

South African Child Gauge 2018

Children, Families and the State

Collaboration and contestation

Edited by Katharine Hall, Linda Richter, Zitha Mokomane & Lori Lake



Broad overview of the *South African Child Gauge 2018*

The South African Child Gauge® is published annually by the Children's Institute, University of Cape Town, to monitor progress towards realising children's rights. This issue focuses on children, families and the state.

PART ONE: Children and Law Reform

Part one outlines recent legislative developments that affect the lives and rights of children. This issue comments on amendments to the Maintenance Act; bills before Parliament including the Traditional Courts Bill, draft Rates and Monetary Amounts Amendment Bill (VAT increase), and the Social Assistance Amendment Bill; draft amendments that have been published for comment, including amendments to the South African Schools Act, draft regulations on the Sexual Offences Courts and Children's Third Amendment Bill; and reform processes that are still in the very early phases such as the draft Child Care and Protection Policy.

See pages 9 – 20.

PART TWO: Children, Families and the State

Part two presents nine essays that motivate for targeted and responsive policies, programmes and services that support families as they provide care and nurture children's development. The first two essays motivate for recognizing the diversity and fluidity of families and caregiving relationships. Essays three and four outline the legal frameworks governing the rights of children and the roles and responsibilities of families and state. The next five essays motivate for: increasing support for parents and caregivers; adopting an integrated approach to stopping violence in families; targeting adequate income support for families; supporting families in the education, health and development of children; and building efficient referral mechanisms and responsive services for those in need.

See pages 21 – 128.

PART THREE: Children Count – The numbers

Part three updates a set of key indicators on children's socio-economic rights and provides commentary on the extent to which these rights have been realised. The indicators are a select subset taken from the website www.childrencount.uct.ac.za.

See pages 130 – 162.

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Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
Bt20+	Birth to Twenty Plus study
CCMA	Commission for Conciliation, Mediation and Arbitration
CCPP	Child Care and Protection Policy
CIT	Company Income Tax
CSG	Child Support Grant
CYCW	Child and Youth Care Workers
DBE	Department of Basic Education
DJCD	Department of Justice & Constitutional Development
DoH	Department of Health
DSD	Department of Social Development
ECD	Early Childhood Development
EE	Equal Education
EELC	Equal Education Law Centre
EPWP	Expanded Public Works Programme
FASP	Financial Awards for Service Providers
FCG	Foster Child Grant
GHS	General Household Survey
HOD	Head of Department
IMC	Inter-Ministerial Committee
IPV	Intimate Partner Violence
LMIC	Lower- and Middle- Income Countries
NACCW	National Association of Child Care Workers
NCOP	National Council of Provinces
NCF	National Curriculum Framework for Children from Birth to Four
NDP	National Development Plan
NIDS	National Income Dynamics Study
NIECD	National Integrated Early Childhood Development Policy
NPO	Non-Profit Organisation
PACSA	Pietermaritzburg Agency for Community Social Action
PIRLS	Progress in International Reading and Literacy Study
PIT	Personal Income Tax
PRR	Parenting Rights and Responsibility
RCMA	Recognition of Customary Marriages Act
RDP	Reconstruction and Development Programme
SALRC	South African Law Reform Commission
SASA	South African Schools Act
SASA!	Start, Awareness, Support and Action
SASSA	South African Social Security Agency
SDGs	Sustainable Development Goals
SGB	School Governing Body
SMG	State Maintenance Grant
TCB	Traditional Courts Bill
TIMSS	Trends in International Mathematics and Science Study
VAT	Value Added Tax
UNCRC	United Nations Convention on the Rights of the Child
WIEGO	Women in Informal Employment: Globalizing and Organizing

Foreword

Mamokgethi Phakeng

Vice-Chancellor, University of Cape Town

According to Statistics South Africa's General Household Survey of 2017, about 22% of South African children are not living with even one biological parent. There are many reasons for this. Children may rely on grandparents, aunts, uncles and other family members to play the parental role, for all or part of the year. In the rare cases where children are without family care, the state is responsible for placing children in alternative care and ensuring that they are supported. Schools, religious structures, community organisations, after-care facilities and NGOs also help to provide family-style environments, especially when children fall through the cracks. The need for such care does not end when a child reaches age 18.

Universities play an important role in providing a "home away from home" for students. Research shows that first-year students who receive well-rounded institutional support tend to thrive academically. Such support helps to develop their values and skills to enter the world as responsible, compassionate citizens. This is true for young people everywhere, but especially for those who have faced overwhelming odds in childhood.

Michael Tladi never knew his father and was abandoned by his single mother at the age of five. He lived on the streets of Pretoria, relying on older boys and petty crime to survive.

He was taken into a shelter run by people who recognised his ability and helped him matriculate. With their encouragement, Tladi came to the University of Cape Town (UCT) to study electromechanical engineering. Faculty staff helped Tladi to register for classes, access tutoring and get psychological counselling to help him come to terms with

his past. UCT financial assistance supplemented the bursary he received from Link-SA. He graduated after eight years, to loud applause from his classmates and academics. Today he is an engineer in the Department of Transport and Public Works Directorate.



While he was still studying, Tladi began visiting the Emasithandane Children's Project in Nyanga township to help the orphans with lessons. After graduating he raised funds to build a new wing at Emasi, with a separate study room equipped with computers and desks. He was able to do so because other people had given family-style support to him – including my colleagues at UCT.

The Children's Institute is just one excellent example of the research UCT is doing to generate a strong evidence base for social policy and action. The *South African Child Gauge* in particular has set a benchmark for communicating research on the many different challenges confronting children in South Africa. This 13th issue has been produced in collaboration with the DST-NRF Centre of Excellence in Human Development at our sister university, Wits. It focuses on Children, Families and the State, and explores the ways families, communities, government and society as a whole can collaborate effectively to nurture children and support their development. Such research informs policy and leads to solutions to real problems on the ground. But the fact is, beyond being academics and activist-researchers, each of us can help create spaces to give someone else family-style support. We can invest ourselves, confident that the result will be a growing community of compassion.

Reflection

Mastoera Sadan

*Convenor of the Enhancing Quality of Life Work Stream,
National Planning Secretariat, Department of Planning, Monitoring and Evaluation (DPME)*

Families are our greatest resource. It is through the efforts, care and support of families that children grow and develop to inherit and safeguard the future of the state: they are its next generation of scholars, teachers, nurses, politicians, business people, workers and parents.

Taking this long view is important because it reminds us that no matter how much effort is spent on getting policies and services right – whether they are about labour laws or tax systems, tertiary education or land reform – it is ultimately people that they aim to serve, and many of those people are young or not yet born. Alongside every step to reduce inequality and grow the economy, we need to be investing in the future beneficiaries and custodians of the country.

The South Africa we inherited in 1994 was a country where families had been deliberately undermined, fragmented and weakened. In the democratic period we have introduced policies to support and strengthen families with an understanding that families take various forms.

The state has a clear compact with families. It is articulated in section 28 of our Constitution, in the National Development Plan and in the international agreements to which we are committed. The primary duty for child care and support lies with families, while the state must provide the necessary infrastructure and a suitable and safe environment for them to do so. Families have a wide range of discretion in how they organise their care arrangements and bring up children,

in line with our pluralist legal system and our commitment to freedom of culture and religion. And children have their own agency, for example when it comes to requesting or consenting to certain health services. But certain things are not negotiable: children must attend school, and they must not be abused. Compacts work both ways, and these responsibilities must be shared.

In developing a comprehensive social protection package, the state aims to ensure that all children, no matter how poor, have enough to eat, receive the health services they need, are able to learn and acquire an education, have an adequate place to live, and are protected from crime and environmental hazards. It also needs to ensure that when there is an emergency – whether it is a medical emergency, a fire or a situation of domestic violence – families, or children themselves, can call on responsive services and know that they will respond.

While we have increased access to services, the key challenge for government is to focus attention on improving the capacity of responsive services and the quality of services. Investments in early childhood are essential to ensure that no child is left behind.

The *South African Child Gauge* is a useful resource as we consider how to strengthen collaboration between families and the state in order to provide children with the best chance in life and, in so doing, nurturing our society and the future of South Africa.





PART 1

Children and Law Reform

Part one summarises and comments on policy and legislative developments that affect children. These include:

- reforms at the final stages such as the amendments to the Maintenance Act;
- bills before Parliament including the Traditional Courts Bill, draft Rates and Monetary Amounts Amendment Bill (VAT increase), and the Social Assistance Amendment Bill; and
- draft amendments that have been published for comment, including the Basic Education Laws Amendment Bill, regulations on the Sexual Offences Courts, the Children's Amendment Bill and the Child Care and Protection Policy.

Recent developments in law and policy affecting children

Paula Proudlock and Stefanie Rohrs

This essay analyses a number of policy and legislative developments between July 2017 and October 2018 that affect children's rights. These include:

- reforms at the final stages such as the coming into effect of amendments to the Maintenance Act;
- bills before Parliament including the Traditional Courts Bill, draft Rates and Monetary Amounts Amendment Bill (VAT increase), and the Social Assistance Amendment Bill;
- draft amendments published for comment, including amendments to the South African Schools Act, draft regulations relating to the Sexual Offences Courts, the draft Child Care and Protection Policy, and draft Children's Amendment Bill.

Maintenance Amendment Act of 2015

The Children's Act sets out parental rights and responsibilities, which include the responsibility to contribute to the maintenance of the child.¹ Questions around the provision of maintenance – e.g. what maintenance entails and who owes the child a duty of support – are regulated by the common law and the Maintenance Act.² Maintenance generally includes food, clothing, accommodation, medical care and the education of the child, but can also include other costs depending on the financial means of the family.³

The payment of maintenance often becomes contentious when parents separate. Given that it is mostly mothers (and/or female relatives) who care for children when parents separate,ⁱ they tend to bear the burden of securing maintenance payments for themselves and their children. Where the payment of maintenance is in dispute or the person legally liable to maintain the mother and/or the child fails to do so, the person caring for the child can lodge a complaint at the maintenance court. As highlighted by Judge Mokgoro, "effective mechanisms for the enforcement of maintenance obligations are thus essential for the simultaneous achievement of the rights of the child and the promotion of gender equality".⁴ Although

the Maintenance Act sets out clear steps for the investigation and adjudication of such complaints, the system is not working well.⁵ One of the biggest challenges is the shortage of properly trained maintenance officers and maintenance investigators.⁶ Other problems include employers' failure to cooperate with emolument attachment orders and the tracing of maintenance debtors and beneficiaries.⁷ In addition to these systemic problems, some debtors resist paying maintenance or are unable to do so due to unemployment or poor management of their income.⁸

The Maintenance Act has been under review by the South African Law Reform Commission (SALRC) since 2011 when the Minister of Justice and Constitutional Development referred the issue for the commission's "priority attention".⁹ An issue paper was published for comment in 2014 and a discussion paper is in progress.¹⁰ Once this review is completed, a comprehensive overhaul of the maintenance law and system can be expected.

Pending the finalisation of the SALRC review, the Maintenance Amendment Act of 2015¹¹ aims to address some of the challenges outlined above. Most of the amendments came into effect in September 2015, but two amendments only came into effect in January 2018 because they required the prior drafting of regulations. The first requires maintenance officers to forward the personal details of a "maintenance defaulter" – a person who fails to pay maintenance – to credit bureaus, thereby exposing the defaulter to blacklisting and preventing them from obtaining further loans or credit.¹² The second amendment aims to make it easier to trace maintenance defaulters whose whereabouts are unknown, and enables the maintenance courts to direct cell phone and data service providers to supply the defaulter's contact details.¹³ The costs of getting this information need to be covered by the complainant or, if he/she is unable to pay the costs, by the state.¹⁴

The Deputy Minister of the Department of Justice &

ⁱ Approximately one in three children (34%) live with both parents. Of the remaining 66% of children, 41% live with their mothers but not with their fathers, and 3% live with their fathers but not their mothers. While these statistics may include parents who are not separated but merely not cohabiting, the data suggest that children are generally more likely to live with their mother. See: Chapter 2.

Constitutional Development (DJCD) is “confident that these changes will improve [...] service delivery to maintenance beneficiaries”.¹⁵ However, the benefits of the amendments are unclear, given that maintenance courts are already able to get contact information from cell phone service providers by subpoenaing them to supply this information. It has further been argued that improvements to the system will only be achieved if additional maintenance officers and investigators are appointed.¹⁶ In light of the high levels of child poverty (see Chapter 7) and the increased risk for poverty in single parent households,¹⁷ effective enforcement of maintenance can be a lifeline for children and their mothers or caregivers. It is therefore paramount that the amendments to the Maintenance Act are accompanied by adequate budget and staff allocations to enable maintenance courts to put the new provisions into practice.

Traditional Courts Bill

In March 2018, public hearings on the third version of the Traditional Courts Bill (TCB)¹⁸ took place in Parliament. The bill aims to provide a uniform legislative framework for the structure and functioning of traditional courts which are customary law dispute resolution forums that operate in many parts of the country. The TCB determines which matters traditional courts are competent to deal with. Traditional courts can, for instance, provide advice on customary law practices, customary law marriages and inheritance. They are further competent to resolve disputes in relation to altercations between community members and minor criminal offences such as theft and common assaults.

At the public hearings, civil society organisations made oral submissions to the Portfolio Committee on Justice and Correctional Services, with only one submission – the joint submission by the Centre for Child Law and the Children’s Institute – focusing on the implications of the bill for children’s rights.¹⁹ Several presenters welcomed the change in the 2017 version of the bill that – in response to earlier civil society submissions – now allows community members living in the area of a traditional court to “opt-out” of traditional courts and pursue proceedings in a magistrate’s court. Yet, many members of the Portfolio Committee fundamentally disagreed with this provision, arguing that this would render traditional courts inferior to formal courts.²⁰

The Portfolio Committee failed to respond to concerns raised about children’s rights and the need for corporal punishment and physical abuse cases to be referred to the

Department of Social Development (DSD) or the formal court system to ensure a child protection response. Committee members also brushed over concerns around traditional courts dealing with domestic violence. Instead of engaging in a debate, members of the Portfolio Committee questioned the credibility of certain presenters based on their gender, age and nationality.²¹

The Commission for Gender Equality raised several concerns around the bill in relation to gender equality, including women’s representation, access to and participation in traditional courts. However, their written submission was not debated by the committee during the public hearings.

In August 2018, the Portfolio Committee resumed its deliberations on the TCB, with specific discussions on the “opt-out” clause. Two legal advisors, including Parliament’s Chief Legal Advisor, recommended retaining the “opt-out” clause because its deletion would render the bill unconstitutional.²² However, a majority of the committee members rejected the arguments of the legal advisors, voted for the removal of the “opt-out” clause and instructed the DJCD to remove the clause.²³ The committee further requested that traditional courts be recognised as courts of law. The amendments requested by the Portfolio Committee are contrary to submissions by civil society organisations and deepen concerns around the protection of women’s and children’s rights in the bill.

Draft Rates and Monetary Amounts Amendment Bill (VAT increase)

In February 2018, the Minister of Finance announced that Cabinet had decided to increase the rate of Value Added Tax (VAT) from 14% to 15% with effect from 1 April 2018. In terms of the VAT Act, the minister can put an increase into effect before Parliament has passed the required amendment to the Act, with the proviso that Parliament must pass the amendment within 12 months.²⁴

Parliament held hearings on the proposed revenue increases and the draft Rates and Monetary Amounts Amendment Bill in March, April and August 2018 and is expected to pass the bill in late 2018. At the public hearings, the Budget Justice Coalitionⁱⁱ, a group of civil society organisations, opposed the regressive taxation mix, in particular the VAT increase juxtaposed with minimal changes to Personal Income Tax (PIT) and no increases to Company Income Tax (CIT).²⁵ Of the additional revenue the 2018 budget hopes to raise, over 70% will come from three

ii The coalition includes Equal Education Law Centre, Equal Education, Institute for Economic Justice, Children’s Institute at UCT, Public Service and Accountability Monitor, Section 27, Alternative Information and Development Centre, and Studies in Poverty and Inequality.

indirect taxes: VAT, fuel and excise (sin) taxes. Yet the lowest income groups spend the highest share of their expenditure on these three taxes.

The submission showed that the real value of social grants has barely kept pace with consumer price index inflation in recent years and often not with food price inflation. This means that the modest increases to social grants proposed in the February 2018 budget will not ameliorate the impact of the VAT increase for poor and low-income households that are dependent on social grants.

The coalition argued that direct taxes such as PIT, CIT and estate and property taxes should rather be increased to make up the lion's share of the needed revenue. Their submission demonstrated that effective rates of CIT and PIT have fallen since 1999 and therefore there is room to increase these taxes. The submission also countered the claim by Treasury that South Africa's CIT is high by international standards – we rank 172 out of 213 countries for company tax contributions (where 1 is the highest).²⁶

The coalition emphasised that tax decisions must be redistributive. Reducing inequality and poverty, and investing in pressing social needs is essential for inclusive economic growth, and ensuring substantive equality (as outlined in s9 of the Constitution). To this end, the coalition costed and proposed alternative revenue raising measures that would ensure a more progressive tax system while ensuring that revenue shortfalls and social needs are met.

In response to concerns raised about the VAT increase, Cabinet announced that it would consider expanding the list of zero-rated items to reduce the impact of the VAT increase on poor households. The Minister of Finance subsequently established an expert panel, chaired by Professor Ingrid Woolard, to make recommendations on additional items for zero-rating and to consider whether improvements to current social programmes such as social grants or the school nutrition programme, could compensate for the negative impact of the VAT increase. The panel received 2,000 submissions, held consultations and after deliberations were completed, submitted their report to the minister in early August 2018.²⁷

The panel recommended the zero-rating of an additional six items: white flour, white bread, cake flour, sanitary products, nappies and school uniforms. This could save poor and low-income households approximately R2.8 billion per year.²⁸ The panel could not reach consensus on whether individually quick frozen chicken should be included and the majority decided to exclude it. They also considered

baby formula but decided against it due to the national policy imperative of promoting breastfeeding to improve child health and nutrition outcomes. With regards to social programmes, the panel recommended an increase to all social grants and specifically the Child Support Grant (CSG), increased investment in the school nutrition programme, and the direct provision of sanitary products to women and girls in poor households.

Treasury called for written submissions on the panel's recommendations and the Standing Committee on Finance held a day of public hearings to hear stakeholders' opinions.²⁹ The Budget Justice Coalition called for:

- more items to be zero-rated (including chicken, peanut butter, sorghum meal powder and mabella, powder soup, canned fish and soya products);
- increases to social grants, especially the CSG;
- a conditional grant to subsidise scholar transport;
- a participatory process to discuss the most effective way to distribute sanitary products to poor households; and
- an increase in the early childhood development (ECD) subsidy to improve the nutrition of young children and salaries of women and youth employed by ECD programmes.³⁰

In the October 2018 Medium Term Budget Policy Statement, Treasury announced that it had decided to zero-rate only three additional items: cake and white bread flour, and sanitary products.³¹ They estimated that it would have cost a further R9 billion and R1 billion in lost revenue to zero-rate chicken and nappies respectively and therefore decided against including these items.³² With regard to school uniforms they cited the difficulty in differentiating between normal clothes and uniforms as the reason for not zero-rating.³³

With regards to increased investments in social programmes, no additional budgetary allocations were made for programmes benefiting children, while R100 million was taken away from the CSG budget line-item due to under-spending.³⁴ This follows on a similar trend in the previous financial year where R518 million was moved out of the CSG budget line-item due to under-spending.³⁵

Parliament will need to make the final decision on the addition of further items for zero-rating when it passes the Rates and Monetary Amounts Amendment Bill in late 2018. Besides Treasury, it is not clear what forum will be considering the panel's recommendations for improved funding of social programmes such as the CSG and the school nutrition programme.

Social Assistance Amendment Bill

The Social Assistance Amendment Bill³⁶ was tabled in Parliament in April 2018 and contains provisions which give the Minister of Social Development the authority to increase the grant amounts for certain categories of grant beneficiaries based on need. These provisions are intended to be used to add a top-up payment to the CSG for relatives caring for orphans. They would therefore get the normal CSG amount of R400 plus a R200 top-up,ⁱⁱⁱ totalling approximately R600. This CSG Top-Up is part of the solution to the foster care crisis described below under the draft Child Care and Protection Policy and draft Children's Amendment Bill. If designed and administered effectively, caregivers will be able to access it directly from the South African Social Security Agency (SASSA) without the need to go through social workers and the courts, and it will therefore reach orphans faster than the Foster Child Grant (FCG). Once Parliament has passed the bill, DSD has to draft regulations clarifying the proof required to prove orphanhood (and/or abandonment) and family relationship.

While the bill was tabled on 13 April 2018, the Portfolio Committee on Social Development has not yet started to process it and has instead indicated that the committee does not plan to deal with it this year.³⁷ If the bill is not passed by Parliament by March 2019, then the additional budget for the CSG Top-Up that is already included in the 2019/20 budget, will be forfeited, at a time when poor households are struggling to cope with the VAT increase and a number of petrol price increases. Taking into account South Africa's high rates of child poverty and stunting, the UN Committee on Economic, Social and Cultural Rights recently flagged this issue for priority attention in its Concluding Observations to the South African Government.³⁸

Draft Basic Education Laws Amendment Bill

The draft Basic Education Laws Amendment Bill³⁹ proposes to amend the South African Schools Act (SASA)⁴⁰ and the Employment of Educators Act⁴¹ to "align them with developments in the education landscape" and to ensure that the right to basic education is fulfilled. When the draft bill was published for comment in October 2017, the Department of Basic Education (DBE) received "an avalanche of input", particularly on the proposed amendments to School Governing Body (SGB) powers.⁴² The department is currently considering and collating the comments before the bill can be tabled in Parliament. Many amendments are being proposed but we focus on two areas, namely the enforcement of compulsory

school attendance, and the respective powers of the Head of Department (HOD) and SGBs with regards to admissions.

Enforcing compulsory school attendance

Section 3 of the SASA obliges parents to ensure that their children attend school and creates an offence if a parent does not fulfil this duty. It is also an offence for any other person to prevent a learner from attending school. If convicted by a court, a parent or other person can be fined or imprisoned for a maximum of six months. The original purpose of enacting s3 in 2005 was to comply with South Africa's international obligations to ensure compulsory school attendance and was aimed at parents who did not send their children to school owing to neglect, religious belief or other such reason.⁴³

The DBE is proposing an amendment to increase the maximum imprisonment sentence for offenders to six years. Equal Education (EE) and Equal Education Law Centre (EELC) have opposed the increased prison terms for parents, and proposed that s3 be amended to remove the prospect of criminalisation, in favour of a social interventionist approach to address the underlying reasons for school dropout, truancy and absenteeism.⁴⁴

The DBE's Policy on Learner Attendance recognises that poverty is the "root cause of irregular school attendance":

*Irregular attendance may be the result of parents' inability to pay school fees, or buy uniforms; lack of transport to school; parents' or children's chronic illness, including HIV/AIDS and tuberculosis; poor nutrition or hunger, child labour, unstable or dysfunctional family and gang violence.*⁴⁵

If s3 is enforced and parents are imprisoned due to their child's absenteeism, the state will effectively criminalise parents (mainly women) for being poor, sick or for living in dangerous places.

EE and EELC argue that the criminalisation of parents "represents an ill-advised attempt to impose an easy answer on an intricate issue".⁴⁶ They cite a UNESCO analysis of the truancy laws of 34 countries which concluded that no substantial evidence exists that punitive approaches to addressing truancy are effective, whereas supportive social interventions are more likely to increase school attendance.⁴⁷

The DBE is also proposing to make it an offence, subject to a fine or imprisonment of up to six years, if anyone "wilfully interrupts or disrupts any school activity or wilfully hinders or obstructs any school in the performance of the schools activities".⁴⁸ DBE's aim is to deter communities (including

iii The Department of Social Development has committed to a top-up that is 50% of the value of the current CSG.

parents, learners and teachers) from forms of protest that result in learners being prevented from attending school.⁴⁹

The majority of protests resulting in school non-attendance have tended to be about issues other than education, for example border demarcation disputes or service delivery failures that are affecting the broader community.⁵⁰ Many of these protests have resulted in children missing school for many days (and in some cases, several months). The DBE is therefore seeking solutions to protect children's rights to education. However, the Centre for Child Law, EE and EELC have all advised DBE (and government as a whole) that using s3 of the SASA is inappropriate and likely to be unconstitutional and ineffective. Section 3 has not been used in the past, even for its original purpose, and it is therefore likely to be difficult to use in the event of violent or intimidatory protests.⁵¹ They also argue that parents should not be targeted for prosecution if their reason for not sending their children to school is the fear that they or their children may become victims of protest-related violence.⁵²

The South African Human Rights Commission has recommended that government concentrate on preventing protests from escalating to the point where schools are targeted.⁵³ This could be achieved by earlier engagement with protesting communities. EE has also opposed the proposed amendment on the grounds that it would be stretching the purpose of s3 to control or limit protest action when other laws exist for that purpose.⁵⁴

Powers of SGBs and HODs with regards to admissions

The draft bill makes it clearer that the provincial HODs have final authority on admission policies and individual admission decisions.⁵⁵ This amendment is being made in the wake of several court cases involving disputes between SGBs and HODs with regards to admission decisions⁵⁶ and aims to strengthen government's ability to ensure equitable access to education.

