 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.
- The conditions and facilities at court for those waiting for their cases to be heard should be improved. The Law, Race and Gender Research Unit (UCT) (*Ibid*) has suggested that: "Those waiting in the queue should be provided on arrival with a number indicating their place in the queue. Cases should be attended to strictly according to these numbers and the progress of the queue should be publicly displayed or announced."
- 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. The task of the campaign would be "to build a culture in which parents accept their responsibility towards their children, and in which those who pay are regarded as responsible and laudable citizens rather than weak and silly fools ...".

- Non-custodial parents who are self-employed or are employed in the informal sector are problematic due to the difficulty of proving their income. The aforementioned campaign can play a pivotal role in dealing with the problem of the informally employed non-custodial parents.
- 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?

#### **10.6.2.6 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.

An exception might be made where foster parents, who have previously received a foster care grant, wish to adopt a child, then they may still apply and receive an equivalent to a foster care grant. This can qualify as an "adoption subsidy". The fact that the parents have proved their ability to care for the child as foster parents will prevent adoptions for the wrong reasons. This may, however, lead to abuse of the foster care grant, where people who would normally have adopted children, would first opt for foster care in order to benefit from the foster care/adoption grant.

The alternative that will serve the best interests of the child, entails that adoptive parents and be treated the same as biological parents. This can be achieved by making available a childcare grant on a universal basis, i.e. without relying or invoking the means test.

### **10.6.3 Other recommendations**

#### **10.6.3.1 Recommendations pertaining to the means test**

In allocating social security benefits, means testing is used for purposes of targeting. The means test entails that benefits are only paid to persons whose means do not exceed a certain amount, or that benefits are reduced at a fixed rate (abatment rate) as the set means increase.<sup>18</sup>

Social grants are subject to a means test and are allocated on a strictly categorical basis—children, old people and the disabled who do not have sufficient means are particularly meant to benefit from these grants.<sup>19</sup> The means test can be applied in various manners. It is primarily concerned with income, although other assessment criteria for means testing are in principle possible (but little used in the South African context), for example nutritional status, gender of the household, geographical targeting and even self-targeting mechanisms.<sup>20</sup> Where income is concerned, some forms of income or parts of a person's assets can be exempt for specific reasons, for example part of a person's salary can be exempted so as to prevent a person from becoming economically inactive. Although usually only the income and assets of the person entitled to the benefit are taken into account, the income or assets of the spouse, living-in partner or even the children or other family members of such person can also be taken into consideration.<sup>21</sup>

Currently certain general qualifying conditions apply, namely that the recipient must: (a) be resident in South Africa; (b) be a South African citizen; (c) provide proof of his/her inability to support and maintain him-/herself (i.e. comply with the means test); (d) not be in receipt of another social grant in respect of him-/herself; and (e) not be maintained or cared for in a state institution. Both assets and income are taken into account. The cut-off point as far as assets are concerned is relatively high, namely R194 400 for a single person (30 times the maximum grant) and R388 800 for a married person (60 times the maximum grant).<sup>22</sup>

In the present South African system, means testing is not administered in a consistent manner and assessments are based on individual discretion. The means test, as currently regulated and applied, is insufficient and at times inappropriate. It supports a poverty trap syndrome, which is sometimes extremely difficult to enforce and comply with. It is improperly targeted and is inconsistently regulated and applied.<sup>23</sup> The present system is not tax based, and very little use is made of data collected by the tax authorities.

The application of the means test as far as child-related benefits are concerned is inconsistent. This is not only susceptible to claims of unfairness but also makes administration of the various grants more complex and time consuming.<sup>24</sup> This is clear from the following.

### **10.6.3.2 Foster child grant**

The means test is applied to determine eligibility for the foster child grant, but it only considers the means of the foster child and not that of the foster parent as well. The foster child grant is not awarded if the foster child's income exceeds twice the annual amount of the grant.<sup>25</sup> The foster child grant pays a higher amount, and for a longer period, than the CSG. Some caregivers might be tempted to rather apply for the foster child grants, than the rather limited CSG.<sup>26</sup>

### **10.6.3.3 CDG**

This grant is payable to the legal parent or foster parent of a child (between 1 and 18 years), who is so severely disabled (mentally or physically), that the child must receive permanent home care. The parent or foster parent must provide medical proof that the child is in fact disabled, as well as proof that the combined annual income of the family does not exceed R48 000 (or such higher amount as the Minister may from time to time determine).<sup>27</sup> There is also no apparent reason why the legal parent or foster parent is involved and not the primary caregiver, as is the case with the CSG.