EE and EELC have welcomed the clarity but argue that the draft bill should more clearly recognise the partnership that exists between government and SGBs.⁵⁷ With regards to individual learner admission decisions, they propose that the bill should provide for a 14-day consultation period between the two bodies before the HOD makes the final decision.

Draft Regulations on Sexual Offences Courts

In November 2017, the DJCD published a revised version of the Draft Regulations Relating to Sexual Offences Courts⁵⁸ for public comment. These regulations stipulate the infrastructure and services of sexual offences courts and

training requirements for criminal justice personnel. Nearly half (46%) of sexual offence complainants are children,⁵⁹ so it is critical that sexual offences courts respect children's rights, are responsive to children's needs, and avoid secondary victimisation of children who have been sexually abused.

While some of the suggested regulations promote children's best interests (for instance the regulations state that a sexual offence case involving a child witness must be prioritised)⁶⁰ others disregard children's rights. For example, the decision to withdraw a charge can be discussed with the parents of a child complainant without consulting the child,⁶¹ which violates children's right to participation.

The regulations attempt to address some of the key challenges child complainants face in sexual offences courts. For example giving evidence through an intermediary can reduce a complainant's fear and emotional trauma during testimony. The draft regulations therefore set out requirements to ensure the availability of sufficient and adequately trained intermediaries. These regulations will need to be costed and an adequate budget allocated to the DJCD to ensure effective implementation.

Draft Child Care and Protection Policy

In December 2017, civil society organisations were invited by the National DSD to submit comments on the first draft of the Child Care and Protection Policy (CCPP).⁶² The policy recognises that many at-risk children are trapped in an intergenerational cycle of risk and that government is currently not providing the developmental services necessary to address the risks and break the cycle. The policy therefore seeks to "ensure a national public programme and systems to ensure that all children survive, develop to their full potential, are protected and participate (not just about protecting them from harm)",⁶³ and requires that "multiple role players must work together, unified around a common vision to provide a continuum of developmental and protective care and protection services"⁶⁴.

Since the draft was released in late 2017, there have been several formal and informal engagements between DSD, other government departments and civil society to refine the draft policy. This section reflects on the June 2018 draft⁶⁵ which was circulated as the "final" draft and is scheduled to be presented to Cabinet for approval in late 2018.

The policy requires three levels of services for children and their families:

1. **Universally accessible promotive services** for all families – for example clean water, sanitation, electricity, birth registration, early education facilities, schools, health care services, recreational facilities, police services, parent

support programmes and public education on child development. This level is the responsibility of a range of government departments across all three spheres of government. Challenges and gaps identified include inequities in access to the full range of services, poor quality health and nutrition services, lack of affordable day care, poor quality early and basic education, and a lack of recreational facilities and play areas. These gaps are mostly the mandates of departments other than DSD.

2. **Targeted prevention and early intervention services** for vulnerable families whose circumstances limit their capacity to provide nurturing and responsive care and protection. These include parenting skills programmes, social grants, employment programmes for caregivers, psychosocial support for families and children, diversion programmes for children in trouble with the law, peer support programmes, services for victims of domestic violence, free or subsidised day care and education, and assistive devices and rehabilitative services for children with disabilities.

Challenges and gaps identified include the inadequate reach and scale of prevention and early intervention programmes, inadequate planning and targeting to reach all vulnerable children, administrative bottlenecks in the foster care system preventing the majority of kinship carers from accessing foster care grants, and the lack of parenting programmes.

3. **Responsive protection services** for children who are exposed to abuse, neglect or exploitation or who lack family care – e.g., criminal sanctions and protection from harmful practices, risk assessments, investigations into abuse, therapeutic services, children’s court inquiries, placement in alternative care, provision of alternative care, supervision and regular review of placements in alternative care, family reunification services and support when leaving the alternative care system at the age of 18.

Challenges and gaps identified at level three include high levels of violence against children, inadequate therapeutic services for the majority of child victims and their caregivers, poor quality and delayed services from social workers and the police, poor record-keeping by social workers, failure or delay in removing children at risk, social workers who fail to bring children’s cases to the children’s court as required by the law, and a lack of family reunification services for the majority of children in alternative care.⁶⁶

The policy deals explicitly with some of these challenges, but not all. Below we describe and critique the policy’s proposals with regards to:

- prohibiting corporal punishment in the home
- introducing a government-wide screening platform to identify and refer vulnerable children; and
- supporting children in kinship care.

Prohibition of corporal punishment in the home

As part of the developmental approach to preventing violence and abuse, the draft policy prohibits the use of corporal punishment in all spheres, including the home. This is a clear shift in public policy because the common law defence of “moderate and reasonable chastisement” effectively allows parents to hit their children, as long as the hitting is “moderate” and intended for correction. A ruling of the South Gauteng High Court in October 2017 found that this legal defence is inconsistent with the Constitution and struck it down (see Box on page 16).⁶⁷

The draft policy prohibits corporal punishment – and therefore deprives parents of any legal defence for hitting a child – but states that the criminal prosecution of caregivers for using corporal or other degrading punishment should be a measure of last resort. Instead, the policy promotes the universal provision of parenting programmes (which should promote positive discipline), and recommends that caregivers who do use corporal punishment are referred to prevention and early intervention programmes. This approach is commendable because a policy or law in itself will not stop parents from using corporal punishment. Many parents and caregivers require information on child development, the importance of nurturing care, the negative effects of corporal punishment, and practical guidance on how to use positive discipline. Furthermore, the focus on prevention and early intervention will – in many or perhaps most cases – be sufficient to protect children and may be more in line with the best interest of the child rather than separating children from their caregivers by invoking a criminal prosecution.

Government-wide screening programme for identifying vulnerable children

Most government officials who regularly come into contact with children have a legislative duty to report abuse or deliberate neglect in terms of s110 of the Children’s Act.⁶⁸ However, there is currently no duty on state officials to help vulnerable children and families access promotive, prevention and/or early intervention services.

Children whose survival, safety and development are at risk should be linked with the services necessary to promote development and prevent further harm. To achieve this, the policy proposes that all government staff who come into

High Court prohibits corporal punishment in the home

In 2017, the South Gauteng High Court heard an appeal from a father who had been convicted of assault for physically disciplining his 13-year-old son. In the appeal, the father argued that he was not guilty of assault because his conduct was covered under the common law defence of “moderate and reasonable chastisement”. In practice, this legal defence – which originates from a judgment in 1913 – allows parents to physically punish their children as long as such punishment is “moderate” and “reasonable”.

During the appeal, the High Court thought it necessary to consider whether the defence is consistent with the Constitution and invited organisations that have an interest in the matter to make submissions to the court. The Children’s Institute, Quaker Peace Centre and Sonke Gender Justice, legally represented by the Centre for Child Law, joined the proceedings as *amici curiae* (friends of the court) and provided the court with an expert affidavit highlighting the detrimental short- and long-term effects of physical punishment and its links with other forms of violence against children. Furthermore, the *amici*’s detailed legal submission demonstrated that the defence is inconsistent with children’s constitutional rights.

In its submission DSD, another *amicus*, argued that the legal defence is unconstitutional and should be

struck down. DSD underlined that the Concluding Recommendations of the UN Committee on the Rights of the Child required the South African Government to prohibit all forms of physical punishment.

Contrary to these submissions, the organisation Freedom of Religion South Africa (FOR-SA), another *amicus*, made a submission to the High Court arguing that the common law defence is constitutional and should be retained.

After hearing oral arguments, the High Court ruled in October 2017 that the common law defence of “moderate and reasonable chastisement” is inconsistent with children’s constitutional rights and struck down the defence. As a result of the judgment, parents would no longer be allowed to smack or spank their children or use any other form of physical discipline. This is a critical first step in curbing the use of physical punishment in the home – one of the most widespread forms of violence against children in South Africa (as outlined in Chapter 6).

However, the High Court judgment is currently not in force because FOR-SA has appealed it. The Constitutional Court will hear the appeal on 29 November 2018.

contact with children and families, should be mandated and capacitated to identify vulnerable children and families and refer them to the services they need:

All relevant departments and agencies bear a minimum duty to understand and recognise vulnerable children and families through a basic screening process, along with an accompanying duty to provide the promotive and preventative services for which they are primarily responsible.⁶⁹

For example, home affairs officials have a responsibility to provide birth registration services, and the duty to recognise and refer vulnerable children and families to a social service practitioner for an initial screening. If this initial screening reveals a need for promotive or prevention services, these must be provided. If the child is in “need of care and protection” in terms of s150 (1) of the Children’s Act, they should be referred to a designated social worker who will investigate the circumstances of the child and family and submit a report to the children’s court.

This approach is welcomed as it could ensure an integrated response to children’s and families’ developmental needs. However, for the system to work, the following ingredients need to be present:

- A clear definition of what makes a child and family “vulnerable”.
- All state officials who come into contact with children and families need to be trained to recognise risk and protective factors, and understand the basics of child development in order to identify vulnerable children.
- DSD and the non-profit organisations (NPOs) that implement social welfare services will need sufficient human and financial resources to respond to the significant increase in referrals for screening and assessment that could result from such a nationwide surveillance system.

The policy currently defines vulnerable children as inter alia: children living in poverty (11 million); orphaned children (3 million); children separated from, or living without, their biological parents (4 million); and children with disabilities.⁷⁰ This equates to more than 50% of the child population.

Requiring other departments to refer vulnerable children for screening and support to DSD and NPOs only makes sense if there are sufficient human and financial resources to do the screening or provide the necessary prevention and early intervention programmes. It is therefore essential that DSD targets its limited resources at the most vulnerable children rather than attempting to reach half the population.

Considering the country's child health and nutrition indicators, it may be worth focusing on children who are stunted (27% of children under 5 years or 1.58 million children); those at greatest risk of stunting (the 1.9 million children under six years of age living below the food poverty line);⁷¹ those who are eligible but not accessing the Child Support Grant (approximately 2 million children) or Care Dependency Grant; and children without birth certificates who are consequently unable to access social grants, school or the school nutrition programme.

Currently a referral system does exist in practice. The Department of Home Affairs, South African Social Security Agency (SASSA) and schools regularly refer parents and caregivers to social workers to obtain a letter, report or court order before they will assist the family to access the promotive or preventative services that they have applied for. In most instances social workers do not have the capacity to respond to these requests due to the high number of referrals. The result is that children are denied access to birth registration, grants or education for many months and/or years, making them more vulnerable. It is therefore important that the new surveillance system does not make screening a prerequisite for access to promotive and preventative services, but rather introduces it as a support service that occurs after these essential services have been obtained.

Supporting children in kinship care arrangements

The policy distinguishes between children living with kin who have a living parent residing elsewhere, and those living with kin whose parents have died or abandoned them. There are approximately 3 – 3.5 million children living in the first category, and approximately 500,000 – 1 million children living in the second category (depending on the definition of orphans and abandoned children being used).^{iv}

For children in the first category, the policy proposes that the kinship caregiver and parent must formalise

their arrangement by concluding a parenting rights and responsibility (PRR) agreement:

In situations where a parent or other person is available to do so, informal care arrangements should be formalised through the conclusion of PRR agreements following the relevant procedures prescribed in law.⁷²

Section 22 of the Children's Act regulates PRR agreements and requires the agreement to be made an order of court or registered with the family advocate before it will be considered enforceable.

It is not specified in the policy why kinship caregivers should be required to have a PRR agreement or what the document will be required for. If the proposal becomes law,^v the PRR agreement could become a document requested by schools and SASSA when caregivers apply for schools or social grants. A significantly large number of caregivers (those caring for 3 million children) will then need the services of the family advocate or the courts. This proposal should therefore be costed to assess the budget needed to increase the capacity of the family advocates and the children's courts to enable them to respond to a significant increase in demand. If the additional financial resources are not available, then the proposal should not be implemented as it will prevent children from accessing essential services such as school and grants. A less administratively burdensome approach to proving the status of primary caregivers would be to draw on the documents currently listed in the Regulation 11 (3) of the Social Assistance Act for proving primary caregiver status.^{vi}

The impact on caregivers and the children in their care should also be carefully considered due to the logistical and financial difficulties families are likely to face in concluding such agreements. For example, the caregiver and child often live far away from the parent and travel costs to get together to formalise the agreement may prove to be prohibitive.

For orphaned and abandoned children living with kin, the policy recognises that it is not effective to continue using the foster care system to provide material support:

Large numbers of orphaned children in the care of relatives do not access the social assistance they need because of the historical diversion of these families into the foster care system as a mechanism to access the FCG. ... This placed tremendous strain

iv The policy defines "orphan" to include paternal orphans (those that have lost a father), maternal orphans (those that have lost a mother) and double orphans (those who have lost both parents). See page 18. The draft Children's Third Amendment Bill (August 2018) defines an orphan as a child who has lost both parents, thereby restricting the definition to double orphans only. See section 1.

v The proposal is not included in the draft Children's Third Amendment Bill (August 2018).

vi Regulation 11 (3) provides that a caregiver may prove that they are the primary caregiver for the purposes of a social grant application, by providing any of the following documents: (i) an affidavit from a police official; (ii) a report from a social worker; (iii) an affidavit from a biological parent of the child; or (iv) a letter from the principal of the school attended by the child.

on the foster care system, with the excessively high numbers of children and caregivers entering it having created administrative bottlenecks. It has led to the exclusion of large numbers of children in need of intensive protection services and left the system unable to maintain its monitoring and renewal of court-ordered foster placements. Critically, this has resulted in the exclusion from the FCG of many of the orphans unable to access the system because of overcrowding, delays and inequities in administration of the relevant processes.⁷³

The policy also recognises that the large majority of orphans living with kin do not need formal protection services via the foster care system because they are not suffering abuse, neglect or exploitation. However, DSD still considers them to be more “vulnerable” than children in the care of biological parents and will therefore require these caregivers to present themselves and their children to DSD to be screened and assessed, or to a court to obtain a PRR order.⁷⁴ If they pass the screening and assessment stage, they will be issued with a “letter of recognition” which recognises them as caregivers with parental rights and responsibilities.

If the assessment process reveals a need for prevention and early intervention services, the caregiver and child will be assisted to access these services (e.g. the CSG Top-Up as outlined in the Social Assistance Amendment Bill above; and/or a parenting skills programme). If a protection issue is detected, for example the caregiver is abusing or neglecting the child, then the case will be referred to a designated social worker for a formal child protection investigation which may result in the child being removed from the caregiver.

In terms of a High Court order, the department is obliged to devise and implement a comprehensive legal solution to the crisis in the foster care system by December 2019.⁷⁵ This requires a solution that ensures the majority of orphans in kinship care can access a social grant timeously. The challenge in using the foster care system for orphans living with kin is the gap between the large number of orphans in need (over 1 million) and the small number of social workers available to process the applications and two-yearly extensions. The solution therefore needs to reduce the burden on social workers. The current proposal should therefore be carefully assessed and costed to determine whether it will reduce the demand on social workers and enable kinship carers to more easily access social assistance, birth registration and schools.

Draft Children’s Third Amendment Bill

DSD is in the process of drafting a Children’s Amendment Bill⁷⁶ which is closely aligned with the policy. The bill covers a range of issues including amendments aimed at dealing with the crisis in the foster care system described above. The draft bill, gazetted for public comment in October 2018, provides that s150 (1)(a) should be amended to read that “a child is in need of care and protection if such child has been abandoned or orphaned and is not in the care of a family member...”.⁷⁷ This would mean that orphans and abandoned children in the care of extended family would no longer be considered children in need of alternative care because they are in family care. This amendment is aimed at complementing the Social Assistance Amendment Bill (see above) which aims to provide more accessible financial support to relatives caring for orphans. If both laws are approved, orphans and abandoned children living in extended families will not need to be placed in alternative care by a social worker and court before they can access the CSG Top-Up.

Some have argued that kinship carers also need some sort of legal recognition or “regulation”. In May 2018, DSD circulated two amendment options for regulating or recognising kinship carers. The first is voluntary and involves an application to the children’s court for a declaratory order.⁷⁸ The second is mandatory based on an assumption that extended family care is more risky for the child than biological parent care. It involves social workers vetting whether the carers are fit and proper and the Head of Department issuing a “recognition notice” which can then be used by the carer to access state services.⁷⁹ The second option has been included in the draft that was gazetted for public comment as a process that will be prescribed in regulations in terms of s32 (5). This proposal has been criticised due to the likelihood that it will consume social worker’s time unnecessarily when they should rather be assisting children who are in need of child protection services due to abuse or neglect, and because it may result in children living with relatives being excluded from accessing state services due to their relatives not being able to access the required “recognition notice”.⁸⁰

To meet the terms of a High Court order,⁸¹ this bill needs to be tabled in Parliament by February 2019 and passed and put into effect by December 2019. This is going to be difficult as 2019 is a general election year and Parliament will therefore have considerably less time and capacity to debate and pass complex legislation.

Conclusion

If effectively implemented, the amendments to the Maintenance Act and the Social Assistance Act may result in more income in the pockets of a few parents and caregivers, enabling them to feed, clothe and educate their children. However, the increase to the VAT rate coupled with the fuel levy and fuel price increases are already having a negative impact on all poor and low-income households – reducing their already strained capacity to provide for children’s basic nutritional, health and education needs. The addition of only three more items for zero-rating and no increased budgetary allocations to social programme’s benefitting children shows no consideration of the constitutional obligation to prioritise children’s socio-economic rights.⁸²

While the Justice Department’s draft regulations on the sexual offences courts are aimed at improving the protection of child witnesses and victims within the criminal courts, Parliament’s intended amendments to the Traditional Courts Bill are likely to undermine gender equality and respect for

children’s rights within the traditional courts setting. Women and children have the right to choose whether they would prefer their complaint to be adjudicated in a traditional or magistrates court, however the removal of the opt-out clause from the Traditional Courts Bill will erode that right.

Many children living in kinship care arrangements struggle to access late birth registration, social grants and schooling. The Child Care and Protection Policy and the amendments to the Children’s Act and Social Assistance Act aim to provide legal recognition and better support to kinship carers and the children in their care. However, if the proposal imposes requirements that caregivers find difficult to meet or that government does not have the capacity to provide, then their situation could be made worse, not better. It is important that well-intentioned efforts to protect a few children in kinship care from potential abuse, do not prevent the majority of children living in kinship care from accessing birth registration, grants, health care services or school.

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PART 2

Children, families and the state

Part two presents nine chapters that consider how families and the state can collaborate better to support children. They motivate for targeted and responsive policies, programmes and services to support families to providing care and nurturing children's development. The essays motivate for the state to:

- recognise the diversity and fluidity of families and caregiving relationships when targeting programmes and services;
- implement current law reforms governing the rights of women and children;
- increase support for parents and caregivers;
- adopt an integrated approach to stopping violence against women and children in families;
- target adequate income support for families in ways that recognise diverse household forms;
- build the efficiency of referral mechanisms and responsive services for those in need; and
- invest in the development of children across their life-course.



Introduction:

Children, families and the state

Katharine Hall & Linda Richter

People have always organised themselves into intimate groups and social networks in which the young are cared for. Families are not just about biological relationships and parenting is not simply about reproduction: The family serves a social function as “one of the great, enduring institutions of organised human life”.¹

The state is an amalgamation of individuals, families, interest groups and the different tiers of government, and it relies on families to reproduce the population and the workforce. It needs families to raise and nurture children, keep them safe, provide for their necessities, send them to school and support their educational development. It also needs families to care for sick children, help them access health care services, and bring them up with a set of values that enables them to participate fully in society, with a long view towards the development of future generations. The state also plays a role in these dimensions of care, protection, material support, education, health care and social development. Families rely on the state to provide an enabling environment in which to care for their children and support their development. Wealthy families may be able to pay for private services, but most children rely on their families to access state benefits and services to support their development, and families can also play an important role in demanding good quality services.

This issue of the *South African Child Gauge* focuses on children at the interface of families and the state. The overarching question is how to achieve good collaboration between families and the state so that children have safe and fulfilling childhoods, develop well, are prepared for adult life and, in turn, can care for their own children. Some questions that we explore are: To what extent should family life be considered private, and at what point should the state intervene? How can policies and services for children cater for a variety of family types and living arrangements? How can the state support family strategies in ways that ensure children’s interests are considered and protected amidst competing demands? What are the areas of inconsistency or tension between policy, social norms and practice?

This introductory chapter briefly considers areas that are elaborated in the individual chapters including:

- the intersections between the private sphere of families and the public sphere of the state;
- the diversity of families and problems of definition;
- South African families in the context of global change;
- the historical and social factors that influence the shape of families; and
- how families are viewed by the state and some areas of contradiction.

Families and the state as private and public spheres

The relationship between families and the state sits at the intersection of “public” and “private” spheres. The state should enable parents to raise and nurture children without unduly trespassing on “the terrain of parental authority”.² Some of this interdependency is ratified in laws and conventions that specify the rights and obligations of children, families and the state. These include the South African Constitution, especially section 28 of the Bill of Rights which provides for the specific rights of children; the Children’s Act; and the international agreements to which South Africa is signatory, such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Other aspects of the relationship are less formalised – for example, the quality of state services that families can expect, or the level of family investment in children’s health, education and social well-being.

*Families and the state collaborate
in the development of children.*

Parents (including family members or guardians in parenting roles) have the primary duty of raising children, but the state must make available essential services and infrastructure that families cannot feasibly provide (such as transport systems, schools, health facilities, policing and welfare services). The

state also carries the final obligation to ensure that children's basic needs are met, and so may intervene when families cannot – or do not – fulfil their responsibilities. In extreme cases, the state might remove children from families and place them in alternative care.

Viewed in this way, families and the state collaborate in the development of children, but there are also areas of tension or conflict. Families require a degree of autonomy but there are limits to the extent to which the state can and should intervene in decisions about co-residence and how to raise children. Yet contestation may arise between families' right to privacy versus the state's obligation to protect the rights of the child (for example, in the case of corporal punishment). Conversely, there are times when families (or individuals within families) require the state to intervene, yet the state may fail to do so because of capacity constraints or the personal beliefs and values of those in the civil service (for example, where police choose not to get involved in "private" matters of domestic violence, or where health workers believe young people should not have sex and deter adolescent girls from using contraception).

Contestation may occur where the state fails to keep its side of the bargain. For example, housing backlogs may make it impossible for families to live together, schools may not be safe for children, and welfare services may fail to respond to cases of neglect. Contestation may also arise when families fail to nurture and socialise children in the ways that the state requires: for example, presenting children at clinics for immunisation, sending them to school and encouraging

their progress, teaching them about road safety and instilling norms and values – for example that stealing and violence are wrong.

Collaboration between families and the state may be positive or negative. When fathers do not support their children and the state fails to enforce the payment of maintenance, it effectively absolves men of their financial responsibilities towards children. Similarly, if families fail to report violence against children because they regard it as a family matter, and the state fails to intervene when someone else reports it, then it may be argued that the family and state are complicit in allowing child abuse. South Africa's dual legal system gives rise to further tensions in determining whether to draw on statutory or customary law when resolving family disputes around maintenance, custody and domestic violence.

The problem of defining the family

What is a family? The word itself may conjure up memories and ideals. A family could be a large, multigenerational network of people including children, cousins, grandparents, aunts and uncles who are linked by blood, marriage or ties of co-residence and who share a home (or neighbouring homes) or are spread across the country. It could be two parents and two children in a three-bedroomed house; or separated parents with new partners and an assortment of biological and non-biological children who move between homes; two fathers with an adopted child; a mother with children and grandchildren; or siblings living together.

Box 1: What is happening with families globally?³

- **Two-parent families** are becoming less common across the world, especially in the Americas, Europe, Oceania and sub-Saharan Africa. The regions with the greatest share of two-parent families are Asia and the Middle East. Children in Africa are the most likely to live apart from both parents.
- **Marriage rates** are declining in many regions. Marriage rates are highest in Asia and the Middle East and are almost as high in sub-Saharan Africa (with the exception of South Africa). Regionally, marriage rates are lowest in Central and South America.
- **Non-marital childbearing** (having children outside of marriage) is linked to declining marriage rates and is increasing in many areas. The highest rates of non-

marital childbearing are in Central and South America. Rates are also high in North America, Eastern and Western Europe and Oceania, and the lowest rates are in Asia and the Middle East.

- **Overall childbearing rates** are falling across the world. The highest fertility rates are in sub-Saharan Africa. North America, Europe and Oceania now have below replacement-level fertility rates, which is why they have predominantly "ageing" populations.
- **Extended family arrangements** (where children live with kin, either with or without their parents) are particularly common in much of Asia, the Middle East, Central and South America, and sub-Saharan Africa.

Families and household arrangements are dynamic, responding over time to social, economic and political factors. Medical advances in the twentieth century especially gave women greater control over reproduction and reduced maternal and infant mortality rates. Some of these gains were eroded in South Africa by HIV/AIDS, with a sharp rise in mortality and orphaning rates towards the end of the twentieth century, followed by some recovery in the past decade.

Marriage rates have declined globally since the mid-twentieth century for a range of political, economic and social reasons. In South Africa, marriage became increasingly difficult in the context of apartheid-era labour migration and influx control, especially as the migrant labour system enforced the separation of men from their wives or partners for 11 months of the year.⁴ The shift to a largely cash-based system of *lobolo* (bridewealth) in the context of high unemployment and low wages make marriage unaffordable for many men.⁵ Marriage decisions are increasingly a matter of personal choice rather than a strategic alliance between families. Shifts in gendered relations and high rates of unemployment mean that more women carry the double burden of financial provision and care.⁶ Changing social norms have led to greater societal acceptance and legal recognition of children born outside marriage, and of same-sex couples.

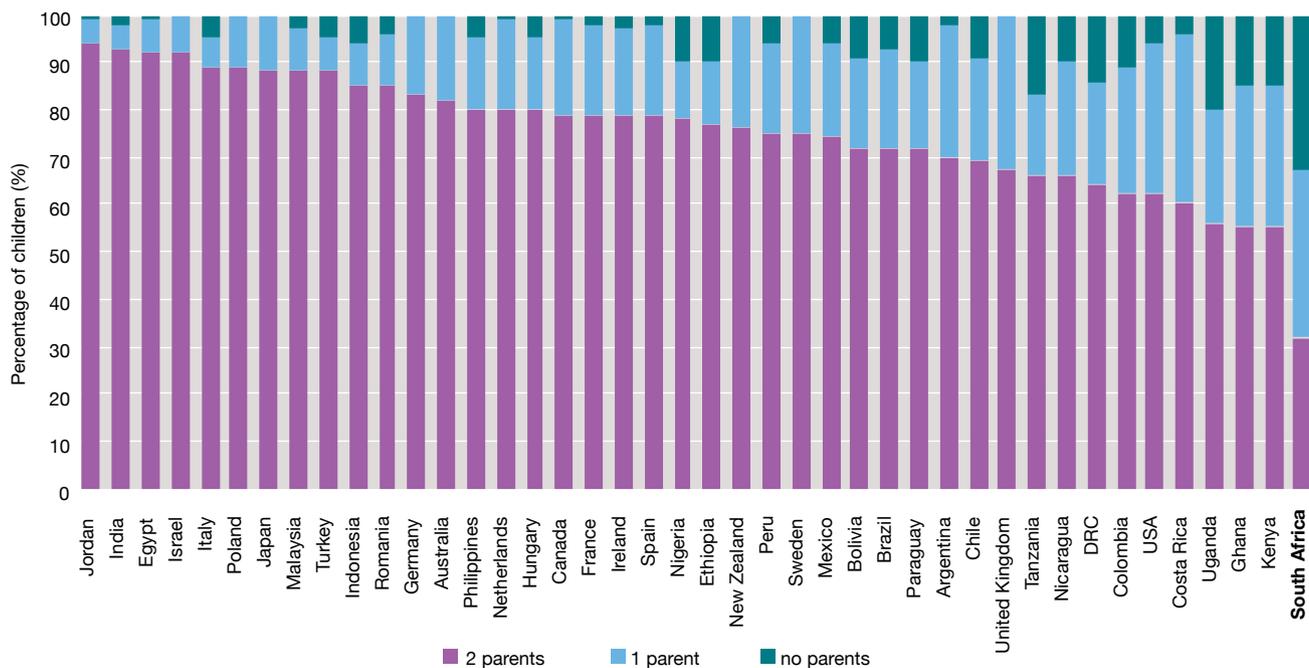
Like individuals, families have a life-course and are constantly developing and changing. Families expand

and contract with births and deaths, they merge and grow through union formation, shrink with dissolution, expand through reunion and develop offshoots as family members move away to form new families of their own. Families have intergenerational continuity, and most children grow up from infancy to adulthood within a family, even though they may move between households and have different caregivers at different times of their lives.

The composition of a family does not signify stability, strength or vulnerability. Chapter 2 shows how residential arrangements may change frequently and how households and families do not necessarily coincide. Households are, to a certain extent, expressions of the material and social strategies of families, used by all or parts of the family at different stages for different purposes, for example to access housing and secure tenure, to access education and income, and to provide care to the very young and the very old. It would be convenient for the delivery of state services if families took recognisable forms within a finite range of possible types, if the relationships of family responsibility and dependence coincided with the place of household residence, and if the composition of households stayed the same and everyone remained in the same place. But this is not the case, especially not in South Africa.

Given the diversity and mutability of families and households, it is not appropriate or feasible for the state to categorise either families or households into typologies for purposes of

Figure 1: Percentage of children living with two, one and no biological parents



Source: Child Trends (2014) *World Family Map 2014: Mapping Family Change and Child Well-being Outcomes*. Bethesda, MD: Child Trends.

determining risk or targeting benefits or services (for example, by focusing on single parent households or children living with relatives). As shown in Chapter 2, households in South Africa are highly varied. Extended and complex structures predominate, and family networks often extend beyond the physical boundaries of any particular homestead. What matters most for children are the resources available in the family (within and beyond the household) and the quality and stability of relationships and care. Irrespective of its shape, size or wealth, a family may be at times intimate, warm and supportive, or a place of uncertainty, neglect and risk.

South African families in a global context

Family forms are changing around the world (see Box 1 on page 23) and South Africa is typical in several respects, including diverse family arrangements and household forms, declining marriage rates and an increase in households headed by women. Yet it is an outlier in the high proportion of children who do not live with either parent, as illustrated in Figure 1.

The World Family Map project provides information about the structure and composition of families across the world. A comparison of 49 countries representing a majority of the world's population found that "in spite of marked family

changes around the globe over the last half-century, children are most likely to live in two-parent families in all countries except South Africa".⁷ The World Review for 2017 reported that in terms of parental cohabitation arrangements, South Africa is an outlier, "even by African standards".⁸ The only other countries with similarly high rates of parental absence are Namibia, Swaziland, Zimbabwe and Lesotho,⁹ all of which have a long history of supplying labour to South Africa. South Africa is also unusual in the persistence of dual housing arrangements – for example, where families have two homes and members oscillate between cities and rural areas.

Families and household arrangements are dynamic, responding over time to social, economic and political factors.

The unusual shape of families in South Africa and neighbouring countries is partly historical and cultural: for example, it has always been common in the region for children to spend time at the home of their grandparents as a way of strengthening family attachments and intergenerational learning, as well as to provide companionship and draw on the capacity of

Box 2: Forced removals and the "homeland" strategy

The resettlement policy, implemented as part of influx control, specifically targeted non-working Africans for removal from designated White areas in towns and on farms. Over 3.5 million individual removals took place between 1960 and 1983, and a further two million people were under threat of removal in the mid-1980s.¹⁰

Coloured and Indian families were affected too, and in some cases entire communities were forcibly removed to the urban periphery (for example from District Six and the southern suburbs of Cape Town to the Cape Flats, and from central Durban to Chatsworth). A nationalist party senator, speaking in parliament in 1977, said: "We make no apologies for the Group Areas Act and for its application. And if 600,000 Indians and Coloureds are affected by the implementation of the Act, we do not apologise for that either".¹¹

But it was Africans who were disproportionately affected, in the sheer volume of numbers removed, in the removal of their citizenship rights and the creation of the independent homelands, and in the splitting up of families on the basis of who was considered economically

useful and who was redundant to the needs of the White economy.

General Circular No. 25 of 1967, entitled "Settling of non-productive Bantu resident in European areas, in the homelands", stated:

1. *It is accepted Government policy that the Bantu are only temporarily resident in the European areas of the Republic... As soon as they become, for one reason or another, no longer fit for work or superfluous in the labour market, they are expected to return to their country of origin or to the territory of the national unit where they fit in ethnically....*
2. *The Bantus in the European areas who are normally regarded as non-productive and as such have to be resettled in the homelands, are conveniently classified as follows:-*
 - i. *The aged, the unfit, widows, women with dependent children, also families who do not qualify under the provision of the Bantu (Urban Areas) Act No.25 of 1945 for family accommodation in the European urban areas.*¹²

non-working family members to provide care and support.¹³ But these care arrangements are also a product of apartheid social engineering, achieved through an extractive system of labour and systematic discrimination over many decades.

A legacy of family disruption

The physical separation of family members for sustained periods dates back, in some forms, to pre-colonial times.¹⁴ Family members were separated by the upheavals of the Mfecane wars of 1815 – 1840 and the waves of migration that followed. Children's living arrangements were often restructured, and informal kinship care was common. Pre-apartheid labour migration to (and within) South Africa also contributed to family fragmentation. The extended separation of labour migrants from their family homes was common in the region as far back as the late nineteenth century when gold was first discovered.¹⁵

Although some commentators caution against a narrowly causal interpretation of the effects of migrant labour on households, the deliberate disruption of households and families by the apartheid regime – or what has been referred to as the “state-orchestrated destruction of family life” – certainly had a massive and lasting effect on African family and household structure.¹⁶ The homeland policy was both an economic and political strategy (see box 2 on page 25): It ensured a cheap supply of labour while absolving municipalities of the responsibility to provide physical and social infrastructure for the families of those who provided labour, and it weakened social structures.

In 1970, anti-apartheid activist and Catholic priest Cosmas Desmond wrote: “More than 40% of the economically active men are absent from the ‘homelands’ at any given time. This enforced splitting-up of families is probably the most evil of all the effects of the resettlement schemes.... For the sake of the comfort of the White man, the Black man must be deprived of his right to live with his wife and family”.¹⁷

Migrant workers were often forced to live in cramped and substandard conditions such as single-sex hostels that were not designed to accommodate families – although many attempted to do so illegally, and at great risk and discomfort to themselves and their women and children.¹⁸

African women who had permission to work in White areas, for example as domestic workers, often had to leave their children in the care of relatives. The live-in quarters of domestic workers were regularly raided to ensure that children were not cohabiting with them. Section 10 of the

Group Areas Act was amended over time and progressively eroded the rights of family dependants (mainly women and children) to live together with their men in towns and cities. Even when these rights could be acquired, family co-residence was contingent on the availability of “suitable” family accommodation.

From the late 1960s housing construction in urban townships slowed and eventually ground to a halt, while single-sex hostel accommodation was expanded. The shortfall of family housing became an indirect way of preventing the urbanisation of women, children and other “surplus” Africans.¹⁹

Apartheid entrenched gender inequalities by relying on women to sustain family homesteads and care for dependents. The care of children remains highly gendered and generally undervalued by society, both when it is provided for free, within families, and as a professional service. Domestic workers, including those providing child care, can be paid below the national minimum wage. Educators in the early childhood development (ECD) sector are paid very low wages, as are child and youth care workers who provide welfare and protection services.²⁰

For decades families were fragmented through a combination of laws, regulations and the deliberate undersupply of housing and services. The legal and regulatory controls were revoked in the mid-1980s, but many of the structural obstacles remain. Spatial, racial and gender inequalities persist in the post-apartheid era, alongside the seemingly intractable challenges of income inequality, unemployment, housing shortages and poor quality human settlements, and they undermine the freedom of many families to determine their residential and child-care arrangements.

How are families envisaged and defined by the state?

Under apartheid, policies and programmes related to the family were primarily designed to promote and protect the interests of White nuclear families. The South African Population Census 1970 defined a family as one of four possible structures:²¹ husband and wife; father, mother and children; father and children; or mother and children.

This family classification was limited to two generations and was dependent on the existence of a marital union and/or biological parenting, to the exclusion of other family forms. This was the “nuclear” family that the state aimed to promote and protect, although as the Lund Committeeⁱ later

ⁱ The Lund Committee on Child and Family Support was established by the Committee of the Minister of Welfare and the Provincial Members of the Executive Council in 1995 to investigate and make recommendations for the support of children and families. Led by Prof Francie Lund, the committee made proposals for a Child Support Grant, which was introduced in 1998.

noted: "It positioned the Christian family as the centrepiece of the white nation [while] at the same time economic growth was premised on the fracturing of the family lives of those who were not white".²² The notion of a nuclear family as "ideal" was not exclusive to South Africa. Rather, it has been argued that "while a diversity of kinship systems certainly has existed throughout history and across the globe, it is the nuclear family model which has achieved privilege status in modern social imaginaries and development imperatives... [and] was positioned as a mark of civilisation".²³

Irrespective of its shape, size or wealth, a family may be at times intimate, warm and supportive, or a place of uncertainty, neglect and risk.

Expectations of the post-apartheid family form were varied. Some expected that once the legislative controls on population movement were lifted, families would be reunited, reconstituting themselves either as co-resident extended families or in simpler (more nuclear) forms. There was extensive debate in the first decade after democracy about whether African families were in fact becoming more nuclear as they urbanised.²⁴ Some predicted that the effects of apartheid on family life would persist into the future and that merely lifting the legislative restrictions would not undo their effects.²⁵ Either way, it is unclear what form most households might have taken in the absence of colonial and apartheid policies.

Arguably, the purpose of current policy is not to influence the shape of families or engineer certain household forms. Rather, it should be about responding to household forms as they exist, removing the impediments to the family arrangements that people desire and providing an enabling environment for the care and development of children. As Martin and Zulaika note:

*Understanding the diversity and dynamic nature of family composition, structure, and living arrangements, as well as other key factors that impact children's care and outcomes, is critical to informing social policies and programs targeted to vulnerable children and their caregivers.*²⁶

The White Paper on Families in South Africa, developed by the Department of Social Development, was approved by Cabinet in June 2013 and is meant to provide an overarching framework for all other policies and programmes dealing with families across all government departments. It was envisaged

that the implementation of the family policy would "result in well-functioning and resilient families that are able to nurture and promote care to their family members".²⁷

The White Paper consciously departs from assumptions about Western or nuclear families as a normative model, and is careful to acknowledge the diversity of family forms, stating that:

*there are different types of families in South Africa which are products of various cultures and social contexts. Therefore, the need exists to recognise the diverse nature of South Africa's families in all initiatives that address their plight.*²⁸

The White Paper defines a family broadly as "a societal group that is related by blood (kinship), adoption, foster care or the ties of marriage (civil, customary or religious), civil union or cohabitation, and goes beyond a particular physical residence".²⁹

At the same time, much of its content suggests an underlying vision of the ideal family as a stable unit built on the foundation of marital union and the co-residence of biological parents and their children. For example, it states that:

*Stable marital unions are essential for the stability of families and ultimately society's well-being. Where unions are flourishing, efforts will be made to promote them and where they are under threat there will be a focus on strengthening them ... Where there is a case of parental breakdown or its absence, means will be sought of strengthening this area.*³⁰

Given the high rates of mobility among both adults and children,³¹ the well-documented fluidity of household form,³² low and declining marriage rates and generally low rates of parental co-residence with biological children (discussed in Chapter 2), it would require large-scale and draconian social engineering to achieve this vision of stable family units.

Children have a wide range of rights and needs (including nutrition and health services, early childhood services and education, protection, material support and shelter). Many different sectors of government provide services either directly to children or indirectly via their caregivers or households. Government programmes tend to have an implicit or explicit vision of families. In general, the state recognises the diversity and multi-generational nature of many families, but in practice different departments have divergent views of what a family is (or should be) and who is assumed to bear responsibility for children.

- Birth registration processes assume that marriage between biological parents is the norm, despite evidence to the contrary, and that children born to married parents are automatically the children of both parents, making it more difficult to register paternity if parents are not married.
- Child Support Grants can be paid to anyone who is looking after the child, with no assumption that it should be the biological mother. They are meant to follow the child, in recognition that people may move, and care arrangements may change.
- School-fee exemptions take into account the incomes of both parents, irrespective of whether they live with the child or with each other, and irrespective of whether they support the child. This has been challenged in court.
- The free basic water allocation of 6,000 litres per month is based on the minimum amount of water needed for a household of up to eight people, allowing for extended large household arrangements.
- The eligibility requirements for housing subsidies recognise a wide range of family forms, but in practice the housing units only accommodate very small families.
- The child protection system tends to see children as vulnerable to abuse and neglect if they live with family members other than their biological parents, and in doing so risks overlooking potential abuse of a child by a parent.

It is not necessarily possible or appropriate to align the targeting of all programmes, but the differences illustrate the considerable disconnect in the way that government views caregiving arrangements and deals with families.

Box 3: A note on race

Racial categorisation of the population was inherited from apartheid, where four population groups were defined in the population register and all people were allocated a race. Although it is widely understood that race is a social construct, the old racial classifications continue to be used in post-apartheid South Africa, ostensibly to monitor and support the reversal of inherited racial inequalities.

Like most national surveys, the household surveys conducted by Statistics South Africa still include the apartheid-era racial classifications of “African”, “Coloured”, “Indian/Asian” and “White”, and every individual is assigned to one of these groups.

Even if one applies these classifications to individuals, one cannot assume that all individuals in a household are of the same race. People may refer to “Black families” or “White families” but attempts to categorise families or households by race assume that all members are classified in the same way. In the 2017 General Household Survey, 188,000 households had members of more than one race, even after imputation.³³ This represents only one percent of households, but the number will grow as more interracial unions are formed and more children of those unions are born. The Prohibition of Mixed Marriages Act was repealed in 1985, and although marriage within races is still the norm, there has been an increase in marriage across what used to be called the colour-line, which is itself becoming increasingly blurred. Interracial marriages are reported to have increased dramatically as a share of marriages, especially for Asian/Indians and Whites, the

two groups that were the least likely to marry outside their race.³⁴ These patterns may also hold true for unions that are not formalised through marriage, and for biological parenting in a context where children are increasingly born to women who are not married.

Yet, given that most households remain racially homogenous, cultural differences and persistent racial inequalities may continue to influence the formation and shape of families. Eighty-one percent of people in South Africa are classified as African, and 80% of households in South Africa have a nominal “head” or index person who is African.³⁵ The national profile of families and the dynamics of average household change are therefore driven mainly by changing residential arrangements in the African population.

Much of this book focuses on family and household dynamics linked to the population classified as African. There is good reason to do so, as discriminatory policy under apartheid specifically disrupted the family arrangements of those who were classified as African. Other “non-African” population groups were afforded very different rights and were not subject to the same extent of restrictions on movement, forced removals or interventions in household arrangements. In particular, the independent homelands were established solely for Africans, and this history informs the continuation of circular migration patterns and stretched family arrangements that span urban and rural nodes.

Overview of the chapters

The central question in this issue of the *Child Gauge* is how the state can support families as the primary social structure that provides care and nurtures children's development, and how government programmes and services can be appropriately targeted without making normative assumptions about what families *should* look like.

The first four chapters provide a contextual overview of family and household dynamics and outline how the roles and responsibilities of families and the state towards children are defined in the legal frameworks.

Chapter 2 provides a **demographic overview** of families and households in South Africa with a focus on children's families and household forms. It paints a picture of families that are mainly extended and household arrangements that change over time. It confirms the low rates of parental co-residence with children and considers some of the reasons for parental absence. It also demonstrates that many absent parents stay in contact with their children and provide some financial support, and that in the absence of parents, children are invariably cared for by other relatives. It tracks some of the underlying trends affecting family and household arrangements, including falling fertility and marriage rates, the reduction in average household size and the rise of single-adult households, and the persistence of labour migration and mobility, including the mobility of children. These dynamics are important for any policies or programmes that provide services to families or that are premised on the notion of family structure.

Chapter 3 offers a **legal perspective on families and the state**. It outlines the respective obligations of family members and the state towards children. It defines parental responsibilities and shows how the Children's Act has broadened the definition of family members who can bear these responsibilities towards children. It shows that despite this progressive legislation, courts have tended to take a narrow view on which relatives bear a duty of support. The Constitution places an obligation on the state to provide for the socio-economic rights of children – an obligation that arises, for example, when families are too poor to provide adequately for a child's needs, or when children are outside of a family environment. The chapter argues for greater prioritisation of children's rights, including through services and support to families.

Chapter 4 examines how rights and responsibilities relating to children are dealt with under **customary law** specifically, and how these processes intersect or conflict with statutory law. Customary law places more emphasis on rights,

duties and obligations for groups rather than individuals. Whereas courts have ruled that parents, grandparents and siblings have a legal duty of support, under customary law this can also extend to other relatives such as aunts and uncles. There are also differences in how marriages and the rights and responsibilities of fathers are acknowledged, and contestation between cultural norms and children's best interests may arise with respect to child support and custody. The chapter argues that customary law is a living embodiment of accepted and localised norms. This creates challenges in ascertaining what the living customary law is in each matter, such as maintenance, custody and duty of support.

Understanding the diversity and dynamic nature of family composition, structure, and living arrangements ... is critical to informing social policies and programs targeted to vulnerable children and their caregivers.

The second cluster of chapters deals with the roles of the family and state in enabling children's care, safety, material well-being and development, highlighting areas of alignment and tension between families and state, and motivating for the design and delivery of services that are responsive and enabling.

Chapter 5 is about **care and caregiving**. It highlights the careful negotiation of family rights and responsibilities, the widespread importance of ancestral lines of care and mechanisms for establishing children's belonging to the patrilineage. It demonstrates the critical role played by families, the gendered nature of childcare and the social role of men in a context where "fatherhood" may be a collective responsibility within the family. It distinguishes between informal kinship care and foster care and questions the use of foster care for orphans living within their own families. It discusses the ways in which the state sometimes undermines the care strategies of families, and how caregivers can be better supported. Providing nurturing care can be demanding and stressful – particularly in the context of poverty and social isolation – and the chapter argues that caregivers need both material and psychosocial support. It ends with two case studies of programmes that seek to support families in holistic ways.

Chapter 6 addresses children's safety and protection, with a focus on integrated approaches to **reducing family violence**.

It outlines the high prevalence of physical punishment and other forms of violence enacted by caregivers. It highlights intergenerational patterns of trauma and violence, and the impact on children who witness violence. It draws attention to the links between violence against women and violence against children and suggests joint strategies for addressing these forms of violence through prevention services that target common risk factors. Finally, it outlines the state's obligations and programmes to prevent violence, describes some areas of mismatch between policy and practice, and considers possible strategies to reduce family violence – something which it describes as a political priority.

Chapter 7 reflects on the importance of **income support** in the context of high unemployment and low wages. It shows that poverty is highly gendered and that women are often responsible for both the care and financial support of children. Many children – particularly those in rural areas – live in households without any salary income, depending mainly on social grants. Lone-parent and extended households are the poorest, but poverty rates are high even in nuclear family households. The chapter considers the cost of raising a child and examines the ways in which the dual responsibilities of providing cash and care are balanced within families. It shows that, although many of the costs of raising children are shared by family members and absent parents may contribute financially to the child, a substantial portion of non-resident fathers do not support their children. This is partly due to the state's failure to enforce maintenance, and partly because many fathers are unable to pay maintenance. The state is responsible for the financial maintenance of children when families cannot afford to provide for them. Although the Child Support Grant is well targeted and reaches millions of children, the amount is not enough even to cover the cost of

feeding a child. Further, the grant may fail to “follow the child” when care arrangements change, as originally intended.

Chapter 8 deals with **human development**, beginning in childhood, and focuses on three pillars of human development – health, education and social development. It adopts a life-course approach to children's development with examples of the contributions of families and the state, starting early and onward into adolescence. The chapter emphasises that optimal human development outcomes can only be achieved by families and the state working together to maximise the investment of each. The chapter also illustrates how both the state and families need to recognise and encourage children's growing autonomy and responsibility in order for them to realise their full capabilities as adults.

Chapter 9 provides a **map of policies and programmes** for families and children in South Africa. It argues that provision of support to families by the state is central to achieving sustainable development. Supportive programmes need to be designed and implemented in a way that enables equal access for all caregivers and children in need, irrespective of the shape of their family. This requires a renewed political commitment to recognise and support the rich diversity of families and co-ordinated implementation of that commitment. Some services are universal and should reach everyone. Some are targeted to particular groups, and it is important that these programmes are appropriately designed and well implemented to ensure that they reach the eligible population. Responsive services are there for those who need them, and include emergency, protective and specialised services. The essay argues that responsive services need to be strengthened so that they are readily available on demand, and through well-functioning referral systems.

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The shape of children's families and households: A demographic overview

Katharine Hall and Zitha Mokomane

This chapter gives an overview of children's living arrangements in South Africa, drawing mainly on household surveys. It draws attention to the diversity of family forms and living arrangements, and to the challenges of categorising families. It differentiates between the concepts of "family" and "household" and shows the fluidity of household and child-care arrangements as families seek to maintain family connections across households while also providing income and care. This creates a challenge for the state, which must design policies and programmes to support families and their children without undermining family strategies.

The chapter considers the following questions:

- Why is there pressure to classify families given the diversity and fluidity of families?
- What is the difference between a family and a household?
- What do South African households look like, and how have they been classified?
- What are the trends in children's household forms, and what do we know about "vulnerable" household forms?
- Who cares for children in the absence of parents, and what are some of the reasons for parental absence?
- What are some of the underlying dynamics that influence household arrangements?

The diversity of families

International research has consistently shown that functional families offer the most natural environment for the growth, protection, support and socialisation of children.¹ At the same time there is wide recognition that "the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition".² The United Nations Committee on Economic, Social and Cultural Rights has urged that the concept "must be understood in a wide sense" and "interpreted broadly and in accordance with appropriate local usage".³ The United Nations Human Rights Committee requires that "States parties should report on how the concept and scope of the family is construed or defined in

their own society and legal system" and that "where diverse concepts of the family, 'nuclear' and 'extended', exist within a State, this should be indicated with an explanation of the degree of protection afforded to each".⁴ This is presumably to ensure that some family forms are not disadvantaged by current policy.

It is not a simple task to classify the diversity of family forms in South Africa. The following sections will illustrate that families and households are not necessarily the same and they do not necessarily have fixed boundaries: both can extend over geographic space and degrees of kin, both can be multigenerational and porous, shifting rather than static, and there are possibilities for overlap and duplication in that people may belong to more than one household, just as kinship ties connect multiple families in complex ways.

What is the difference between family and household, and why are they so often confused?