### **10.6.3.4 CSG**

The CSG is payable to a primary caregiver of a child under the age of 7 years. This primary caregiver is the person who takes primary responsibility for meeting the daily needs of a child and who has the parent's/parents' permission to care for the child. Anyone who receives payment for caring for a child is not regarded to be the primary caregiver for the purposes of this grant. There is also a means test involved, which is linked to the personal income of the applicant and, where applicable, of his or her spouse.<sup>28</sup> The previous means test was based on the household income.<sup>29</sup> The current amount of the CSG is R110 per child per month.<sup>30</sup>

This present test differentiates between urban and rural areas and between different types of dwellings (the so-called geographical method of targeting vulnerable groups). The rural bias in poverty incidence (and the existence of significant pockets of poverty in urban areas) is reflected in the CSG means test, which has a higher cut-off point for rural households and those living in informal dwellings.<sup>31</sup>

### **10.6.3.5 Conclusion**

A pressing concern is whether the means test should be retained as far as the eligibility of children for social assistance benefits is concerned. Without the means test children (according to the constitutional definition, everyone younger than 18 years) should qualify for social assistance regardless of income, be it personal income or household, or that of parents or primary caregivers. This scenario will entail that there should be a basic grant for all children.

Another alternative would be to retain the means test in order to ensure targeting and that those children in need of assistance do receive it. It is proposed that if a means test is retained, the means test should be amended in order to allow for the following:

- Synergy between the various social assistance institutions. Children, who qualify in terms of the means test for child related benefits, should automatically be exempted from other means testing in order to qualify for other social assistance and basic health services benefits, such as free healthcare and nutritional support.
- Means testing should be applied in a fair and consistent manner. Although there are various grants available, which serve different purposes, it is important to ensure that the same standard is applied throughout the system for all child-related grants.
- The simplest and easiest form of means testing (also suggested by the Lund Committee) was that of setting a minimum threshold for qualification. This would entail that if a primary caregiver (and a live-in partner) earn(s) an income below a certain minimum threshold, that person would qualify for aid in terms of the means test.
- The rural bias reflected in the means test for the CSG is discriminatory in nature and it is suggested that it should be removed, if the means test is retained. In other words, caregivers should qualify irrespective if they are in rural or urban areas.
- It is also proposed that a more appropriate system of means testing could be developed as a medium-/long-term measure in terms whereof other areas of vulnerability can also be addressed. This would imply a well-functioning institution and service delivery system, where well-trained personnel attend to different areas of vulnerability of clients (i.e. children) concerned on a case management basis. This system will entail that means testing should be applied by not just taking income and assets into account but also other poverty indicators, such as nutritional status, geographical area, women-headed households etc. A certain weight must be attached to all these factors when applying the means test. The case management approach applies that other elements or areas of vulnerability affecting children, such as malnutrition, can be attended to simultaneously.
- If means testing is retained, it is suggested that a uniform means test be applied across the board for all grants pertaining to children. The income and assets of the parents/foster parents/primary caregiver as well as a partner living in the household, should be taken into account. This information should as far as possible be obtained from the tax collecting bodies, but should leave aside the tax deductions and exemptions hampering the purposes of social security. This might, however, create a poverty trap.
- It is also suggested that one uniform income support grant be retained, but that children in foster care as well as care-dependant children be given a top-up of the general grant. This will imply that all children receive for, instance, R110. Children in foster care will on top of that be eligible to receive an additional amount, in order to let the total received equal the current maximum amount a for which a child in foster care might qualify. A care-dependent child is also entitled to a top-up because of their added needs.
- The current value of the various grants is also undervalued. It is suggested that a non-means tested child grant take realistic costs of living into account.
- Children who are severely ill/disabled should not be disqualified from a universal child grant as well as a top-up because of their disability. Because of the added needs of persons

with disabilities they should be entitled to additional support regardless of the fact that they receive benefits because they are children. The scope of the CDG should, however, be broadened to include assistance to children with chronic illnesses and HIV/AIDS.

## **10.7 Administrative capacity and delivery issues**

### **10.7.1 General**

The Department of Social Development is faced with a number of challenges as far as its operations and service delivery are concerned. Some of the major problems are:<sup>32</sup>

- Social security delivery is run by nine provincial departments with no standard processes and procedures to administer grants.
- The rural nature of vast portions of the country makes it difficult for the Department of Social Development to reach all needy citizens.
- Most provinces lack staff with the necessary skills required to properly discharge their financial management responsibilities.
- The Department of Social Development depends on third party payment contractors to discharge its payment responsibilities, whose treatment of beneficiaries reflects negatively on government.
- The Department of Social Development has many constraints as far as information systems are concerned, resulting in an inability to monitor and maintain a visibility of their respective operations.
- Problems with human resources, such as department officials who are not always on duty, resulting in enormous numbers of people waiting in vain in difficult circumstances.
- There seems to be a lack of awareness of various grants available, methods of access thereto as well as a lack of proper comprehension of the functioning of the process.

### **10.7.2 Proposals for reform**

- People should be made aware of their rights to the various social grants, as well as the correct way to access them.
- Welfare staff should be trained to be customer-orientated and to serve the public in the best and most efficient manner.
- There must be a paradigm shift in focus on customer satisfaction in training and recruitment, as well as in service delivery. A change of attitude does not cost anything.
- Administrative and institutional capacity can be increased in a new institutional arrangement as recommended in the relevant section of the report. It is envisaged that in the medium to long term all grants would be administered through a national agency within a co-operative governance framework.