Many people conflate the terms family and household. The confusion arises in part from the assumption that families are essentially (or ideally) nuclear in form. It has been argued that confusion about these constructs stems from instances where those who attempt to analyse them do not see Western kinship and household systems as the product of culture.⁵ While "household" and "family" may coincide, for example in the context of nuclear families, this cannot be taken as the norm, even in "Western" contexts, and especially not in southern Africa.⁶

If one tries to distinguish between the terms, then "household" could be defined as an arrangement of co-residence with shared consumption and production (even though household members may not be co-resident all the time), whereas "family" would refer to social groups that are related by blood or bonds of marriage, non-marital union, adoption or some other affiliation, and which endure over time and space.

Both constructs may incorporate degrees of kinship, forms of emotional attachment, and relations of dependence and reciprocity. Yet "the household" cannot be understood simply as the residential dimension of "the family". Arguably both

households and families are dynamic, changing over time with births and deaths, the union and separation of partners and, in the case of households, the arrival and departure of members.

While “household” and “family” may coincide, for example in the context of nuclear families, this cannot be taken as the norm.

Although co-residence is not necessarily a key characteristic in traditional patterns of family organisation, researchers often use household survey data to study family structure.⁷ Very few statistical offices report on families, and when they do refer to families they are often simply reporting on households.

The possibilities and limitations of household surveys

Most surveys use a physical dwelling as the sampling unit and then determine whether there are one or more households at that dwelling, and who resided in each household at a particular point in time. In other words, they look at co-residence arrangements within a physical space, rather

than family structure. However, most of the large household surveys in South Africa do provide some information on family relationships within the household – for example by identifying co-resident spouses or partners (in the case of adults) and connecting children with their co-resident parents. Many also record the relationship between each member and the head of the household, although the notion of household headship is itself problematic and the person recorded as the head may sometimes be quite arbitrary. Qualitative research has found that subjective definitions of household membership and headship often include absent household members (such as migrant workers) and so do not always correspond to the definitions arrived at through surveys.⁸ What the surveys usually cannot see is relationships between other members of the household or the extent to which families are stretched, with members spread across different households. And only panel surveys that return to the same group of people can see the movement of individuals between households, and how households change over time.

Nevertheless, surveys are often the only way we can quantitatively analyse the distribution of different household types and map trends over time. Although the types tell us

Box 4: How are households defined in different surveys?

The **Population Census** defines a household as “a group of persons who live together and provide themselves jointly with food or other essentials for living, or a single person who lives alone”.⁹ The census only counts people who were present in the household on census night, so it would exclude members who are away. Using this definition, a household may be even narrower than a family that usually lives together.

The **General Household Survey** (GHS) is a nationally representative survey conducted by Statistics South Africa (Stats SA) every year. It allows for households to include members who are not present at the time of the survey by defining a household as “every person who is considered to be a member of the household ... who stayed here at least four nights on average per week for the last four weeks”.¹⁰ This is still a narrow definition of a household because it excludes non-resident members including those who go to work or school elsewhere but return on weekends. Other official surveys like the Income and Expenditure Survey, the Quarterly Labour Force Survey and the Living Conditions Survey also use this definition.

The **National Income Dynamics Study** (NIDS) is a nationally representative panel survey commissioned by the Presidency. NIDS uses a broader definition of the household than the Stats SA surveys because it includes non-resident members. In this way it allows for double counting: the same person (say, a temporary migrant) might be counted as a non-resident member at their home of origin and also as a resident member of the household where they live and work. NIDS has three criteria for defining household membership:

- Household members must have lived “under this roof” or within the same compound / homestead at least 15 days in the last 12 months; and
- When they are together they share food from a common source; and
- They contribute to or share in a common resource pool.¹¹

The NIDS survey therefore defines a household not by the regularity of a member’s physical presence but by their subjective “belonging” to the household, implied by shared resources and communal living arrangements. A similar definition is used in the demographic surveillance sites at Hlabisa and Agincourt.

Table 1: Distribution of household types in South Africaⁱ

Household type	Share of households
One-person (where there is only one household member)	22%
Couple (where there are only two members and they are either spouses or partners)	10%
Childed couple (where there is a spouse/partner couple with their own children and no other members)	19%
Lone parent (where there is a person without spouse/partner in the household, with their own children and no other members)	11%
Extended (any household that does not fit into one of the above categories, but all members are related)	36%
Composite (any household with at least one unrelated member)	2%
Total	100%

Source: Statistics South Africa (2017) *General Household Survey 2016*. Pretoria: Stats SA. Analysis by Debbie Budlender.

Note: "Childed couple" refers to the strictly nuclear form (two parents with one or more biological children) and for ease of reading is labelled "nuclear" in the rest of this chapter.

little about the nature of families or the quality of relationships, they are useful for giving an overall picture of household arrangements and the contexts in which children live, and can be used to inform social policy if they are interpreted with care.¹²

Table 2: Children's household types, total and by race

Household type	Share of all children	African	Coloured	Indian / Asian	White
Nuclear (spouse/partner couple with their own children and no other members)	25%	21%	37%	61%	67%
Lone parent (single parent with own children and no other members)	10%	11%	6%	3%	6%
Extended (not nuclear or lone parent, but all members are related)	62%	66%	50%	35%	23%
Composite (not nuclear or lone parent, and some members are not related)	2%	2%	7%	1%	4%
Total	100%	100%	100%	100%	100%

Source: Statistics South Africa (2017) *General Household Survey 2016*. Pretoria, Stats SA. Analysis by Debbie Budlender.

Note: "One-person" and "couple" households have been excluded from the child-centred analysis as the number of children living in these household forms is negligible.

What do South African households look like?

Types of households in South Africa

Given survey limitations and the complexity of household and family forms, there is no definitive or ideal way of classifying households for purposes of family analysis. Stats SA has tended to use four household types: single-person, nuclear, extended and complex,¹³ while Table 1 presents a more detailed analysis of household types in South Africa using six types¹⁴.

As the table shows, the largest single category is the "extended" family household (36% of all households), followed by single-person households (22%). Less than one fifth of households in South Africa take the form of a nuclear family (i.e. "childed couple").

Cross-sectional analyses can describe household arrangements at a single point in time but do not show how households change over time. Despite arguments that processes of modernisation and industrialisation lead to the simplifying of family structure towards a nuclear form,¹⁵ various analyses have suggested that extended household forms continue to predominate, and that nuclear structures are not increasing.¹⁶ A rural analysis concluded that a decline in nuclear family structures and an increase in three-generation households was due largely to "changes in migratory behaviour (such as an increase in female labour migration)".¹⁷

ⁱ The analysis in Tables 1 and 2 draws on a simplified version of the IPUMS method, to provide an overall picture of types of households in South Africa. The IPUMS-International project harmonises variables from census data to enable comparisons between different countries. The advantage of the IPUMS method is that it moves beyond each member's relationship to the household head and combines a number of variables (including age, household relationships, fertility, marital status and even proximity on the household roster) to determine family interrelationships.

Children's households

Table 2 shows that children's living arrangements are very different from the overall pattern presented above. In particular, the "extended household" category is much more prevalent with 62% of children living in such households. A quarter of all children live in strictly nuclear households (consisting only of children and their biological parents), while 10% live in lone parent households. When weighted to the population, approximately five million children live in nuclear households and two million live in lone parent households, while 12 million are in extended households.

The overall pattern reflects the dominance of the African population, but the patterns vary substantially by race. Two thirds (66%) of African children live in extended households while only 21% live in households that are defined as nuclear. At the other extreme, 67% of White children live in nuclear households. Given assumptions about nuclear forms being the Western norm, it is interesting that one third of White children do not live in nuclear family households.

Trends in "vulnerable" household forms

As we have seen, the extended household is the most common configuration nationally, and even more so for children. Extended households include multiple-generation households (for example, children, parents and grandparents) as well as many other permutations, such as a mother living with her child and her sister, or households where cousins are included. Extended households are not necessarily large: a

two-person household with a child and her aunt would fall into this category, for example.

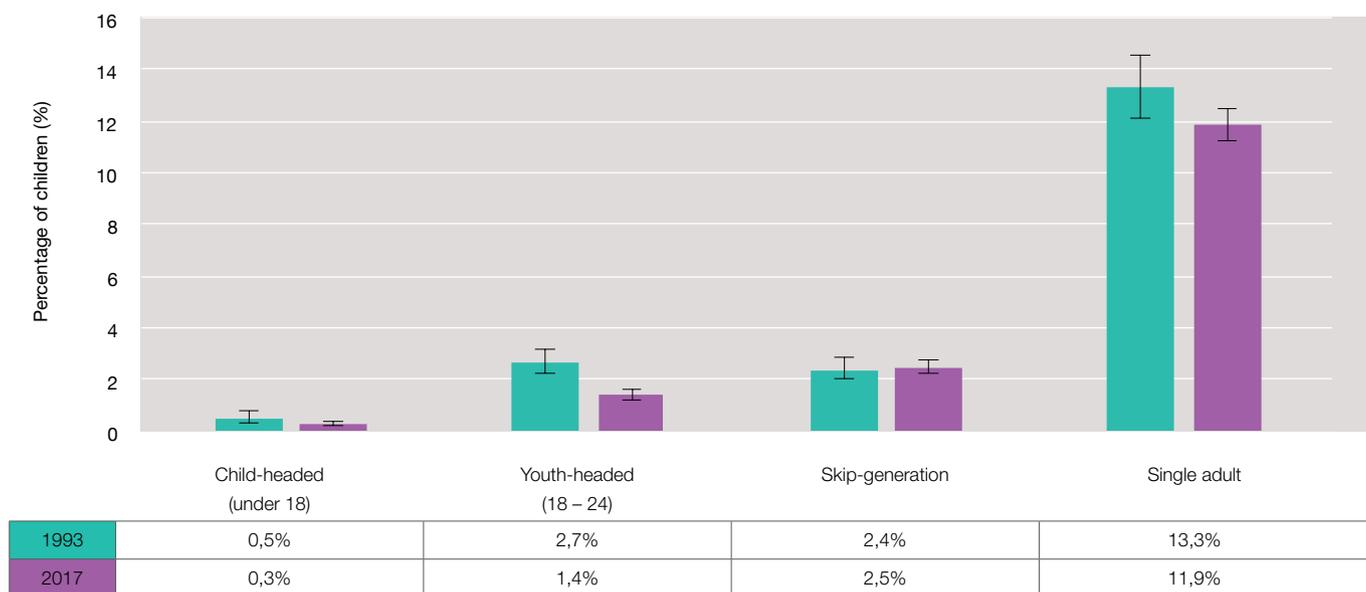
Household forms that are sometimes regarded as particularly vulnerable, such as child-headed households, youth-headed households and skip-generation households (where the middle generation is missing), do not appear in the general household typologies presented above as they could apply to many of the household types. For example, a child- or youth-headed household could be a nuclear family (when two young people have a baby and form a family), a single-person household (if a young person lives alone) or an extended household (if young siblings or cousins live together).

Working with data from the Agincourt demographic surveillance site, Madhavan and Schatz defined categories for various "fragile" household forms (including child-headed and skip-generation households) that were commonly considered to be highly prevalent, and possibly increasing. They found only a small minority of households in these categories.¹⁸

A comparison of children's household types over the period 1993 to 2017 (as illustrated in Figure 2) also found no increase in the prevalence of child-headed, youth-headed, skip-generation and single-adult households. If anything, these household forms, already a small minority, decreased slightly while "extended" household forms increased over the two post-apartheid decades.¹⁹

Most of the single-adult households are households where children live with their biological mother. However, the

Figure 2: Share of children in household sub-types, 1993 & 2017



Source: Southern Africa Labour and Development Unit (1993) *Project for Statistics on Living Standards and Development 1993*. Cape Town: SALDRU, UCT; Statistics South Africa (2018) *General Household Survey 2017*. Pretoria, Stats SA. Calculations by Katharine Hall, Children's Institute, UCT.

vast majority of children live in households with at least two adults, and about half have three or more co-resident adults.

Child-headed households

There have been persistent and widely held assumptions that child-headed households are without family support – and that parents or adult caregivers are “permanently absent”.²⁰ The dominant narrative on orphans and vulnerable children has suggested that children in child-headed households are mainly orphans, and that they have proliferated because of HIV-related orphaning. While it is true that South Africa has high rates of orphaning, and that the rapid increase in orphaning during the 2000s was driven by HIV, this does not explain the phenomenon of child-headed households.

Orphans are overwhelmingly cared for by family members, while child-headed households may be an outcome of family strategies.

In 2017, 80% of children living in child-only households had a living father and 88% had a living mother. Only 5% were double orphans.²¹ These distributions have remained fairly consistent since 2002, and over the past decade the share of children living in child-only households has remained small (around 0.5% of children).²²

The assumed or implied link between orphaning and child-headed households has been promoted by international agencies, non-governmental organisations and government departments and has remained remarkably persistent even in academic literature.²³ It has been suggested that assumptions or even deliberate misrepresentation of child-headed households “served to justify the intervention of diverse donors into the (re)construction of the South African family”.²⁴

The available evidence suggests that orphans are overwhelmingly cared for by family members, while child-headed households may be an outcome of family strategies (for example, to access education, or to maintain a rural homestead while adults migrate for work). Child-headed households can be temporary arrangements, and they are not necessarily without family support. For example, there may be neighbouring relatives, and migrant adults may return. Even in the relatively few cases where children are orphaned and living alone, the “child-headed” status of the household may be transient, just until new family care arrangements are made. These dynamics are not easily captured in household

surveys, which do not look beyond the household or see change over time at the level of the household. Child-headed households are substantially more likely than other households with children to receive remittances from family members living elsewhere, again pointing to family support beyond the household.²⁵

An analysis of child-headed households in the 2017 General Household Survey reveals that:

- About three quarters of child-headed households are in the former homelands, mostly in Limpopo, the Eastern Cape, Mpumalanga and KwaZulu-Natal.
- 95% of children in child-headed households have at least one living parent.
- 90% of child-headed households have at least one member who is aged 15 or over.
- Child-headed households are small (with a mean household size of 1.8) and nearly half have only one member. These children living alone are mainly boys in their older teens.

Although the percentage of children living in child-headed households is very small, the number is not negligible when one considers that every one of those children may need support services. In 2017, about 58,000 children were living in 48,000 households where all the resident members were under 18 years. Children in child-headed households may be vulnerable in multiple ways: they tend to be extremely poor and have low access to social grants,²⁶ they may struggle to access schooling or to achieve academically, they may be vulnerable to violence, abuse and exploitation, and experience high levels of anxiety, stress or grief.²⁷ It is important that responses and support services for child-headed households distinguish between those that need intervention in their household arrangements (for example by placing children in alternative care) and those where family strategies should be acknowledged but where other services are needed (such as counselling or assisting with access to school and social grants).

Section 137 of the Children’s Act defines “child-headed households” differently from the common definition where households consist only of children under 18 years. The purpose of the Children’s Act definition is formally to recognise child-headed households as a family form and give them legal status. It refers to a household in which a child over the age of 16 has assumed the role of primary caregiver for other children in the household, even if there is an adult living in the household who, for example, is too old or ill to take on that role. The definition of such child-headed households is dependent on their identification by

welfare services and a discretionary decision by the provincial Head of Social Development that it is in the best interest of the children in the household for it to be defined as a child-headed household. Some of these households are identified and supported locally, through organisations like *Isibindi* (see Case 9 on page 78). Details of the numbers and whereabouts of legally-defined child-headed households are not publicly available, although in 2017 the Department of Social Development was reported to have identified and assisted 3,214 child-headed households.²⁵

Female-headed households

The notion of a single household head who is “responsible for the household” is problematic as various members may be responsible for different aspects of household management and decision-making, and responsibilities may be shared, including among adults who are non-resident members.²⁶ Yet the construct of the “female-headed household” is sometimes cited as a cause for concern, and both Stats SA and international agencies like the World Bank report on female-headed households among their social indicators.²⁷ Concerns about large numbers of “female-headed households” may arise partly because it is known that women tend to earn less than men and so households without adult males may be poorer on average, with a greater burden on women to maintain the household, care for dependents and provide financial support. There may also be concerns about the absence of men in child-rearing or as role models for children.

A female-headed household may be defined as a household where there are only adult women and no adult men, or where there are both women and men, but a woman is identified as being the nominal household head. Female-headed households are not a new phenomenon in South Africa. Two sources of data from 1980 recorded over 50% of African households in the rural homelands as being headed by women, while female headship was between 20% and 25% in small towns and farms, and higher in metropolitan areas.³¹

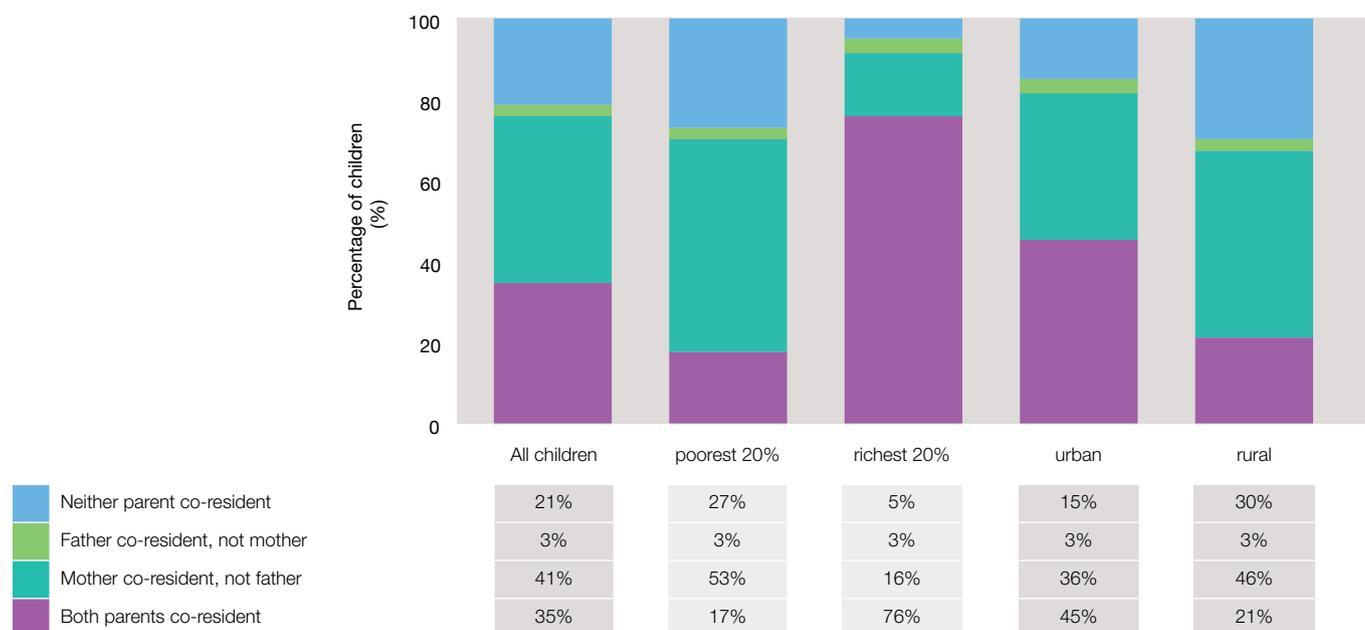
Both the 2011 census and the 2016 Community Survey found that 41% of all households in South Africa were headed by women. A child-centred analysis of households puts the number of female-headed households even higher. In 1993, 47% of African children lived in female-headed households and this had increased to 54% in 2014.³²

Female-headed households are, on average, larger than male-headed households and have more child dependants. Female-headed households are also more likely than male-headed ones to have nobody employed.³³ Even with increased employment rates among women, the income differentials between women and men mean that poverty has remained strongly gendered – a dimension of inequality which is inherited by children and only partly offset by social grants.³⁴

Parental co-residence and absence

As shown in the previous chapter, the extent of parental absence from children’s households is uniquely high in South Africa. In 2017 just over a third of children in South Africa

Figure 3: Children’s co-residence with biological parents



Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Calculations by Katharine Hall, Children’s Institute, UCT.

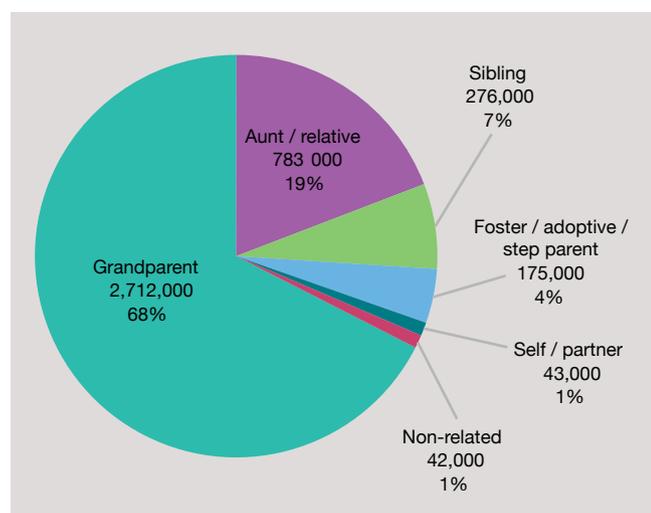
lived with both their parents, while 21% (4.1 million) lived with neither parent. Three quarters had a co-resident mother but only 38% had a co-resident father. Parental co-residence arrangements are clearly related to inequality. Children in the poorest quintile are much less likely than the non-poor to live with both their parents, and more likely to have neither parent in their household. This does not mean that poor people are less attached to their children. Rather it suggests that poor parents may be less able to live with their children, and more likely to have extended family who can provide care. Poor and rural households bear a large burden of care for the children of parents who live elsewhere, for example because they are trying to earn money in cities.

Most children who have only one co-resident parent, (and even those who have no co-resident parents), live in households with two or more adults, where responsibility for child care may be shared. Co-resident men may also play a social fathering role. Although only 38% of children have a co-resident biological father, over three quarters have at least one co-resident adult male.³⁵

Very young children are likely to have a co-resident mother (over 90% of children under two years live with their mother), but co-residency drops as children grow up. An analysis of school-age children aged 7 – 17 found that 10% lived in skip-generation households consisting of grandparents and grandchildren with no middle generation.³⁶

One again, it should be remembered that these distributions are a moment in time, reflecting the situation when the survey is conducted. The distributions have

Figure 4: Relationship of child to household head when parents are not co-resident



Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Calculations by Katharine Hall, Children's Institute, UCT.

remained quite consistent over the past two decades, even though household forms for individual children may have changed during their childhood.

Who cares for children in the absence of biological parents?

Given the political and social history of South Africa where relatives have always played a substantial role in the care of children, skip-generation and three-generation households are more prevalent in rural than urban areas.³⁷ Almost all of the 4.1 million children who did not have co-resident parents in 2017 were living with kin, as shown in Figure 4.

Kinship care may be both a product of structural obstacles to parent-child co-residence, and of choice.

In the context of labour migration and non-marital childbearing, many grandparents assume the role of co-caregivers or primary caregivers.³⁸ The presence of a pensioner in the household enables adult household members (including women of working and childbearing age) to become labour migrants, suggesting that income from the pension provides a means to migrate, and/or the means for the pensioner to care for children of the migrant.³⁹

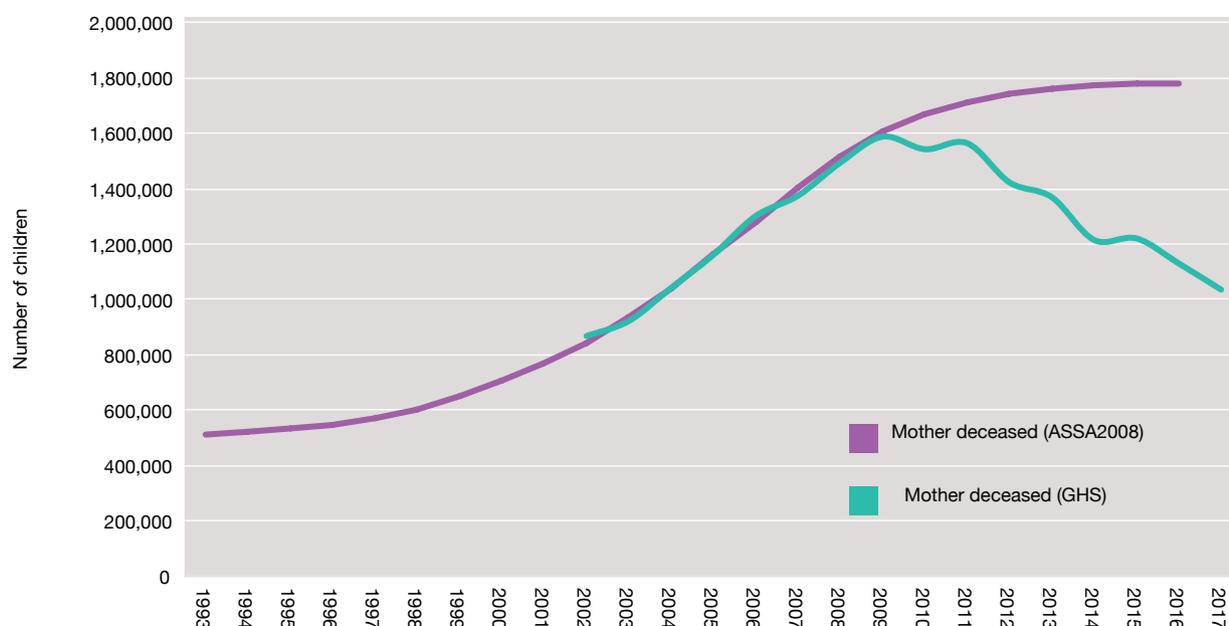
One of the common concerns about grandparent care is that grandparents may be old and frail, and not physically strong enough to provide adequate care. Although the South African population is ageing because of better survival rates, grandparents are not necessarily very old. The average age of transition to motherhood has been fairly stable since the 1970s, at 21 years.⁴⁰ This means that many women can expect to become grandmothers in their 40s or earlier.

Over 7 million children live in households where the household head is defined as their grandparent or great-grandparent, and in nearly half of these cases (46%) the grandparent is under 60 years. Almost two thirds of these children also have one or both parents living in the same house, so that caregiving can be shared between parents, grandparents and other kin if present. Around 2.7 million children live with grandparents in the absence of their parents. These grandparents tend to be slightly older on average, although 39% are under 60 years and therefore not yet eligible for an old age pension.

The reasons for parental absence

Parental absence is only partly due to orphaning. Orphaning rates started increasing during the 1990s and rose sharply

Figure 5: Trends in maternal orphaning, comparing ASSA model and survey estimates



Source: Actuarial Society of South Africa (2011) *ASSA2008 AIDS and Demographic Model*. Cape Town: ASSA; Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Calculations by Katharine Hall, Children’s Institute, UCT.

during the 2000s, driven mainly by AIDS and related parental deaths. After 2009 orphaning rates (and particularly maternal orphaning) started to decline – much earlier and more quickly than was predicted in modelled projections from the 2000s,ⁱⁱ as shown in Figure 5. This was directly related to the roll-out of antiretrovirals – a policy success.

Paternal orphaning rates are higher than maternal orphaning, and therefore account for a larger share of parental absence. In 2017, 5% of children (just over 1 million) had lost their biological mother, while 11% (2.2 million) had lost their father. But orphaning is not the main reason for the absence of either fathers or mothers. Nearly 5 million children do not have a co-resident mother, but only 22% of these are maternally orphaned, while 78% (3.7 million) have a mother living elsewhere. A much larger number of children – 12 million – do not have a co-resident father, but only 18% of these children are paternally orphaned. Nearly 10 million have a biological father living elsewhere.

Parental absence may be related to a range of reasons such as non-marital childbearing, adult employment strategies and labour migration, urban housing constraints, limited availability of affordable care, schooling opportunities, choices about who is best placed to provide care for children, divorce or separation, and any combination of these. Kinship

care may be both a product of structural obstacles to parent-child co-residence, and of choice. Research that explicitly set out to analyse the effect of motherhood on labour participation among women found that labour migration was a key reason for maternal absence.⁴¹

Quantitative estimates of parental absence are snapshots in time, whereas households (and people) are not static. Children may move to join absent parents, or parents may return to the household of origin. The fact that parents are not resident members of the child’s household does not mean that they never see the child. They may remain in contact with the family and the child, they may stay in the household some of the time (for example on weekends), they may be integrally involved in decision-making about the child and they might help to support the child financially. Widespread access to mobile phones means that it is much easier for family members to stay in touch than it was previously.

Contact with non-resident parents

Many absent parents do see their children regularly and help to support them financially even when they live elsewhere. Overall, children are less likely to have contact with their absent fathers than with absent mothers: a quarter of children whose fathers live elsewhere never see their fathers.

ii The Actuarial Society of South Africa issued a cautionary note in 2012, warning that recent estimates of AIDS mortality (in particular adult survival rates) were likely to be overstated as the assumptions around antiretroviral treatment initiation became out of date with public sector guidelines (Actuarial Society of South Africa 2012). A new model, “Thembisa”, takes into account more recent developments in HIV prevention and treatment (Johnson 2014).

With high rates of paternal absence in the first place, this suggests that substantial numbers of children have fathers who are absent not only from their households but also from their lives. Around half of children with non-resident fathers see their father at least monthly and a substantial number are in daily or weekly contact. In contrast, only 8% of children whose mothers live elsewhere never see their mothers. Over half of those with a non-resident mother see their mother at least once a month, and one fifth see their mother weekly or daily (as illustrated in Table 3).

Teenage childbearing rates have fallen since the 1980s, and have continued to decline since 1994.

When these numbers are extrapolated to all children under 15, only 1% of have no contact with or financial support from their biological mother even though she is known to be alive. A larger share, 13%, have no contact with their living father. This is an indicator of possible paternal abandonment, although it would include men who do not know that they are fathers (for example if the mother chose not to inform them about their paternity), as well as fathers who are in prison or mental institutions, or who live elsewhere but are too poor or sick to visit or send money.

What are some of the underlying trends relevant to family and household arrangements?

A range of broader trends and dynamics are relevant to family form and household structure in that they influence and/or

arise from changing family dynamics. Many of these changes are also reflected in regional and global patterns.

Households are getting smaller

During the 1990s some authors claimed that African families were becoming smaller and more nuclear as they became urbanised, and that this trend was evident in the quantitative survey data.⁴² Others argued that the available data could not support such a claim, as surveys were not able to reflect the fluidity of households or adequately describe family forms.⁴³

Later analyses found strong signs of changing household structure. Households were indeed becoming smaller on average (decreasing from around 4.4 members in 1993, to 3.2 in 2014),⁴⁴ but not because they were becoming more nuclear. Rather, alongside the high prevalence of extended family households, a marked increase in single-person households seems to have contributed to a decrease in average household size.⁴⁵ Many of these single adults have children living elsewhere.

Another possible contributing factor is the splitting of large and extended households into smaller units to accommodate families in the tiny 40m² dwellings provided through the housing subsidy scheme⁴⁶ or as a strategy to access housing subsidies.⁴⁷ With around four million houses having been developed since 1994, the so-called “RDP” houses now accommodate about a quarter of all households.

Households where children live have more members than adult-only households, but even these households have become smaller – down from an average of 5.9 resident members in 1993 to 4.7 in 2017.

Table 3: Contact and financial support from parents who live elsewhere

	Absent mother	Absent father
How often does absent parent see the child?		
• Daily / several times a week	20%	22%
• Several times a month	37%	27%
• Several times a year	35%	27%
• Never	8%	24%
Absent parent supports the child financially	53%	46%
No contact or financial support from absent parent	7%	22%
Share of all children potentially abandoned	1.4%	13.2%
Illustrative number of children potentially abandoned by parent	229,000	2.2 million

Source: Southern Africa Labour and Development Research Unit (2016) National Income Dynamics Study 2014 – 2015, Wave 4 [dataset]. Version 2.0.0. Pretoria: Department of Planning, Monitoring, and Evaluation [funding agency]. Cape Town: Southern Africa Labour and Development Research Unit [implementer]. Cape Town: DataFirst [distributor]. Analysis by Katharine Hall, Children’s Institute, UCT.
 Note: Analysis based on children under 15 years with absent living parents.

Box 5: Changes in household composition over time

Debbie Budlender

Analysis using longitudinal data from NIDS⁴⁸ illustrates the extent to which household composition changes over time. Three approaches were used in the investigation, which examined change over a period of less than five years.

- The first test examined whether individuals were living with the same household members in 2010 as in 2008. Even when ignoring changes due to deaths, less than 45% of the panel members were living with exactly the same individuals.
- The second approach looked only at the number of members in the household and found that only 42% were in a household of the same size in 2008 and 2012 even after disregarding both births and deaths.

- The third approach examined how many members of a particular household in 2012 had at least one other member of their 2008 household who was living in a different household less than five years later. The analysis revealed 35% of individuals lived in such “split” households.

These results reveal extremely high rates of change in the composition and size of households even over a short timeframe. Further, other analyses confirm that the overwhelming majority of households in South Africa consist only of related members. The high rates of change in composition and size of households will therefore be mirrored in high rates of change in composition and size of families.

Fertility rates are falling

South Africa's fertility rates have been dropping since the 1960s. They reached their sharpest decline in the 1980s and have continued to decline post-apartheid, reaching 2.4 in 2017.ⁱⁱⁱ This “fertility transition” is driven partly by higher education levels and declining marriage rates.⁴⁹ The difference in fertility rates between married and unmarried women has narrowed over the years, and the stigma of single motherhood has also declined.⁵⁰ Thus, over time, women have fewer children and more women are single mothers – albeit often with an extended family around.

The urban share of the South African population is projected to rise to 80% by 2050.

Teenage childbearing rates have also fallen since the 1980s, and have continued to decline since 1994.⁵¹ The fertility rate among 15 – 19-year-old women was estimated at 78 per 1,000 in 1996, dropping to 71 in 2016.⁵² In terms of health risks to mother and baby there is a huge difference between a 19-year-old giving birth and a 15-year-old giving birth. It is particularly among children aged 15 – 17 that fertility rates have declined: the share of children born to mothers under 17 dropped from 13% in 1984 to 5% in 2008.⁵³

Teenage mothers often receive the support of their mother and other older relatives to care for children. With this support girls are more likely to be able to complete their schooling.⁵⁴ Legal amendments have also enabled pregnant

learners to continue their education, possibly contributing to greater visibility of teenage parenting (and thus an impression that the prevalence is increasing).

Marriage rates are falling

Childbearing is increasingly delinked from marriage – both in South Africa and elsewhere in the world. Marriage rates have been declining and for those who do get married the age of marriage has increased. The average age of marriage in the sub-Saharan African region was 18 years for women in 1930, rising to 23 years in 1990. In South Africa, the average age at which women married was 32 years in 2016.⁵⁵

The percentage of African women who were never married was fairly stable in South Africa (at around 25%) from 1921 to the 1950s, and started increasing from 1960, with the biggest increase in the 20-year period between 1960 and 1980, when it rose to 43%. This was at a time when controls on population movement and residential arrangements were at their height. The labour system enforced the separation of migrant men from women for 11 months of the year, meaning that marriages became harder or lengthier processes to enter into, and more difficult to sustain.⁵⁶

The share of never-married African women continued to increase gradually to 54% in 2001.⁵⁷ In 2014 only 23% of African women of childbearing age (15 – 49 years) were married; and the national figure was 27%.⁵⁸ There are many possible reasons for the continued decline in marriage rates, including the high cost of entering into marriage, the context of widespread unemployment and low earnings, and women's independence from male providers (due to higher

iii The 2011 census recorded an increase in fertility for a few years during the late 2000s, after which it decreased again.

Table 4: Marital status of children's mothers

Mother's marital status	All children	African	Coloured	Indian/Asian	White
Married	29%	24%	41%	73%	76%
Living together / partner	11%	12%	12%	8%	7%
Separated / divorced	2%	2%	3%	5%	7%
Widowed	2%	2%	1%	2%	0%
Single	30%	33%	27%	3%	3%
Unknown / not co-resident	25%	28%	16%	9%	7%
Total	100%	100%	100%	100%	100%

Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Calculations by Katharine Hall, Children's Institute, UCT.

education levels and earning capacity among women). There is a link between declining marriage rates and the rise in female-headed households – in turn linked to the uncoupling of marriage and motherhood.⁵⁹

Table 4 shows a child-centred analysis of maternal marriage rates recorded in 2017. It was not possible to determine the marital status of mothers for 25% of children because the mothers did not live in the child's household (or were deceased), and their marital status was therefore not recorded. Forty percent of children had a mother who was in a union (29% were married, and 11% living with a partner), while 30% were single and never married. There is considerable variation across races, as shown in the table.

Households are dynamic as people move

Households are not static. Policies and interventions targeted at households or children may be challenged by the high rates of mobility in the population. Cross-sectional comparisons over time reveal trends in average form but they do not capture the dynamic nature of individual households as membership changes. An analysis of panel data from NIDS shows the dynamic nature of households and how membership changes even over the short term as outlined in Box 5 on page 41.⁶⁰

Children are highly mobile – and also “left behind”

The mobility of children has been well-documented in relation to orphaning since the early years of the HIV epidemic,⁶¹ but only more recently in relation to adult labour migration. Two localised studies found high rates of child mobility and a strong association between child and maternal migration.⁶²

An analysis of national panel data from NIDS found that 35% of African children under 15 had moved place over a

period of six years (2008 – 2014) and 14% had moved across municipalities.⁶³ Children's migration was highly correlated with maternal migration, though mothers and children did not necessarily move at the same time or in the same direction. A quarter of all children in the balanced sample^{iv} experienced a child-mother migration event during the period (where either the mother or the child, or both migrated). Nearly half of these migration events resulted in the child living with the mother (for example, if they co-migrated, or the child joined the mother, or the mother returned to a home of origin where the child was staying). Slightly more than half resulted in the separation of children from mothers (the mother migrated leaving the child behind, or the child was sent away from the mother's home to be cared for elsewhere).

The population is increasingly urbanised

Like the rest of the world, South Africa is urbanising rapidly. The urban share of the South African population was calculated at 54% in 1996,⁶⁴ increasing to 63% in 2011, and is projected to rise to 80% by 2050.⁶⁵

Children are less urbanised than adults: fewer than half (47%) of children were resident in urban areas in 2002, and by 2017 this had increased to 57%. Yet, in the same year, 69% of adults lived in urban areas. The difference in levels of urbanisation between adults and children is likely to be related to (adult) labour migration, where the main direction of movement is to cities.

Children do not always follow parents who migrate to cities, and some who are born in urban areas are sent away to be cared for by relatives. There are drawbacks to urban life, including the lack of adequate, affordable and safe family accommodation, high crime rates, high costs of living, and the possibility of adults remaining unemployed. For adults

^{iv} The balanced sample consists only of those who could be matched across the waves of the panel (in this case, from 2008 to 2014/15). The attrition rate for African children across the first four waves of NIDS was 16%

who do manage to find work, there is the question of how to care for children when women and their children are away from the extended family and established chains of care, and where private childcare is unaffordable.

As Posel and Van der Stoep have commented:

*Although mothers can now move permanently with their families to places of employment, there are a number of reasons why they may be choosing to migrate without their children. The precarious nature of employment, a higher cost of living and the accessibility and quality of accommodation at places of employment would discourage migration with children.*⁶⁶

Conclusion

Household structure and co-residence patterns do not really tell us much about families, which may be spread across the country and beyond. Neither do they tell us about the quality of family relationships or the care that children receive. However, some points can guide policymakers and service providers in thinking how best to collaborate with families for the well-being of children.

- Most households consist entirely of members who are related to one another. In other words, while families may extend beyond the physical boundaries of households, nearly all children live in households with family members.
- Families are changing – with lower marriage rates, higher rates of non-marital births, and smaller household sizes. But the direction of change is not towards more nuclear forms. Extended households continue to predominate, and kinship care of children remains common. Yet the normative framework of the nuclear family remains pervasive in post-apartheid South Africa – even though “these powerful value frameworks centred on the importance of the nuclear family as the key site of care

for children... do not align with the lived experiences of care of many children in contemporary South Africa”.⁶⁷ It has been argued that the very concept of “family” is itself political – that “while a diversity of kinship systems certainly has existed through history and across the globe, it is the nuclear family model which has achieved privileged status in modern social imaginaries and development imperatives”⁶⁸ and that “falsely universalised notions of the nuclear family” are reproduced in the relationship between family policy and state⁶⁹.

- Households are dynamic as family members move around. Child-care arrangements change over time according to the needs of the child, which in turn must be weighed against the needs of the family as whole, the availability of care and suitable accommodation, and other considerations.

This essay provides evidence to support a shift from a focus on regulating, preserving and (re)constructing families, towards a better understanding of co-residence arrangements as a family strategy. It challenges concerns around commonly perceived fragile forms such as child- and youth-headed households, skip-generation households, and single parent households, and how these too may be family strategies.

Family choices are also constrained by policy and planning – for example, families depend on cities for employment, yet cities fail to provide adequate and safe family accommodation. The lack of state-funded child-care facilities for young children results in continued dependence on unemployed family members to provide care.

Policies that are about families cannot rely solely on household level information to define categories and target groups in need of protection or intervention. Rather, the challenge is for policies and programmes to respond to diverse and changing living arrangements so that the state can support families and the children in their care.

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Legal perspectives: Children, families and the state

Karabo Ozah and Ann Skelton

The South African Constitution recognises plurality of legal systems. This means that various officially recognised state laws coexist¹ and children may live day-to-day lives under different legal systems that regulate their relationships with family members². South African family law draws on a variety of sources as outlined in Figure 6.

The Constitution,³ common law and legislation place responsibilities on parents, families and the state to provide for the realisation of children's rights. This chapter considers the rights of children and the responsibilities of families and the state. This includes the intersection between the role of the family in providing for their children, and the role of the state in assisting the family to provide for children and stepping in when parental or family care is absent or failing. The chapter will address the following issues:

- The importance of family as a primary source of provision for and protection of children;
- Children as rights bearers and participants in matters concerning their care;

- Children as members of families and the obligations of the family to care for children; and
- The state's role in assisting families to provide for children and the obligation of the state to provide for children who are not in family care.

The importance of the family within regional and international law

Historically, children were viewed as property of their parents and treated as "mini-human beings" resulting in their protection being a quest for charity.⁵ The United Nations Convention on the Rights of the Child (UNCRC) confirmed, at an international level, a move away from this "charitable" approach to the protection of children. The UNCRC recognises children as rights bearers and in turn places an obligation on their parents/family and the state to fulfil those rights. The preamble recognises the family as the fundamental group of society and the natural environment for the growth and well-being of children, who should be

Figure 6: Sources of South African law⁴

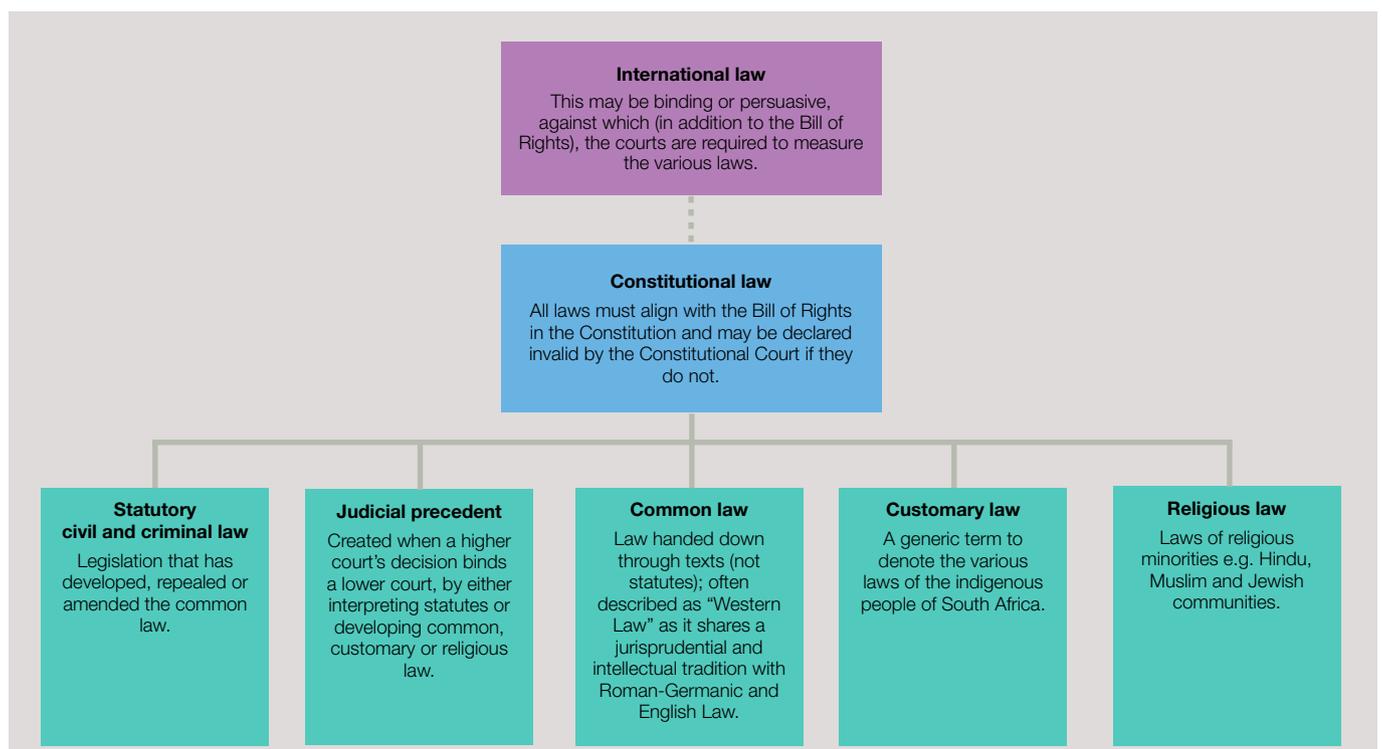


Table 5: Responsibilities of parents, families and the state

Article 20 of the ACRWC

1. *Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall have the duty:*
 - a. *to ensure that the best interests of the child are their basic concern at all times;*
 - b. *to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and*
 - c. *to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.*
2. *States parties to the Charter shall in accordance with their means and national conditions take all appropriate measures:*
 - a. *to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, education, clothing and housing;*
 - b. *to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and*
 - c. *to ensure that the children of working parents are provided with care service facilities.*

Article 18 of the UNCRC

1. *States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*
2. *For the purpose of guaranteeing and promoting the rights set forth in the Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of the children.*
3. *States Parties shall take appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

afforded the necessary protection and assistance so that they can fully assume their responsibilities within society.⁶

The African Charter on the Rights and Welfare of the Child (ACRWC) also recognises the family as central to a child's upbringing and requires the state to protect and support the establishment of families as "the natural unit and basis of society".⁷ The ACRWC requires states to protect children by ensuring that both parents have equal rights and responsibilities, and ensuring that no child is deprived of protection and maintenance regardless of the parents' marital status as outlined in Table 5 below.⁸ Where a child is temporarily or permanently deprived of his or her family environment or cannot, in his or her best interest, be allowed to remain in that environment, then the state is obliged to provide special protection and assistance to that child.⁹

Both the UNCRC and the ACRWC are founded on four general principles: non-discrimination; the right to life, survival and development; child participation; and the best interests of the child.¹⁰ These general principles enjoin families and the state to ensure that all children are given maximum protection and opportunities to develop and reach their full potential. The best interests principle elevates the interests of the child above those of the family, where

it is necessary to protect the child and thus provides for a balanced approach to the protection of the individual rights of the child on the one hand and the obligation to support the family on the other hand. The right to non-discrimination includes the prohibition of discrimination against children's parents or legal guardians.

Families in South Africa operate within a complex legal system, comprising statutory law, common law, religious and customary law, all of which must be aligned with the Constitution.

Table 5 compares article 20 of the ACRWC and article 18 of the UNCRC and highlights the following differences:

- The ACRWC is more protective to children as it broadens the categories of persons who have responsibilities towards children to include parents and any person responsible for a child, while the UNCRC focuses on parents and those who have legal guardianship. Legal guardianship denotes

Case 1: Children's rights and the responsibilities of families and the state

Coughlan NO v Road Accident¹¹ Fund concerned three children whose mother was killed in a road accident. The Road Accident Fund (RAF) admitted that it was liable to compensate the children for 100 % of their proven damages. It was agreed that this amounted to R112,942. The RAF, however, refused to pay the children any compensation. It contended that the children were not entitled to any compensation because, after the death of their mother, their grandmother was appointed as their foster parent and received a Foster Child Grant (FCG) from the state. The RAF argued that the FCG was a benefit that the children received as a result of the death of their mother. In its view the children had already been fully compensated for their financial loss: if they received compensation for loss of support, they would receive "double compensation".

The Constitutional Court found that social grants for children must not be deducted from RAF compensation. This is important for many children whose parents die in road accidents as at the time there were just under 500,000 children receiving the FCG and more than

11 million children receiving the Child Support Grant (CSG). In the words of Tshiqi AJ:

"Like foster child grants, child support grants are not predicated on the death of a parent. The fact that the state assumed responsibility for the support of the children after the death of the breadwinner should not have been held to be a determining factor on whether the caregiver qualified for the child support grant or not. The purpose of the RAF is to give the greatest possible protection to claimants. A deduction of either foster child or child support grants would undermine that purpose."

The court remarked that the approach of the RAF failed to acknowledge the different roles that the state assumes when it makes the payments. In the case of the CSG, the state assumes the role of a caregiver as enjoined by the Constitution and when it pays compensation for loss of support through the RAF it steps into the shoes of the wrongdoer.¹²

that someone who has been appointed by a court would have responsibilities towards a child;

- The ACRWC provides a more detailed description of what is expected from parents and other persons responsible for the care of the child; and
- The state's responsibilities to assist parents or other persons responsible for children to meet the essential socio-economic needs of children are set out in the ACRWC, while the UNCRC provides a broad obligation that seems to focus on providing institutions and facilities to assist families rather than focus on assisting and strengthening families for the benefit of the child.

South Africa has ratified both the UNCRC and the ACRWC and thus is bound to promote and protect children's rights in line with both treaties.