## **10.8 Conclusion**

It is the constitutional and international obligation of the state to provide social security to children. Providing social assistance is one form in which the state can and must attempt to improve the standard of living of children. There must also be concurrent development of services and programmes.

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## ENDNOTES

- 1 Article 26.
- 2 See [www.unicef.org/crc/reppline.htm](http://www.unicef.org/crc/reppline.htm) par 19 and 20.
- 3 Shung-King M *et al* “Child Health” in *South African Health Review* (2000) 383.
- 4 Child Health Unit (1997) “An evaluation of South Africa’s Primary School Nutrition Programme” Health Systems Trust.
- 5 See, for example, McCoy D *et al* (1997) *An evaluation of South Africa’s Primary School Nutrition Programme* Health Systems Trust: Durban 23.
- 6 Magardie K “The poison in the peanuts” *Mail and Guardian* May 4 to 10 (2001) 4.
- 7 McCoy *et al* 23.
- 8 McCoy *et al* 21.
- 9 See McCoy *et al* 23.
- 10 Departments of Health, Agriculture, Social Development and Education “Integrated nutrition and food security system for children 0–18 years” (2001) Working document.
- 11 Cabinet Directive 3.1 of 22 November 2000.
- 12 Committee on the Rights of the Child “Concluding observations on the rights of the child: South Africa” 28/01/2000.CRC/C/15Add.122. (Concluding Observations/Comments).
- 13 Synthesis document “Strategies for eliminating child labour: Prevention, removal and rehabilitation” International Conference on Child Labour, Oslo, 27—30 October 1997 at 4.
- 14 Synthesis Document “Strategies for eliminating child labour: prevention, removal and rehabilitation” International Conference on Child Labour, Oslo, 27—39 October 1997: 7.
- 15 Nelson Mandela Children’s Fund “Report on: A Study into the Situation and Special Needs of Children in Child-Headed Households” June 18, 2001.
- 16 Information from research conducted on child-headed households, by the Nelson Mandela Children’s Fund.
- 17 These submissions include (and are based on) information supplied by the Child Health Policy Institute, UCT “Special Focus on Social Security for Children infected and affected by HIV/AIDS”, 2001.
- 18 Information on this section was partly obtained from a contribution by Dr L Jansen Van Rensburg prepared for the Committee “Social Assistance and Indirect Social Security Committee: Means testing and Targeting” as well as from a report submitted to the Government on Social Security: Olivier MP “Social Insurance and Social Assistance—Towards a Coherent Approach”, December 1999.
- 19 Olivier MP “Towards a coherent approach to social protection, labour market policies and financing of social security: A new paradigm for South Africa?” ISSA Conference 2000 on 27.
- 20 This entails that individuals make the choice as to whether to apply for certain benefits. The programmes/ benefits are designed in such a manner that only the poorest would want to participate therein. The problem with self-targeting programmes/benefits is that the quality of service/products/benefits are low.
- 21 Jansen Van Rensburg L “Paper prepared for the Committee—Social Assistance and Indirect Social Security Committee: Means testing and Targeting”).
- 22 As far as income is concerned, the full amount of the grant is only payable if the beneficiary earns R1 944 or less per year. If the amount is exceeded the value of the grant is reduced on a sliding scale basis. If the beneficiary is a single person, 50c is deducted for every Rand more than the grant, in the event of a married person the deduction is 25c for every Rand exceeding R1 944 per year. The cut-off point for the minimum value of the grant, i.e. R100, is R12 504 per annum (single person) and R23 064 per annum (married person). The bottom of the scale is exceptionally low (R1 944 per year or R162 per month). See Olivier MP “Towards a coherent approach to social protection, labour market policies and financing of social security: A new paradigm for South Africa?” ISSA 2000 on 27.
- 23 Olivier “Social Insurance and Social Assistance: Towards a Coherent Approach” p.8.
- 24 Liebenberg & Tilley “Poverty and Inequality Hearings Social Security Theme Background paper for South African National Non-Governmental Organisation, the South African Human Rights Commission and the Commission for Gender Equality” (28 April 1998) 13-14.
- 25 Reg 3 GN R418 in GG 18771 of 1998-03-31.
- 26 Janse Van Rensburg “Social Assistance and Indirect Social Security Committee: Means testing and Targeting”.
- 27 Reg 5(1) GN R418 in GG 18771 of 1998-03-31.
- 28 The new means test was introduced by GN R813 in GG 20235 of 1999-06-25.

<sup>29</sup> See Reg 9(3)(a) GN 418 in GG 18771 of 1998-03-31.

<sup>30</sup> Janse Van Rensburg “Social Assistance and Indirect Social Security Committee: Means testing and Targeting”.

<sup>31</sup> If the child and the primary caregiver live in an urban area in a brick-built house, personal income of above R9,600 would exclude them from receiving the grant. In the case of a rural informal dwelling, the primary caregiver’s personal income must be below R13,200 in order to qualify for the grant. For these purposes an “informal dwelling” means a house, which is, whether partly or wholly, without brick, concrete or asbestos walls.

<sup>32</sup> Norms and Standards Report to MINMEC, 22 June 2001 Department of Social Development.