Children as individual rights bearers in South Africa

The UNCRC and the ACRWC have promoted a rights-based approach to protect and provide for children. The Constitution clearly sets out the rights that children are entitled to in South Africa. In terms of section 28 of the Bill of Rights every child has the right:

- to a name and nationality from birth;
- to family or parental care, or to appropriate alternative

care when removed from the family environment;

- to basic nutrition, shelter, basic health care services and social services;
- to be protected from maltreatment, neglect, abuse or degradation;
- to be protected from exploitative labour practices;
- not to be required or permitted to perform work or provides services that are inappropriate for a person of that child's age or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- not to be detained except as a measure of last resort and for the shortest appropriate period of time and must, in case of detention, be kept separate from persons over the age of 18 years and treated in a manner that takes account of their age;
- to have a legal practitioner at state expense in civil proceedings affecting the child if substantial injustice would otherwise result; and
- not to be used directly in armed conflict; and
- to have their best interests be the paramount consideration in every matter that concerns them.

Apart from these child-specific rights, children are also entitled to all other rights in the Bill of Rights, except those

reserved for adults (such as the right to vote). The right to education and to social assistance, the right to human dignity, the right to equality and the right to life are some of the important rights that children are entitled to under the Constitution. The protection of these rights has been expanded in legislation such as the Children's Act, the Sexual Offences Act, the Schools Act, and the Child Justice Act – to name just a few. These rights of children are enforceable against the state, families and any other person who violates them as illustrated in Case 1.¹³ The Children's Act also provides for children to participate in any matter that concerns them.¹⁴ This includes the right to bring – or be assisted to bring – a matter to court¹⁵ where a right in the Bill of Rights or the Children's Act has been infringed or is threatened.¹⁶

Children as members of families and obligations of families to care for children

The Children's Act recognises children as members of families and the meaning of family has been expanded in South African law through the recognition of extended family members as well as unrelated people that children have a relationship with. Family members are defined in the Children's Act as:

- A parent of the child;
- Any other person who has parental responsibilities and rights in respect of the child;
- A grandparent, brother, sister, uncle, aunt or cousin of the child; or
- Any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship.¹⁷

Defining parental responsibilities and rights

The Children's Act provides for the acquisition, suspension and termination of parental responsibilities and rights.¹⁸ These include the responsibilities and rights:

- to care for the child – which is defined very broadly in the Children's Act as outlined in Box 6 below;¹⁹
- to maintain contact with a child – which entails having a personal relationship with the child, and maintaining contact with the child through visits and other forms of communication in cases where the person doesn't live with the child;²⁰
- to act as a guardian of a child – which entitles the person to give consent to certain actions that relate to the child;ⁱ
- to contribute to the maintenance of the child.ⁱⁱ

Box 6: The Children's Act definition of care

Care, in relation to a child, includes, where appropriate:

- within available means, providing the child with –
 - a suitable place to live;
 - living conditions that are conducive to the child's health, well-being and development; and
 - the necessary financial support;
- safeguarding and promoting the well-being of the child;
- protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards;
- respecting, protecting, promoting and securing the fulfilment of, and guarding against any infringement of, the child's rights set out in the Bill of Rights and the principles set out in Chapter 2 of this Act;

- guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development;
- guiding, advising and assisting the child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development;
- guiding the behaviour of the child in a humane manner;
- maintaining a sound relationship with the child;
- accommodating any special needs that the child may have; and
- generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child.

i Section 18 of the Children's Act provides that a guardian must administer and safeguard the child's property or property interests; assist or represent the child in administrative, contractual and other legal matters or give/refuse consent for the child's marriage, adoption, application for a passport, departure or removal from the Republic; and consent to the alienation or encumbrance of any immovable property.

ii Maintenance is not defined in the Children's Act.

Table 5: Parental responsibilities and rights

Automatic	Acquired by agreement or by court order
<ul style="list-style-type: none"> • Biological mothers (regardless of marital status) • Married biological fathers • Unmarried biological fathers (who comply with section 21 of the Children’s Act) • Limited parental responsibilities and rights (not including guardianship) are recognised by the law for caregivers of children. 	<ul style="list-style-type: none"> • Unmarried biological fathers (who do not comply with section 21 of the Children’s Act) • Family members and other caregivers including: <ul style="list-style-type: none"> • grandparents • aunts and uncles • siblings who are above the age of 18 years • Adoptive parents (when adoption order is granted) • Any other person to whom parental agreements have been granted by agreement or court order.

The Children’s Act moves away from the concepts of “custody” and “control” where the focus was always on the parents’ power over children, to an approach where parents first and foremost have responsibilities towards children and must exercise the rights in relation to their children in the best interests of the children concerned.²¹ It is for that reason that the Children’s Act refers to the “responsibilities and rights” of parents – in that order – to emphasise the fact that the parental responsibilities are more important than parental rights, and that parental rights should be exercised to protect the rights of children.²²

One aspect of parental responsibilities and rights is “care” which is defined in section 1 of the Children’s Act. Caregivers include other persons, too, not just parents or families. The definition of “care” emphasises the responsibility of those who care for a child to ensure the child’s health, well-being and development, and to protect the child’s constitutional rights – as outlined in Box 6.

Who has parental responsibilities and rights automatically, and who can acquire them?

Generally, there are two categories of people who can have parental responsibilities and rights in relation to a child. The biological parents have automatic parental responsibilities and rights by operation of law and there are other persons who can acquire such responsibilities and rights either by default, because of their role as caregiver, or through a written agreement with the other holders, or by approaching a court for an order granting them such responsibilities and rights. These categories are outlined in Table 5.

Biological mothers

The Children’s Act provides that a mother of a child has full parental responsibilities and rights from birth.²³ However, if a

mother is an unmarried child and does not have guardianship in respect of the child and the biological father of the child does not have guardianship, then the guardian of the child’s biological mother is also the guardian of the child.²⁴ This provision is controversial and may lead to disputes on two fronts:

- It dissolves the rights of the mother and may lead to contestation in respect to birth registration of the child. It also means that if the grandmother becomes the legal guardian, she may give up her grandchild for adoption without needing to get consent from the mother of the child.
- It excludes the biological father who does not have guardianship because he is either himself a child or he does not qualify for parental responsibilities and rights in terms of section 21, and it favours the maternal family over the paternal family of the child.

Married fathers

A father has full parental responsibilities and rights if he is married to the child’s mother or was married to the child’s mother at the time of the child’s conception; or birth; or any time between the conception and birth.²⁵ This is because there is a common law presumption that a man who is married to the mother is the father of the child.

Children born to parents living or married under religious law are also entitled to protection and their parents have responsibilities and rights that are recognised.ⁱⁱⁱ The Children’s Act defines a marriage as a marriage recognised in terms of South African law or customary law or concluded in accordance with a system of religious law subject to specified procedures.²⁶ Despite this, Hindu, Muslim and Jewish marriages are not formally recognised in South Africa.²⁷

iii Sections 15, 30 and 31 of the Constitution clearly recognises religious and cultural rights and the observance thereof, subject to such observance not being inconsistent with any provision of the Bill of Rights.

Case 2: Muslim marriages must be recognised to protect the rights of children and women

The need to recognise and regulate Muslim marriages has been recognised by the court in the matter of *Women's Legal Centre Trust v President of the Republic of South Africa and Others, Faro v Bingham N.O. and Others, Esau v Esau and Others*²⁸ where the following order was made:

- It is declared that the State is obliged by section 7 (2) of the Constitution to respect, protect, promote and fulfil the rights in sections 9, 10, 15, 28, 31 and 34 of the Constitution by preparing, initiating, introducing, enacting and bringing into operation, diligently and without delay as required by section 237 of the Constitution, legislation to recognise marriages solemnised in accordance with the tenets of Sharia law ('Muslim marriages') as valid marriages and to regulate the consequences of such recognition.
- It is declared that the President and the Cabinet have failed to fulfil their respective constitutional obligations as stipulated in the paragraph above and such conduct is invalid.
- The President and Cabinet together with Parliament are directed to rectify the failure within 24 months of the date of this order.

The court recognised the negative impact that the failure to recognise and regulate Muslim marriages have on children in the following quote:

*The child's best interests are of paramount importance in every matter concerning a child. Children in Muslim marriages are therefore not provided with adequate protection as those in civil and customary marriages enjoy, upon dissolution of the marriage of their parents by way of divorce. In terms of section 6 of the Divorce Act, a decree of divorce shall not be granted until the court is satisfied as to the welfare of the minor or dependent children and it may call for an investigation to be undertaken and for any relevant person to appear before it. This all serves to indicate that there has been, and is, an ongoing infringement of the section 34 rights of persons in Muslim marriages, as well as the children thereof whose rights are stated in section 28 of the Constitution, to have any dispute that can be resolved by the application of law decided in a fair public hearing.*²⁹

In terms of traditional Jewish Law the legal obligations of maintenance towards children rests upon the father, irrespective of whether the child was born out of wedlock or not.³⁰ This obligation includes providing for all the child's needs, educating the child and ensuring that the child learns a profession.³¹

The Children's Act considers the payment of damages or inhlawulo as one of three factors in determining whether an unmarried father has automatic parental responsibilities and rights.

The duty of the father to maintain a child is independent of custody – so even if the child is in the care of the mother, the father has the obligation to maintain the child, as is the case with civil marriages. Both parents have rights to have contact with or access to the child unless such this is deemed harmful to the child.³² The default position is that guardianship rests with the father, and a mother does not have legal standing

over her children unless specifically appointed by a Jewish court.³³ The maintenance obligation of the father continues even after divorce and the High Court recognised the powers of an Orthodox Jewish Ecclesiastical Court to enforce its maintenance order against a father who had defaulted on his maintenance obligation following his divorce to the benefit of the child.³⁴ Similarly, although Muslim marriages are not recognised under South African law, the courts have recognised and upheld maintenance obligations flowing from such marriages.³⁵

The lack of formal recognition of some religious laws has a negative impact on the protection of rights of women and children.³⁶ Nonetheless, the courts have not shied away from intervening in matters to ensure that the Constitutional rights of children living under religious law are protected. In August 2018, the Western Cape High Court directed the state to introduce legislation to recognise Muslim marriages and to regulate the consequences of those unions (see Case 2).

Unmarried fathers

Section 21 of the Children's Act provides for the automatic acquisition of parental responsibilities and rights by unmarried fathers who comply with the following requirements:

- a. if at the time of the child's birth he is living with the mother in a permanent life-partnership; or
- b. if he, regardless of whether he has lived or is living with the mother—
 - i. consents to be identified, or successfully applies in terms of section 26 to be identified, as the child's father or pays damages in terms of customary law;
 - ii. contributes, or has attempted in good faith to contribute, to the child's upbringing for a reasonable period; and
 - iii. contributes, or has attempted in good faith to contribute, towards expenses in connection with the maintenance of the child for a reasonable period.

A more detailed discussion of children under customary law can be found in Chapter 4. However, it is notable that the Children's Act considers the payment of damages or *inhlawulo* under customary law as one of the three factors in determining whether an unmarried father has automatic parental responsibilities and rights, demonstrating how the Act recognises the need to protect the rights of children living under both civil statutory law and customary law.³⁷ Under customary law, the payment of damages is seen as an acknowledgment of paternity but is not considered

sufficient for the acquisition of parental responsibilities and rights. Usually, a father has to pay an additional beast (or cash equivalent) for *isondlo*, for the child's upkeep, in order to enable him to have a relationship with his child.³⁸ The approach of section 21 of the Children's Act is not irreconcilable with the customary law position as the purpose of *isondlo* relates to the other two requirements set out in section 21 which are that the father must have contributed to the child's upbringing and contributed towards the maintenance of the child for a reasonable period of time.

The law also recognises situations where the father has tried in good faith to contribute to the maintenance and upbringing of the child as outlined in Case 4.

Other recognised caregivers

The Children's Act recognises that children live in various types of families, often with people who do not have formal parental responsibilities and rights towards them. In order to create a default position that provides *de facto* caregivers with sufficient rights to care for children, section 32 of the Children's Act recognises persons who voluntarily care for a child either indefinitely, temporarily or partially. It provides that such persons must safeguard the child's health, well-being and development, and protect the child from maltreatment,

Case 3: Fulfilling the requirements of section 21 to acquire automatic parental responsibilities and rights

In the case of *KLVC v SDI [2015] 1 All SA 532 (SCA)* the court had to determine whether an unmarried father had acquired parental responsibilities and rights where the mother argued that he had not complied with section 21 (1)(b) in particular. The court found that the father had met the said requirements and stated as follows:

Section 21 the Act was specifically intended to provide for the automatic acquisition of parental rights by an unmarried father if he was able to meet certain requirements. Clearly, the intention was to accord an unmarried father similar rights and responsibilities in relation to his child to those of the father who was married to the child's mother. To my mind, this was intended to promote both the equality guarantee in s 9 and, more importantly, the right of a child to parental care as envisaged by s 28 of the Constitution.

It bears mention that s 20 of the Act, which accords automatic full parental responsibilities and rights to married fathers, makes no stipulation whatsoever

that such fathers should contribute towards the upbringing or expenses of their children. On the other hand, s 21 (1)(b) requires an unmarried father to contribute, or make an attempt in good faith to contribute, towards the upbringing and the expenses in connection with the maintenance of the child for a reasonable period. It is clear that the legislature draws a distinction between married and unmarried fathers. However, it is important in my view for the court whilst interpreting this section, not to unfairly discriminate against the unmarried father by demanding what the appellant refers to as 'significant or reasonable contributions'. There is a real danger of finding that an unmarried father has not automatically acquired rights and responsibilities in respect of a child due to factors entirely unrelated to his ability and commitment as a father.

This interpretation accords with the child-centred approach that the Children's Act takes in ensuring that children are cared for and have relationships with both parents.

Case 4: Court finds that caregivers who are family members can instruct attorneys for civil claims on behalf of a child

The North Gauteng High Court found that it was not necessary to appoint a *curator ad litem*^v for litigation on behalf of a child where the child has a family member as a caregiver and that such a family is empowered to instruct an attorney to pursue a claim against the Road Accident Fund. This was in the case of *Ex Parte T Molantoa obo O Moloantoa and other Applicants*³⁹ where various applicants sought to appoint *curators ad litem* for purposes of litigation despite the fact that the litigation had already advanced on instruction of the family members of the children. The Court found that:

- an adult caregiver who is a family member of a child is competent to assist the child with his or her claim against the Road Accident Fund
- the fact that the child's caregiver is a family member other than a biological parent is no ground on its own for the appointment of a curator, nor is the fact that the caregiver is poor or ill-educated.⁴⁰

The Court remarked as follows:

Section 32 (1) provides in terms that a person who voluntarily cares for a child must safeguard the child's health, well-being and development. In matters concerning a child, the child's interests are paramount. It must surely have been present to the collective mind of the legislature that the nuclear family (i.e. biological mother + biological father + biological children) was and is by no means the universal norm in this country. Why would the legislature impose a purely bureaucratic obstacle in the path of the vindication of children's rights? I can see nothing in the scheme of the Children's Act or its purposes which will be retarded if s 32 is interpreted to permit a child's caregiver to assist the child in an action against the Fund. An interpretation which recognises such a competence on the part of a caregiver will advance the purposes of the Act.⁴¹

abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards. These persons may exercise any parental responsibilities and rights reasonably necessary to comply with their obligations to protect the child, including consenting to the child's medical examination or treatment if such consent cannot be reasonably obtained from the parent or guardian of the child. Although these persons do not need a court order, a court may limit or restrict the parental responsibilities and rights that such persons may exercise.

The recognition of the role of persons, other than the biological parents of the child, as being significant for the child's care and well-being is also evident from the definition of "caregiver" in the Children's Act which includes:

- a foster parent;
- a person who cares for the child with the implied or express consent of a parent or guardian of the child;
- a person who cares for a child whilst the child is in temporary safe care;
- the person who is the head of a child and youth care centre where the child has been placed;
- the person at the head of a shelter;
- a child and youth care worker who cares for a child who

- is without appropriate family care in the community; and
- the child at the head of a child-headed household.

The recognition of these different caregivers indicates the role of persons other than the biological parents (including the state through the placement of children in foster care and in child and youth care centres) and outlines their responsibilities – including their right to consent to medical treatment of children.^{iv} In this way the law recognises the widespread practice of informal kinship care without formal documentation.

Acquiring shared parental responsibilities and rights by agreement

The Children's Act allows for the sharing of parental responsibilities and rights. This is not a requirement, but is an option available to those who wish to formalise care arrangements. The mother of a child, or any other person who has full parental responsibilities and rights in respect of a child is able to conclude a parental responsibilities and rights agreement which enables her or him to confer some of these responsibilities and rights on the unmarried father of a child who has not acquired such rights in terms of section 21 of the Children's Act or any other person who has an interest

iv Surgical treatment requires the consent of a parent or guardian. See: Children's Act 38 of 2010. Section 129 (4).

v A *curator ad litem* is a legal representative appointed by a court to represent the best interests of a person who lacks the capacity to make decisions for themselves.

in the care, well-being and development of the child.⁴² Such a parental responsibilities and rights agreement only takes effect if it is registered with the family advocate or made an order of the High Court, a divorce court or the children's court.⁴³

For example: Zitha and Sonwabo are married and have two children Buhle and Andile. When Zitha, the mother, dies, Sonwabo enters into a parental responsibilities and rights agreement with Zitha's sister, Thandi, to care for the children while he is away working in the city. This means that Thandi can care for the children on a day-to-day basis and make certain decisions such as which school they can attend, but with some limitations – for example, she cannot take them out of the country or consent to them undergoing surgery without Sonwabo's approval. Sonwabo does not lose any of his parental responsibilities and rights.

Co-holders of parental responsibilities and rights may choose to conclude a parenting plan to regulate the exercise of parental responsibilities and rights. The contents of such a plan includes where and with whom the child lives, maintenance of the child, contact between the child and the parties or any other person, and the schooling and religious upbringing of the child.⁴⁴

The Children's Act outlines the formal requirements for the conclusion of a parenting plan⁴⁵ and also provides guidance as to how co-holders of parental responsibilities and rights should exercise their rights and make decisions in relation to the child.⁴⁶ However a written parental responsibilities and rights agreement is optional, not mandatory. The day-to-day decisions about a child can also be arranged verbally, by people who are sharing aspects of the care of children.

Acquiring parental responsibilities and rights through a court order

Sections 23, 24, 27 and 28 of the Children's Act provide for a person who has an interest in the well-being or development of the child to approach the court for an order granting care, contact or guardianship of the child. The application for guardianship can only be made to the High Court, while for care and contact, a person may approach the Children's Court. The court would consider whether the order sought would be in the best interests of the child, taking into account the relationship between the child and the applicant, the applicant's commitment towards the child and the extent to which the applicant has contributed towards the expenses in connection with the maintenance of the child.

Adoption and surrogacy

The Children's Act also regulates adoption⁴⁷ and surrogacy⁴⁸, which are processes that also lead to the acquisition of parental responsibilities and rights. Once the legal requirements for these respective processes are complied with and a court order granting an adoption⁴⁹ or a surrogate motherhood agreement is confirmed by the High Court, the child is for all purposes the child of a person or persons in whose favour the order has been granted.⁵⁰ Customary law adoptions have been recognised by our courts for purposes of maintenance claims, inheritance and road accident fund claims where children's adoptive parents died in road accidents.⁵¹ Adoptions in terms of the Children's Act can be by family members, step-parents or any other persons who are not related to a child who comply with the requirements of the Act.⁵²

Foster care

Foster parents obtain limited parental responsibilities and rights which may be set out in the court order,⁵³ but guardianship remains with biological parents or any person who has been appointed as a guardian. A foster parent may not make any important decisions affecting the child without considering the views and wishes of the child, and of the parents or guardians of the child.⁵⁴ Children in foster care are wards of the state and where decisions need to be taken the state has to step in, for instance if the child has to undergo surgery or leave the country and does not have a legal guardian, the provincial head of social development has to give written consent.⁵⁵

Upholding the best interests of the child in disputes about parental responsibilities and rights

Where disputes arise in relation to parental responsibilities and rights, the Children's Act recommends a conciliatory approach and provides for the use of mediation.^{vi} The Children's Court has the power to refer matters to mediation and family group conferences, for possible dispute resolution.⁵⁶ Section 71 of the Children's Act provides that the children's court may, where circumstances permit, refer a matter to any appropriate lay forum, including a traditional authority in an attempt to settle the matter out of court. Significantly, the section precludes the referral of matters of alleged abuse or sexual abuse of a child to a lay forum.⁵⁷

The recognition of alternative dispute mechanisms and forums is a positive development in that it aligns with one of the general principles of the Children's Act which

vi Section 21 (3) of the Children's Act provides that an unmarried father and mother must be referred to mediation where there is a dispute about the acquisition of parental responsibilities and rights.

Box 7: The best interests of the child

Section 7 of the Children's Act outlines the factors that need to be considered in determining what is in the best interests of the child:

- a. the nature of the personal relationship between—
 - i. the child and the parents, or any specific parent; and
 - ii. the child and any other caregiver or person relevant in those circumstances;
- b. the attitude of the parents, or any specific parent, towards—
 - i. the child; and
 - ii. the exercise of parental responsibilities and rights in respect of the child;
- c. the capacity of the parents, or any specific parent, or of any other caregiver or person, to provide for the needs of the child, including emotional and intellectual needs;
- d. the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from—
 - i. both or either of the parents; or
 - ii. any brother or sister or other child, or any other caregiver or person, with whom the child has been living;
- e. the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- f. the need for the child—
 - i. to remain in the care of his or her parent, family and extended family; and
 - ii. to maintain a connection with his or her family, extended family, culture or tradition;
- g. the child's—
 - i. age, maturity and stage of development;
 - ii. gender;
 - iii. background; and
 - iv. any other relevant characteristics of the child;
- h. the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
 - i. any disability that a child may have;
 - j. any chronic illness from which a child may suffer;
- k. the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- l. the need to protect the child from any physical or psychological harm that may be caused by—
 - i. subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - ii. exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- m. any family violence involving the child or a family member of the child; and
- n. which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

requires that in any matter concerning a child an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided.⁵⁸ However, there is little published about how effective these processes are in practice. Section 28 (2) of the Constitution requires that the "best interests" standard be central to dispute resolution, and the Children's Act⁵⁹ provides guidance as to how to determine what is in the best interests of the child particularly where there is contestation of parental responsibilities and rights as outlined in Box 7.

In addition to the "best interests" criteria outlined in section 7 of the Children's Act, section 10 requires that the views and wishes of the child be considered, through enabling their participation in matters that affect them. Children's level

of participation is guided by their age and maturity and may also include participation through a legal representative.⁶⁰ Our courts have recognised the right of children to participate and be heard in matters where parental responsibilities and rights are in dispute.⁶¹ This is different from the role played by the Office of the Family Advocate which takes a role akin to mediation,⁶² whereas in this case a legal representative of a child stands squarely in the corner of the child and communicates the child's views and wishes to the court⁶³.

Very often disputes about children are between their parents and caregivers – typically parents arguing about care or contact. There are an increasing number of grandparent/parent disputes, particularly where one parent has died, and his or her parents exert their rights to remain caregivers

or to have contact with the child. Grandparents have a duty of support towards their grandchildren in common law. Nevertheless, this does not mean that they have any automatic responsibilities and rights in relation to a grandchild. The responsibility to maintain a grandchild also does not arise if there is a parent who is capable of doing so. Where parents refuse to allow contact between children and their grandparents, the courts have granted orders enabling such contact if it is in the child's best interests.⁶⁴

Disputes between parents, (or between grandparents and parents) about parental responsibilities and rights are considered to be part of "private law" – in other words, they are private matters in which the parties contesting rights have to try to resolve the dispute themselves, or through mediation, or ultimately a court. The state does not need to get involved in such disputes – except through the Office of the Family Advocate, which was established to provide mediation for free, and also to facilitate a separate avenue to determine the views and wishes of the child, and place these before the court.

Many disputes arise regarding the payment of maintenance for children. Although these are mostly cases brought by mothers against fathers,^{vii} grandparents have been successfully sued for maintenance.⁶⁵ These are also private law matters, but they contain an element of "public law" where the state gets involved by tracing defaulters and prosecuting cases where orders to pay maintenance are not complied with.

Disputes impacting on parental responsibilities and rights where the state is involved

Sometimes disputes arise because there are allegations that children are abused or neglected or are otherwise in need of care and protection. In these instances, the state becomes involved, and these cases are viewed by the law as being a hybrid of "private law" and "public law".

Section 110 of the Children's Act places an obligation on certain persons who engage with children on a professional basis to report cases where they reasonably conclude that a child has been physically or sexually abused^{viii} or wilfully neglected as outlined in Box 8. Members of the public may also report cases where they believe that a child is in need of care and protection. Social workers working for government and for child protection organisations designated by the state are then required to investigate allegations of abuse and neglect. The Act allows for such investigations to be

Box 8: Professionals' responsibility to report child abuse and neglect

Section 110 (1) of the Childrens Act outlines professionals' responsibility to report child abuse and neglect:

Any correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.

In terms of section 305 (1)(c) a person who fails to comply with section 110 (1) is guilty of an offence and if convicted is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.

undertaken without removing the child. Removal of a child from his or her parents or caregivers is an extreme measure, and the Children's Act therefore circumscribes this power by requiring a court order prior to removal in all situations other than those where emergency protection is required.

In *C v Department of Health and Social Development*, the Constitutional Court found that when the state intervenes to remove children from the care of parents or family, such removal must be subject to automatic review as the need for emergency removal must be balanced with children's right to family and parental care and their right to have their best interests considered.⁶⁶ The facts of the matter were that when social workers and city officials carried out a planned operation to remove children from people found begging on the streets with their children, they found Mr C and Ms M were at a busy intersection in Pretoria. Both had their children with them. Mr C was repairing shoes by the roadside, and on that day he had taken his daughter with him because his partner

vii It does not matter if the parents are married or unmarried: *Peterson v Maintenance Officer*, Simon's Town Maintenance Court 2004 (2) SA 56 (C).

viii Reporting of sexual offences is obligatory for everyone, in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

was in hospital giving birth to the couple's second child. Ms M, who begs for a living, had her two daughters with her and an assistant because she is blind. Mr C and Ms M both had their children removed from them by the police and social workers and taken to places of safety without placing the matter before the Children's Court to review such immediate removal. This meant that the parents and children would only be heard by a court after a period of ninety days which the Children's Act provides for a social worker to investigate and submit a report to the Children's Court indicating whether a child is need of care or not. The Constitutional Court was of the view that the lack of immediate automatic review is unconstitutional. In the words of Yacoob J:

It is in the interests of children that an incorrect decision by a court made without hearing the child or the parents, or by a designated social worker or police official be susceptible to automatic review by a court, in the ordinary course, in the presence of the child and the parents. It follows from this that sections 151 and 152 do not provide for this and are therefore constitutionally wanting. Sections 151 and 152 of the Act, though their positive provisions are aimed at the best interests of children fall short of achieving this result. They carry the potential of being counterproductive because they fail to provide for a Children's Court automatic review in the presence of the child and the parents. In this sense, and to this extent, the laws are not in the best interests of children. They therefore limit the rights contained in section 28 (2).⁶⁷

The case was important in ensuring that the removal of children from parental care does not go unchecked. The facts of the case are indicative of the lived realities of many parents who have to make care decisions for their children and at the same time earn a living to provide for their families. Decisions that are viewed as potentially contrary to the best interests of the child, may in fact be in the child's best interests. For example, in the case of Mr C the only other option he may have had was to leave his child alone at home, which may have left the child more vulnerable.

There are other situations where the state separates children from families through executive action. One of these is through the imprisonment of parents. In the case of *S v M (Centre for Child Law as Amicus Curiae)*⁶⁸ the South African Constitutional Court set a precedent by requiring that, henceforth, all courts considering the sentencing of a primary caregiver must consider the impact that imprisonment would have on the best interests of the child.

In *S v M*, the Constitutional Court recognised the individuality of a child as a separate being from his or her parents and this is reflected in the following quote:

Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them.⁶⁹

The Children's Act foresees that there may be conflicts in relation to the exercise of parental responsibilities and rights, not only between the parents or co-holders of parental responsibilities and rights but also between their interests and that of the child; and it therefore includes provisions to address these tensions by placing the child's interests at the centre. For example, where courts or the state override parents' refusal of medical treatment for a child based on religious or other beliefs, to ensure that when parents' interests are at odds with the interests of the child the courts or state can intervene to safeguard the child's best interests.⁷⁰

The state's role in supporting families to look after children

The South African Constitution provides for children's rights to "family care or parental care, or to appropriate alternative care when removed from the family environment".⁷¹ The provision further recognises the family as generally the unit that bears the primary responsibility to look after children, while the State must support families and in some instances step in to provide directly for children who are placed in the State's care. The right to a family is framed as a child's right and not as a right to family life, which is adult orientated. This is probably due to concern that parents could invoke a "right to family life" to limit state intervention in "family matters", and that this could be detrimental to the child in cases where the state needs to intervene or remove the child in cases of abuse or neglect.

Although the primary responsibility to care for children lies with the parents or caregivers of children, the state has an obligation to provide for the socio-economic rights of children thus assisting to ensure the realisation of children's constitutional rights. These rights include:

- The right to basic education;⁷²
- Access to health care services;⁷³
- Social services,⁷⁴ which includes the child care and protection system that obligates the State to support families in safeguarding the well-being of their children,

and provides for the removal of children into State care where this is in the child's best interests;^{viii}

- Social security,⁷⁵ which includes the provision of grants to support parents in providing for the daily essentials for their children, if they are unable to do so;
- The right to housing and shelter.⁷⁶

Section 7 (2) of the Constitution places an obligation on the state to respect, protect and fulfil each of these rights. While the realisation of most socio-economic rights is subject to progressive realisation and therefore limited by the extent of available resources, children's socio-economic rights outlined in section 28 (1)(c) of the Constitution are not subject to the same internal limitation.⁷⁷ This difference together with the best interest's principle and children's right to be protected from neglect and abuse, supports the argument that children should have a priority claim on state resources to ensure the prompt delivery of a basic, minimum level of socio-economic goods.⁷⁸ This approach has found traction when it comes to education as the Constitutional Court has stated that the right to basic education is not subject to progressive realisation.⁷⁹

Many parents have to make care decisions for their children and at the same time earn a living to provide for their families. Decisions that are viewed as potentially contrary to the best interests of the child, may in fact be in the child's best interests.

However, the first cases which dealt tangentially with children's socio-economic rights met with a cautious approach by the Constitutional Court. In *Government of the Republic of South Africa v Grootboom*⁸⁰ which dealt, among other matters, with the question of whether families with children had an immediately realisable right to housing, the Constitutional Court overturned the finding of the High Court which had relied directly on section 28 (1)(c) in relation to children's right to shelter. According to the Constitutional Court this approach would mean that parents who have children have the right to access adequate housing in terms of section 26 (the right of access to adequate housing, which applies to everybody) as well as the right to claim shelter on demand in terms of section 28 (1)(c).⁸¹ The court found that section 28 (1)(b) and section 28 (1)(c) had to be understood together in

that section 28 (1)(b) outlines who has the responsibility for the care of children, those being parents, family or state – in that order.⁸² Section 28 (1)(c) outlines the essential elements of that care, thus if the child is in the care of parents, then they have the primary duty to provide for the basic needs of the child.⁸³ Therefore, only where the child is removed from their parents and is placed in state care would the state then have the obligation under section 28 (1)(c).⁸⁴

In *Minister of Health v Treatment Action Campaign*⁸⁵ the Constitutional Court cleared the ambiguity of the *Grootboom* case by explaining that it is not only when children have been removed from family care and placed in state care that the state bears an obligation to provide the care entitlements in section 28 (1)(c).⁸⁶ The court said that the duty extends even where the implementation of the right to parental or family care is lacking, as was the case here in so far as the parents lacked the financial resources to pay for health care services and thus the duty fell to the state.⁸⁷

In *Centre for Child Law v MEC for Education, Gauteng*,⁸⁸ which dealt with children who had been removed from their parents, the court found that the state must provide alternative care facilities that are appropriate and meet the children's basic needs.⁸⁹ The court stated that:

what is notable about children's rights in comparison with socio-economic rights is that section 28 contains no internal limitation subjecting them to availability of resources and legislative measures for their progressive realisation. Like all rights, they remain subject to reasonable and proportional limitation, but the absence of any internal limitation entrenches the rights as unqualified and immediate.⁹⁰

More generally, parents should be able to rely on the state for support through a range of programmes that support their parenting efforts. South African law allows for parental responsibility leave. Mothers who are in formal employment are entitled to have four months maternity leave and are able to draw benefits from the Unemployment Insurance Fund during that time. On 21 August 2018 the National Council of Provinces passed the Labour Laws Amendment Bill, which provides that employed fathers will be entitled to 10 days' parental leave on the birth of a child.⁹¹ The Bill also provides for 10 weeks' adoption leave for one parent when adopting a child under the age of two, and ten weeks "commissioning parent leave" when an employee's child is born by means of a surrogacy arrangement.

viii The Children's Act provide for the functioning of the care and protection system which includes the provision of prevention and early intervention services as well as the process for finding children in need of care and protection and placing them in alternative care.

Early childhood development (ECD) services (comprising health, care and education) have been a major focus of the government policy and implementation planning,⁹² and a site of increasing government spending despite the Children's Act stating that government "may" provide these services. Partial care facilities are developed at ECD level, but more after-school services are required.

The Constitution recognises the family as the unit that bears the primary responsibility to look after children, while the state must support families

Social assistance for parents or caregivers is provided through the Social Assistance Act,⁹³ and comprises the Child Support Grant (a means tested grant for all primary caregivers, including a parent), the Foster Child Grant (a grant for foster parents, who may be family members but not parents, and is not means tested), and the Care Dependency Grant, which is for caregivers caring for children with disabilities (including parents). The Children's Act also places an obligation on the state to support families and ensure family preservation through measures such as providing prevention and early intervention programmes that will provide families support to build their capacity and self-reliance.⁹⁴ Such programmes may include assisting families to obtain the basic necessities of life; assisting the families to obtain such necessities for themselves; providing families with information to enable them to access services; supporting and assisting families with a chronically ill or terminally ill family member, early childhood development and promoting the well-being of children and the realisation of their full potential.⁹⁵

Conclusion

Families in South Africa operate within a complex legal system, comprising statutory law, common law, religious and customary law, all of which must be aligned with the Constitution. The Constitution sets up a powerful set of rights and protections for children, including the best interests principle which must be paramount in all decisions concerning them. The law clarifies who acquires parental responsibilities and rights automatically, or by agreement or

court order. The Children's Act is flexible in terms of family forms which is a welcome approach as it recognises the diversity of customs and religion and expands the categories of people who can be recognised as caregivers of children, who in most instances have obligations towards children as a result of customary practices or religious law.

Disputes concerning children that occur between parents and other caregivers fall within the domain of private law, with minimal intervention by the state except through the Office of the Family Advocate, or in the enforcement of maintenance claims. Provision is made for the child to be heard in matters that affect him or her, including the provision of legal representation, and this an essential component of recognising children as rights-bearers.

Disputes where there are allegations of abuse or neglect move into the terrain of public law. The care and protection provisions in the Children's Act require social workers to conduct investigations, and there are legal constraints on the removal of children from parents and families. The emphasis is on strengthening families through the provision of prevention and early intervention services and only removing children from families in those instances where there is danger to the child.

The Constitution and other legislation place primary emphasis on parents and caregivers' obligations for the care of children, including the provision of basic needs. This approach has been endorsed by the courts, which have indicated that children should first look to their parents, families and caregivers for the fulfilment of their basic needs, and only where parental care is absent or "lacking" does the obligation to provide services arise. However, there are notable exceptions such as in relation to the right to education, which requires the state to provide for a system that enables parents and family to enrol their children, even where they may be lacking financial resources. This is in keeping with the fact that education is compulsory in South Africa.

The state is yet to meet its obligations towards ensuring that all children in South Africa enjoy the rights provided for in the Constitution, and in some instances it has taken the courts to ensure that the state meets its obligations. There is also a need for the state to strengthen its support to parents and families, who are the primary protectors of their children's rights.

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Living Customary Law and Families in South Africa

Elena Moore and Chuma Himonga

The 1996 Constitution gave legal force to both “state”ⁱ and customary law, making South Africa a legal pluralist stateⁱⁱ.¹ Customary law is derived from social practices that the community accepts as obligatory.² While many South Africans live according to customary law, the law (or norms) regulating the lives of people will vary across communities, ethnicities and provinces. The precise number of people who live according to customary law is difficult to estimate as people have a choice of legal system to regulate different life transitions, such as marriage and death. At the very least, there are more than 16 million Black South Africans who live in the former homelands under traditional authority who will have some parts of their personal lives regulated by customary law. Over half a million peopleⁱⁱⁱ are recorded as being married under customary law.³

This essay examines aspects of customary law affecting children and families in South Africa, and considers the following questions:

- What is customary law and how does it intersect with other legal systems?
- How are family rights and responsibilities towards children determined?
- What are customary marriages, and how does the system of customary marriage affect children?
- How does customary law deal with the custody of children on dissolution of marriage?
- How do land rights operate under customary law?
- How does customary law deal with succession and what does this mean for children’s right to inherit?
- What are the options for dispute resolution?
- Why are customary forums sometimes preferred in cases of domestic violence?
- What are some of the inherent challenges with living customary law?

Customary law

Customary law is defined in section 1 of the Recognition of Customary Marriages Act (hereafter referred to as RCMA) as the “usages and customs traditionally observed among the indigenous African peoples of South Africa”, which “forms part of the culture of those peoples”. In understanding customary law, an important distinction needs to be drawn between codified customary law and living customary law. Codified customary law, also referred to as official customary law, comprises what was an oppressive form of customary law developed by colonial and apartheid states which exists in codes and precedents. It has been argued that much of the customary law in the courts before 1994 was drawn from texts or precedents and is therefore of dubious validity.⁴ Living customary law, on the other hand, exists in the system of living norms that regulate the everyday lives of people who live according to customary law. This system of law is dynamic, evolving and context-specific as it adapts to changes in the beliefs and circumstances of the people it applies to.⁵

The recognition and application of customary law rests on the right to culture.⁶ Historically Black South Africans were positioned “outside of the law”,⁷ which means they were subordinated by, and denied protection from, customary and state support systems in the apartheid and colonial contexts.

All forms of discrimination are prohibited under the Constitution. Therefore, the South African Law Commission’s Project Committee on Customary Law in 1996 identified the need to ensure that customary marriages be recognised and comply with constitutional rights, especially the rights guaranteeing equality and non-discrimination, as well as the rights of the child. The RCMA came into force in 2000 and was the first major reform in customary law.

Customary law is subject to constitutional review and therefore aspects can be declared unconstitutional if they

i For the purposes of this essay, “state” law refers to common law and statutory law based on South Africa’s English and Roman Dutch legal roots. However, it is necessary to bear in mind that, in South Africa, living customary law is part of state law in the sense that it is recognised by, for instance, the courts.

ii This means that there are two or more legal orders operating within the state

iii Unfortunately, there are considerable methodological problems with recording marital status in South Africa. The problems are largely a result of the wide diversity in marriage forms, cultures, religions and languages but also in the way in which marriage data is captured. As Budlender et al. (2004) demonstrate, the discrepancy derives from the fact that census and survey data reflect perceptions of marriage, while administrative data generally record the legal system. Many customary marriages are not registered and therefore don’t appear in administrative records.

contravene fundamental rights. The Constitution, under section 211 (3) states that “the courts must apply customary law, when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.” Whilst this itself is not problematic, often the version of customary law that is subjected to constitutional review is official customary law and the cases lack genuine empirical evidence of living customary law.

Customary law is mostly unwritten. The rules of customary law are flexible and change in response to changes in the socio-economic environment, and are therefore rooted in the contemporary rather than the past. There is no group of dedicated people tasked with making rules or with the authority and power to define norms of customary law. It is recognised that the definition and content of living customary law is a contested issue often along gendered lines and in the absence of a single, identifiable person or group who can define it in a given community, the ascertainment of customary law is difficult.⁸ The rules are generated by the community living by that law.

Customary law covers all matters regulating personal and family life including matters relating to children (such as care, contact, maintenance, guardianship and initiation); marriage and the consequences of marriage (rights and responsibilities of spouses during and after the marriage); succession (who has a right to inherit and the administration of estates); land tenure and traditional leaders (who regulate family matters and disputes).

Family rights and responsibilities towards children

Like state law, customary law considers survival at birth a minimum condition for regarding the child a legal person. But unlike state law, customary law does not give children special treatment, with specific individual entitlements outside the welfare of the family as a whole.⁹ Bennett outlines how the idea of children enjoying individual rights is fundamentally at odds with the African legal tradition, where the emphasis lies on duties rather than rights.¹⁰ Whereas Western systems of law emphasise the individual and the nuclear family, customary law tends to prioritise a child’s development under the protection of its patrilineal or matrilineal family.

In customary law, a biological father does not have automatic rights and responsibilities to his children.¹¹ Rather, a father’s right to his biological children is linked to marriage, and the question of a child’s family affiliation depends on *lobolo* (bridewealth). If *lobolo* was agreed (with

either immediate or partial transfer), the child belongs to the father’s family. If it was not, the child belongs to the mother’s family. In this way the nuclear family is not the principal social unit.^{iv} However, in *Hlope v Mahlalela*,¹² the court disapproved of the role of *lobolo* in determining parental responsibilities and rights, and gave preference to the best interests of the child principle enshrined in the Constitution.

Unlike state law, customary law does not give children individual entitlements outside the welfare of the family as a whole.

There are also mechanisms for acquiring patrilineal affiliation outside of marriage, and this is particularly relevant in the context of low and declining marriage rates. Section 21 (1) of the Children’s Act provides that the biological father of a child born out of wedlock can acquire full parental rights and responsibilities in respect of his child if he “pays damages (*inhlawulo*) in terms of customary law.”¹³ The amount or scale of damages differs across ethnicities and communities. In the past, once *inhlawulo*^v was paid, a father could not be held liable to pay past maintenance under common law.¹⁴ It is unclear how this defence is used by fathers in the current context. Further research is needed to examine how such payments interact with the state maintenance system and whether they contribute to low maintenance compliance. Research suggests that until a child’s father completes *inhlawulo*, he may not be recognised as the legitimate father of a child, especially by the child’s mother’s family, and he may be restricted from visiting and spending time with his child at the mother’s family homestead.¹⁵ However, the living customary law on the payment of damages is complex, and changing¹⁶ and the limited evidence of the practice and its impact on paternal involvement is mixed. According to customary law, the biological father of a child born out of wedlock may, in addition to paying damages, pay a fine called *isondlo* which entitles him to the custody of – or access to – his child.¹⁷

Both parents and grandparents have a duty to support children. In 2012 the High Court, interpreting the common law, declared that grandparents and siblings had a “duty of support” to a child but uncles and aunts had no such duty.¹⁸ This interpretation would be in line with living customary

iv This section presents the customary law as understood from academic literature and the decisions of the courts.

v *Inhlawulo* is a cultural practice whereby payment, usually offered in the form of cattle or money, is tendered by the father to the woman’s family for impregnating her outside of marriage. *Inhlawulo* (often referred to as payment of damages) is essentially an acknowledgment of paternity.

law under which grandparents and siblings have a duty of support. Where it differs with customary law is in relation to uncles and aunts, as according to living customary law it is expected that uncles and aunts would also carry such a duty. Unfortunately there is no research evidence or case law to support this.

Amongst families living according to customary law, the practice of moving children from one family to another or to extended kin is common. In the event of a parent being unable to care for a child, the relatives of the child would look after the child. Adoption does not occur in customary law and it has been argued that any attempt to equate customary care arrangements with adoption or fostering should be resisted.¹⁹ There are many reasons for this: the notion of the state regulating family care arrangements contradicts the presumption that a child belongs to everyone in the wider family, not just parents; and such intervention prevents the freedom of families to arrange their own affairs. In addition, it is practically impossible to regulate care arrangements for 19.5 million children, when many of them move during the course of their childhood, when 4.1 million do not live with either of their biological parents at any one time, and where families need to organise care strategies to suit the needs of the child and of the broader family.

Customary marriages

The requirements for a valid customary marriage include the payment of *lobolo* and the integration of the wife into the husband's family. These requirements are understood as part of living customary law. In some cases, full or partial payment of *lobolo* is a prerequisite for concluding a valid marriage, while in other cases the agreement for the payment is sufficient. Spouses have a duty to register a customary marriage with the Department of Home Affairs (and either spouse can do so) but the failure to register a marriage does not affect its validity.²⁰

The question of when – and how – a person can marry differs under living and official customary law. Living customary law treats marriage as an agreement between families, to be negotiated by the elders and sealed by the transfer of *lobolo*.²¹ But the RCMA brings the consent of both prospective spouses into prominence. Similarly, under living customary law individuals are considered marriageable when they have been initiated, as this marks the transition to adulthood. However, the RCMA sets the minimum age of marriage at 18 (subject to a few exceptions). Research indicates that a parallel system of marriage for minors still exists whereby children can marry in accordance with

customary law and then register their marriages in terms of the RCMA after attaining majority. Many customary law scholars agree that the age of majority can no longer be defined in terms of the customary concept of adulthood,²² as this position sanctions child marriages which, is contrary to the Children's Act²³.

Ukuthwala

In some parts of the country, a customary marriage called *ukuthwala* is undertaken. Legal scholars have defined *ukuthwala* as “a culturally-legitimated abduction of a woman whereby, preliminary to a customary marriage, a young man will forcibly take a girl to his home”.²⁴ Concerns about a recent resurgence and distortion of this practice prompted the South African Law Reform Commission to investigate. It was found that *ukuthwala* was being practised in destructive ways that, for example, enabled older men to violate young girls. Recent literature focuses on how the current practice of *ukuthwala* is linked to poverty, gender-based violence and criminality.²⁵ Yet some scholars argue that the practice, at least in parts of the Eastern Cape, has deep roots with violent forms of *ukuthwala* dating back to the 1800s.²⁶

The *Jezile* case of 2014 was the first *ukuthwala*-based conviction in the Western Cape. It centred on the abduction of a 14-year-old girl from her home in the Eastern Cape following the negotiating and payment of *lobolo* of R8,000 to her family.²⁷ The girl was forced to travel with the defendant to Cape Town where she was held against her will, raped and physically attacked by the defendant. The defendant, Jezile, appealed the 22-year sentence for rape, assault and trafficking by arguing that the lower court had not given his culturally-based motivations sufficient consideration and that the practices should have been understood within the framework of *ukuthwala* and customary marriage.

Mwambene and Sloth-Nielsen argue that forced marriage fails the constitutional compatibility test on a number of grounds, including freedom and security of the person (section 12), the right to dignity (section 9), and the best interests of the child (section 28 (2)). However, they also argue that *ukuthwala* is not necessarily/always equivalent to “forced marriage”, although it could lead to this if the negotiations are concluded without the consent of the girl. They therefore advocate against blanket criminalisation, and recommend that the positive attributes of the practice are recognised. Whilst the RCMA guidelines clearly outline the requirements for a valid customary marriage (including the consent of the bride), little is known about the living customary law on this matter and the ways in which *ukuthwala* is practiced. Jezile

received a 22-year sentence for rape, assault and trafficking, as the judgement read “it cannot be countenanced that the practices associated with the aberrant form of *ukuthwala* could secure protection under our law.”²⁸

Dissolution of marriage and child custody

Customary marriages can be terminated both inside and outside of the courts, but only state courts have the jurisdiction to award a divorce, as well as to determine how consequential matters such as the redistribution of matrimonial property, and custody and maintenance of children are dealt with. It is important to note that the official number of divorces may overlook a wider prevalence of marital breakdown.²⁹ There are many challenges in obtaining a divorce, notably, barriers to litigation by women and traditional customs that allow men to take additional wives. In practice, many marriages are dissolved informally between families rather than through the court system and the parties therefore do not enjoy the benefits of the protection provided by the RCMA.³⁰ Despite the challenges posed by informal dissolution, there are at least two important changes in living customary law that are relevant to children. First, the evidence indicates that living customary law has adapted in such a way that it facilitates and encourages children to participate in decisions regarding custody arrangements. Second, it seems that there is agreement that maintenance disputes should be resolved by the state court, as suggested in Case 5 below.

Custody

Qualitative research that examined custody orders from a regional court following the dissolution of customary marriages found that custody was contested in nine of the 28 cases.³¹ Despite the low number of divorce cases found

in the courts, the findings reveal that fathers are seeking involvement and contesting custody. Moreover, in 15 of the 19 uncontested cases, the parents had joint custody with specific detailed care plans.³² In other words, both mothers and fathers were involved and seeking support from the court to safeguard their relationship with their child. The findings also showed that the family advocate prepared reports and recommendations in eight of these cases and therefore some (but not all) of these matters were not left to be decided by the families.

The mother was awarded custody in six of the nine contested cases on the basis that the courts were protecting the child from abuse, prioritising caring connections and penalising the failure of a father to maintain contact. In one case, for example, the court held that the father-child relationship was not strong, as the father had had only limited contact with the four-year-old boy (twice in a three-year period) and the court believed that joint custody was not appropriate due to parental conflict. It has been noted by the South African Law Commission that because “the best interests principle has no specific content, the courts may take into account relevant cultural expectations when deciding a child’s future”.³³ Yet in these cases it was unclear whether the courts had considered customary norms in determining custody and the child’s best interests.³⁴

Maintenance

The courts have acquired the power to make maintenance payments under section 8 (4) of the RCMA. However, in practice, maintenance is often not paid and the financial responsibility for children, in many cases, is left to mothers and maternal kin.³⁵ In Case 5, Kagiso initially attempts to resolve a dispute about child maintenance at a family meeting by

Case 5: Seeking maintenance³⁶

Kagiso was married for four years and had two children when she eventually left her husband because she could no longer tolerate his infidelity. In doing so, Kagiso described the challenge she had to face during the family meeting: “Yes, I told his mother that I wanted to leave, but she does not approve . . . but I told her I am still young and cannot continue to be in a marriage where my husband is cheating on me”.

Kagiso’s husband’s mother, held a position of power through both lineage and seniority and demanded that Kagiso remain in the marriage and overlook her son’s misbehaviour. But Kagiso was employed, albeit as a

low-paid farm worker, and was able to support herself financially after leaving the marriage.

Kagiso then fought to obtain maintenance for her children using the state courts and explained how she sought a garnishee order by visiting her former husband’s employer: “I went to his place of work to try and speak to him. I wanted him to sign papers that would enable him to start paying maintenance fees for his children.” While Kagiso lived in a rural village with few opportunities to improve her income, her ex-husband worked in the city and earned substantially more than her. Kagiso managed to secure maintenance payments for her children.

drawing on living customary law, but later draws on statutory law to ensure that her husband pays maintenance.

Customary access to land

Land tenure is one of the most controversial topics in customary law and research on women's access to land within customary law. However, recent studies have reported changes in land rights of single women living in communal areas in South Africa.³⁷ This is relevant to children, as children are disproportionately cared for by women in rural homesteads located in the former homelands. A recent survey of women in three provinces (KwaZulu-Natal, Eastern Cape and the North West) indicated that women had greater access to land than in the past,³⁸ and that unmarried and widowed women's access to land had increased noticeably post-apartheid. With the decline of marriage, it was reported that it has become easier for women with children to be given a site. It was even stated that "a woman having children was the motive behind her family wanting her to get her own

site because they consider her to be troublesome."³⁹ These changes have taken place in the context of severe poverty, unemployment and increasing reliance on social grants in the former homelands. The changes were not shaped by legal reform but rather by local negotiations between women and land authorities where, it is argued, "the symbolic victory of equality and democracy during the 1994 transition changed the balance of power."⁴⁰

However, the locally negotiated practices and processes of change that have been achieved through customary law with regard to residential sites are in danger of being jeopardised by a range of new laws that Parliament has enacted since 2003. This legislation includes the Traditional Leadership and Governance Framework Act of 2003 (the Framework Act), the Communal Land Rights Act of 2004 and the Traditional Courts Bill of 2012. In particular, the Traditional Courts Bill (Case 6) has raised concern as it may centralise power in traditional leaders and undermine the multi-vocal processes of negotiation underway in communities.⁴¹

Case 6: An examination of the Traditional Courts Bill

Zita Hansungule

In January 2017, the Traditional Courts Bill⁴² was tabled in Parliament for consideration by the Portfolio Committee on Justice and Correctional Services. The aim of the Bill is to provide a uniform legislative framework to align the structure and functioning of traditional courts with the principles and values set out of the Constitution.⁴³

This is not the first time that a bill regulating the traditional courts system has been tabled in Parliament. Two previous versions of the Bill were tabled in 2008⁴⁴ and 2012⁴⁵ respectively. Both versions were rejected by civil society groups and academics for not representing the interests of the people that would be directly affected by their implementation.⁴⁶ It has been noted that the 2017 version of the bill "makes a valiant attempt at resolving"⁴⁷ the flaws identified in the 2008 and 2012 versions, but significant shortcomings remain. This brief highlights provisions in the Bill that have potential implications on children and families.

The Traditional Courts Bill [B1-2017]

The Bill recognises the voluntary and consensual nature of customary law by providing for an "opt-out" mechanism in clause 4 (3). The clause provides a party to a dispute with the option to "elect not to have his or her dispute heard and determined"⁴⁸ by a traditional court or to appear

before a traditional court. It is noted that this aligns with a restorative rather than punitive approach to justice as it promotes people's rights to access justice and participate in a chosen cultural life.⁴⁹ There are two main areas of criticism that have been levelled against the clause. The first, which originates from proponents of the courts' independence, is concerned with the need to preserve the status and autonomy of the traditional court system. The second is concerned that the clause does not do enough to ensure that those affected by the Bill – particularly women and children – are actually able to opt out. For example, the Bill does not place a duty on clerks of traditional courts to inform parties of the opt-out clause; and nor are there remedies for parties who have been denied or faced barriers in their attempts to opt out.⁵⁰ A further criticism is the failure of the clause to set an age from which a child can exercise the right to opt-out.⁵¹

From a child rights perspective, it is disappointing that the Bill fails to align with systems established to protect and promote children's rights in the Children's Act 38 of 2005, the Child Justice Act 75 of 2008 and the Sexual Offences Act 23 of 1957.⁵² No reference is made to how traditional courts will use the principles, systems and mechanisms developed in these laws to advance and protect the interests of children involved in proceedings before traditional courts.

The Bill includes protections against various forms of discrimination by promoting the participation and representation of women in traditional courts; ensuring that proceedings in traditional courts observe and respect the rights contained in the Bill of Rights; and setting out – in schedule 1 – prohibited conduct that infringes on the dignity, equality and freedoms of persons.⁵³ It is however not clear how these protections will be implemented particularly in the context of “deeply entrenched patriarchal socio-cultural rules and practices prevailing in many traditional communities”.⁵⁴ Furthermore, schedule 1 identifies a limited list of vulnerable groups that should not be discriminated against, yet discrimination on the basis of age, gender, nationality or ethnicity are not included; including them would be an affirmation of the constitutional protection that these often vulnerable groups are entitled to receive without discrimination.⁵⁵

Further protections in the Bill include the way in which sanctions imposed by traditional courts are aligned to restorative justice principles and practices as opposed to being punitive in nature.⁵⁶ Yet the Bill does not explicitly exclude sanctions such as corporal punishment, banishment or cruel, inhumane and degrading treatment.⁵⁷

A regression following Parliamentary consultations

The Portfolio Committee consulted on the 2017 version of the Bill in March 2018. In a disappointing turn of events the committee pushed back against the improvements made to the Bill and against the submissions made to

improve the Bill further.⁵⁸ They instructed the Department of Justice and Correctional Services to effect changes to the Bill. On 21 August 2018, the department presented draft amendments, based on the committee’s instructions, to the committee for consideration. These seem to erode the gains made by the 2017 Bill in the following ways:

- Clauses on the opt-out mechanism have been removed – meaning that parties to disputes cannot chose to opt out from the traditional courts system at all.
- Clauses promoting and protecting the fair representation of women have been removed.
- Schedule 1 (prohibiting conduct that infringes on the dignity, equality and freedoms of persons) has been deleted in its entirety.⁵⁹

These changes ignore gains made in the last 10 years to improve the Bill, and to better align it with the Constitution in order to protect the best interests of women and children. These changes are, at the time of writing, not yet final because the Portfolio Committee has not voted on and passed the draft amendments. As the Bill continues to go through the Parliamentary process it is hoped that these proposed amendments are critically evaluated in light of the need for the Bill to be constitutionally compliant. Once the Portfolio Committee passes the Bill, it will be debated and passed in the National Assembly and then referred to the National Council of Provinces where there will be further opportunities for public submissions and amendments to the Bill.

Customary systems of succession

Another area of customary law that impacts directly on children and families is the customary law of succession which outlines how an estate is administered and divided after the death of an individual. Recent reform of customary law by the Constitutional Court and legislature abolished the male primogeniture rule.^{vi} It also removed all forms of discrimination against female or extra-marital children’s right to inherit from their parent’s estate.⁶⁰ This is a critical development in strengthening the rights of children to inherit directly upon the death of a parent.

However, this does not mean that such changes are practised on the ground and it is impossible to specify the living customary law on this matter across the country. Nonetheless, we can draw on a few examples to highlight

some of the issues. A recent study found norms of equality within living customary law regulating matters of intestate succession in some parts of the country.⁶¹ There is widespread support for the right of children to inherit regardless of their age, sex or birth status. Moreover, the study found cases in which widows (who may have care of their young children) inherited in their own right.⁶² It has become increasingly common for parents to direct that a particular daughter should take over responsibility for the family home on their death.⁶³ However, there is still evidence to suggest that succession practices sometimes deny a right of inheritance to legitimate heirs, most specifically widows, daughters, younger sons and extra-marital children. In particular, the concept of family property is used to exclude women as in Case 7.

vi Where the oldest male child has the right to succeed to the estate of an ancestor to the exclusion of younger siblings, both male and female, as well as other relatives.

Case 7: A shared inheritance⁶⁴

My dad had about 100 goats, 90 sheep and 40 cows. He said that I [the oldest male child] should look after them after his death. He had two other children after me. The inheritance is not mine. It's mine to look after. An inheritance is the umbrella of the home according to us as the Thembu. So we get surprised when the government says that we have to divide the inheritance and then they intervene. When my mother has a problem or isn't well, we sell a cow or a sheep from the kraal [to help her], when one of us has a problem it's necessary for us to go to the kraal and we all agree together: I have to call all of them, my sisters, even if they're married and we sit together and I explain to them that this is what I'm thinking about.

Dispute resolution

South Africa's pluralist legal system extends to dispute resolution forums. When a dispute arises, people living according to customary law can approach customary and/or state law forums for assistance. All courts in the country have jurisdiction to hear marriage and succession matters arising under customary law, although some matters may be assigned to specific courts such as the divorce courts. Since the enactment of the RCMA, traditional courts (such as the chiefs' and headmen's courts) no longer have jurisdiction to hear matters on customary marriages, including divorce, and their jurisdiction is limited to mediation before divorce.

Research evidence indicates that there is a normative sequence in which people use customary and state dispute resolution forums when seeking assistance with disputes. The majority of disputes relating to customary marriages are first dealt with within the family and, failing resolution, are then transferred to other customary dispute resolution forums.⁶⁵ When disputes are not resolved within these forums, they are sometimes transferred to state courts. The advantage of taking the dispute to family members or a traditional leader is that there is normative agreement about the family being the appropriate forum for resolving the problem. The family is also accessible. There is also evidence to suggest that women, as customary wives in family meetings, draw on new legislation and new rights to contest the content of the rules that should be followed.⁶⁶ In such instances, women in particular, are drawing on two different sources of social order (custom and the state), both of which are seen as legitimate. The availability of new rules, norms and values make it possible for wives to

draw on wider resources to get their position accepted and still legitimate it at family meetings.

Many individuals (including traditional leaders) believed the state courts to be the appropriate dispute resolution forum for particular grievances such as child maintenance, divorce and intestate succession matters.⁶⁷ Recent research indicates that some women transferred their claims directly to state courts, as they were perceived to be more powerful than customary forums in enforcing orders for maintenance and compensation against men.⁶⁸ An "opt-out" clause was introduced into the Traditional Courts Bill in order to formalise the right to choose which legal system to follow for dispute resolution, but this has subsequently been removed from the Bill, undermining that right of choice (see Case 6).

One of the advantages of having parallel legal systems is that they provide individuals with greater choice as to which rules they will invoke and abide by. It is arguably beneficial for vulnerable family members to be able to seek support from multiple dispute resolution forums in the event of conflict. And in cases where one forum fails to provide equitable outcomes, another forum could (hypothetically) be approached, thereby reducing the risk of such disputes having prejudicial outcomes for vulnerable individuals, as outlined in Case 5 above.⁶⁹

Domestic violence

In the matter of domestic violence, however, many people prefer to use traditional dispute resolution forums (such as family meetings) rather than the state legal system as it is considered a private matter.⁷⁰ However, women's experience of trying to seek help with domestic violence draws our attention to the powerful disciplinary influence of social norms and beliefs in regulating responses to abuse. Involving the police and using the Domestic Violence Act is sometimes considered unacceptable and disloyal – and police interference is seen as a violation of culturally correct procedures.⁷¹ Failure to report domestic violence and violence against children is a serious concern, and these tensions point to the difficulties in reconciling social norms and statutory law.

Inherent challenges

There are several inherent challenges with living customary law. Given the evolving and dynamic nature of the law, ascertaining it and applying it in the courts is challenging. Furthermore, there are significant shortcomings with the ways in which the legislature recognised customary laws by simply, in some cases, adopting civil law concepts. In this way, the

legislature, whilst operating within a legal pluralist society, does not recognise the true nature of living customary law. For example, the RCMA did not recognise the concept of family property when dealing with matters of succession and/or marital property. Therefore, children and spouses are unsure what property forms a part of the deceased's estate or marital property in matters of succession or divorce respectively. In a recent study, many men and women held the belief that a husband's property belongs to his family and that the concept of community of property in the RCMA does not apply to customary marriage.⁷² With so few customary marriages obtaining a legal divorce, it is difficult to know how the courts address this contestation between family and individual property.

Adoption does not occur in customary law. The relatives would look after the child.

Another impediment to the implementation of the RCMA is that people need to know how to navigate the new laws and they need to know how different institutions (such as the Department of Home Affairs, traditional leaders, the courts, families and the church) can support them by implementing the new laws. Related to this issue is the fact that in practice there are marked socio-economic differences between men and women in customary marriages, with Black South African women having lower levels of educational attainment, employment and income than their spouses. The way women and children experience customary law will depend largely on their own agency, their material constraints, their family relations and the practices in their communities. Differences in educational attainment, income and employment will position men and husbands in a stronger bargaining position with better access to legal knowledge and power, and potentially greater influence to determine which legal system to invoke in matters of dispute.

If the changes in the laws are aligned with beliefs and practices on the ground, they will be more successful, so long as they are also in line with relevant human rights principles

and values. For example, the right to freedom of culture or religion may not be exercised in a manner inconsistent with any provision of the Bill of Rights, which prevents parents and communities from "privatising" harmful practices, such as corporal punishment.⁷³ On the other hand, the Children's Act has recognised cultural practices and provides that the biological father of a child born out of wedlock acquires full parental rights and responsibilities in respect of his child if he "pays damages (*inhlawulo*) in terms of customary law".⁷⁴

Conclusion

The reform of customary marriage sought to harmonise the constitutional rights to culture and equality in a manner that took context into account and enhanced women's choices.⁷⁵ However, poor Black rural women married under customary law (and their children) continue to be excluded from the protections embedded in statutory law. The areas that women and children are particularly vulnerable include the protection of children from forced early marriage, the inheritance rights of extra-marital partners, girls who have not reached maturity and women married to men who have concluded polygamous marriages, or the financial consequences for women and children following marital dissolution.

Under the Constitution most forms of discrimination, including discrimination based on sex and age, are prohibited. The reform of customary law in the fields of marriage and succession went some way towards improving the legal rights of women and children. However, this is only the first step in regulating the lives of women and children who live according to customary law. The next step is ensuring effective implementation of these reforms, as recent research indicates that the new laws are not being implemented consistently or effectively.⁷⁶ The main reason for this is that many people do not know about the new laws. This includes court officials, traditional leaders, the Department of Home Affairs and ordinary citizens. Moreover, awareness of the laws in their own right is not enough. The laws governing parental rights and responsibilities, marriage, divorce and succession are complex, and people must understand them in order to be able to know what opportunities and choices are available to them.

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Negotiating the care of children and support for caregivers

Nolwazi Mkhwanazi, Tawanda Makusha, Deidre Blackie, Lenore Manderson, Katharine Hall and Mayke Huijbregts

All children need care to survive, thrive and grow to adulthood into adulthood. Decisions about childcare are not always straightforward. According to the Children's Act,¹ such decisions ought to be made with the "best interests of the child" in mind. But what the "best interests of the child" means is not always the same for different people and stakeholders.

There are a variety of care options available, ranging from care within the child's biological family to care in state institutions. Irrespective of the form or place of childcare, two issues remain constant in all arrangements: First, care for children is usually provided in families and households where women are the main caregivers, and second, decisions about childcare are rarely made by an individual but involve negotiations within families, between families, and at times between families and the state.

Survival pressures and livelihood needs impact deeply on what families can do to provide care.

In South Africa, the decisions, opportunities and resources available for caring for children are rooted in – and deeply intertwined with – systems of inequality that are experienced along the lines of race, gender and class. The apartheid regime's deliberate and systematic incursion into family life has meant that the contexts in which children are cared for – and the ability of families to secure care – are often circumscribed by variables beyond the control of the family. Indeed, the formation and composition of families is not simply a logical outcome of biological reproduction or marriage. Historical and social processes weave into how families are constituted and are at the centre of decisions and practices surrounding childcare. As noted in the introduction, families are varied, fluid and flexible – at times, resilient and at other times, fragile. Families also change over time and as they change, so too do configurations of care. This essay focuses on childcare and children's caregivers and aims to

address the following questions:

- Who provides care for children?
- How does the state support or undermine care choices?
- Why and how should the state support caregivers?

Who provides care for children?

Care work is physically demanding; it may include growing, harvesting, purchasing and preparing food, cleaning and home maintenance, assisting with transport, medical appointments, liaising with government staff and others, and assisting children with social interactions, as well as personal tasks such as lifting, carrying, washing, going to the toilet, and feeding. It is also emotionally demanding.

Negotiating care

In most families, the willingness to provide care to others flows from the quality of relationships. To a large extent, in "primary" relationships, people care for the people that they have affection for. However, the capacity to care and the decisions about who undertakes care go beyond the quality of relationships and are influenced by normative expectations, and social and economic factors including who is available to provide care and who needs to earn money.

Children's experience of care is inextricably woven into the social fabric. For most families in South Africa, childcare arrangements are made in a context of low rates of marriage and cohabitation, and high rates of HIV, poverty and unemployment. Survival pressures and livelihood needs impact deeply on what families can do to provide care. Those who face hardship are likely to have limited choices about how to respond to child-care demands.

For example, a comparative study examined the role that fathers and paternal family play in acknowledging and caring for children born outside of recognised unions in rural Lesotho and urban South Africa. It noted that despite similarities between the two communities (high HIV, high unemployment and a decrease in marriage rates and the payment of damages), there were important differences in how and when the mother's family made claims on the family of the biological father.² In

Case 8: Negotiating care at the intersection of intergenerational fertility

Alison Swartz

Mambele was born in rural Tarkastad in the Eastern Cape in 1944. She married in her late teens and although she did not want children yet, she had the first of her seven children at 19. Ntombi, her second last child, was born in 1979 when she was 35 years old. By the time her last child, a son, was born in 1985, Mambele's childbearing period spanned a total of 21 years. Mambele moved her family from Tarkastad to Khayelitsha in 1985 when Ntombi was a little girl. Ntombi discovered that she was pregnant when she was 16 and had just started Grade 11. When the father denied paternity, Ntombi dropped out of school, hoping to find work to support herself and her baby. Despite her efforts, she was unable to find employment. She struggled to care for her daughter, Zabi. To help her daughter,

Mambele became Zabi's primary caregiver. Ntombi had two more daughters, Sindi and Londiwe. In 2013, when Zabi was 16 and her mother was 33, Zabi found out she was pregnant. Sandile denied paternity at first, but after seeing the child his family verified that he was the father. He made little contribution towards caring for his daughter, Thandiwe, financially or otherwise. When Thandiwe was almost two years old, Ntombi, Zabi's mother, had another child – her fourth daughter.

This case illustrates intergenerational patterns of fertility, and the ways in which female relatives share childcare responsibilities across generations, particularly when mothers are young and fathers are absent, unable to provide support or deny paternity.

Mokhotlong, Lesotho, women refused to acknowledge their partner's claim to paternity, while in Nyanga East, South Africa, cultural norms were disregarded to allow fathers and paternal families access to a child. Yet despite these different outcomes, the decisions families made around childcare were based on similar factors: geography, availability of kinship networks, education and employment opportunities.

The practice of paying damages allows paternal kin to acknowledge that the child belongs to the patrilineage – giving the child an ancestral line of care.

In resource poor settings, aspirational, economic and social forces push working-age adults to migrate for work, leaving children in the care of elderly kin. The deaths and illnesses of working age adults from HIV in previous decades contributed to older people assuming the role of caregiver for their co-resident grandchildren and for these children themselves to perform care work when elders could not. Today, increased access to antiretrovirals allows women, who might have previously needed care, to make decisions about work and having children. Such biomedical advances are affecting the negotiation of care within families, and this is particularly so within "young families".ⁱ In such situations, when decisions about childcare are made, education opportunities for

young mothers are often weighed up against employment opportunities which could bring much needed income into the household. This is particularly challenging for younger teenaged parents or heads of child-headed households as caregivers of children can only qualify for the Child Support Grant (CSG) from the age of 16.³

Women providing care

Demographic and other data about co-residence and care arrangements make it clear that women (particularly unemployed women) are the main caregivers for children. Women, as mothers, sisters, daughters and so on, are expected to provide childcare and other forms of routine care such as cleaning and cooking. Since care is deeply gendered, the health and well-being of the mother and the reproductive aspirations of other female kin are also important considerations.

To some extent decisions about care begin while the child is *in utero*. For example, how and when a pregnancy is announced impact on subsequent decisions about where a child belongs and who will care for the child. Teenage girls often report that they only realised that they were pregnant five or six months into the pregnancy.⁴ For many, the pregnancy was unplanned and they wished that they could delay motherhood, but late discovery of the pregnancy made legal termination impossible. Once the pregnancy was reported, an entourage from the girl's family could seek the payment of damages from the alleged father and his family. In some cases, the late request for damages was used by the

ⁱ "Young families" is a term used to describe families that are formed when a teenager gives birth to a child. The term acknowledges that not only is the mother of the child young, but the grandmother of the child is often also young and therefore likely to be of reproductive and working age.

Table 7: Children with absent parents

Age	Total number of children	Mother absent		Father absent		Both parents absent	
		%	Number	%	Number	%	Number
0 – 5 years	6,978,000	15	1,070,000	61	4,223,000	13	909,000
6 – 11 years	6,815,000	26	1,781,000	62	4,275,000	23	1,548,000
12 – 17 years	5,786,000	32	1,869,000	64	3,724,000	28	1,631,000
Total	19,579,000	24	4,721,000	62	12,223,000	21	4,089,000

Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall, Children's Institute, UCT.
 Note: Absent parents may be dead, unknown or living elsewhere.

father's family to delay payment until the baby was born and seen to resemble the alleged father. In other cases, the father acknowledged paternity.

The practice of paying damages allows paternal kin to acknowledge the child belongs to the patrilineage – giving the child an ancestral line of care – and creating the potential for the father and his family to provide care and support. However, as with any cultural practice, the payment of damages is complex, contested and changing in response to larger changes in society.

In South Africa children are more likely to live with their mothers than with their fathers and with maternal rather than paternal kin. As illustrated in Table 7, only 38% of children live with their biological father.

There is little difference in co-residence of children and fathers across the age groups, while co-residence of children with their mothers declines sharply with the age of the child. Only one in six young children (0 – 5) do not live with their mother, compared to one in three older children (12 – 17 years). Although children may not live with their fathers, the father's absence does not necessarily mean that fathers do not care for their children in other ways.⁵

Fathers and men providing care

Fatherhood in South Africa, as in other African contexts, is often a collective responsibility.⁶ When biological fathers are unable to meet the needs of children, their own fathers, brothers or maternal grandfathers and uncles often step in to help.⁷ Children are thus exposed to multiple adult male figures who may participate in raising the child.⁸

Men's relationships of care for children may vary according to residential proximity.⁹ For example, men may live with their biological children or be fathers to biological children living elsewhere (possibly with the children's mother in a separate home) or they may live with a woman who has children from a previous partner. If they live close to where their children stay, they may be in regular contact.

Men's relationships of care for children may also vary according to the childrearing roles, activities, duties and responsibilities that older men as father-figures are expected to perform and fulfil regardless of their biological connection to a child.¹⁰ These social fathers may include the mother's partner, patrilineal and matrilineal uncles, grandfathers and brothers, friends, teachers, religious and community leaders.¹¹

However, women continue to carry the burden of childcare even when fathers are present. For example, results from the 2010 Time Use Survey indicate that mothers spend much more time than fathers on childcare, even when fathers are co-resident.¹²

*Fatherhood in South Africa,
as in other African contexts, is often
a collective responsibility.*

The assumption that the biological mother will be – and should be – the primary caregiver of her infants and young children is embedded in understandings of gender that are common across different populations in South Africa. The willingness, capability and capacity of mothers to provide care to infants and small children is generally taken for granted, with an assumption that new mothers will also be supported by older and experienced kin or by the woman's partner. State structures, legislation and grants provide supplementary assistance, but also assume that those who are vulnerable will be cared for within a safety net provided by kin. While family members are more likely than the state to intervene, this is not always the case. Accordingly, in both urban and rural settings, the care of children born to young mothers is often undertaken by their grandmother, or is shared by women who are not related but form a support network.¹³

Shared or delegated childcare arrangements have been an important strategy for women in the context of AIDS, and also when women need to work. When women are labour migrants, there may need to be decisions about whether the child can stay with the mother at all, or whether it is better for the child to be cared for by family members elsewhere.¹⁴ Often families need to privilege employment and income generation opportunities over the relationship between a particular caregiver and child. If possible, families will call on people who cannot engage in wage labour at the time, such as a mother with young children or an elderly person, to help with childcare.

Informal kinship care and foster care

Extended families continue to play a significant role in the care of children in South Africa, and the majority of children not living with their parents in South Africa live with their grandparents or other relatives, as illustrated in Table 8.

Table 8: Relationship of household head to child if child is not living with mother

Grandparent / great-grandparent	65%
Aunt / uncle / in-laws / other relative	17%
Parent / step / foster / adopted	10%
Sibling / step sibling	6%
Self / partner	1%
Unrelated	1%

Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall, Children's Institute, UCT.

Of the four million children who are cared for by relatives in the absence of their parents, just over one million are maternally orphaned, while close to three million have mothers who live elsewhere. It is important to distinguish informal kinship care from foster care. Kinship care is widespread, historical and negotiated within the family. Foster care is a form of alternative care provided by the state where children are found by a court to be in need of care and protection (because of abuse, neglect, abandonment or orphaning) and are placed with a foster family rather than in institutional care. Technically, they are wards of the state, whose placement is considered to be temporary, subject to review every two years, and in the case of children who have been removed from their family, the ideal outcome is eventual family reintegration.

In 2002, in response to rising orphaning rates, the Minister of Social Development encouraged relatives caring for orphaned children to apply for foster care so that they could access the Foster Care Grant (FCG) – which at the time was

nearly triple the value of the CSG. The number of foster care placements escalated rapidly – from around 50,000 children to over 500,000 by 2010 – placing an overwhelming demand on social workers and the children's courts. Nearly 90% of children who were reported to receive FCGs in 2017 were maternally orphaned. Over half (56%) were living in households headed by a grandparent, while another 32% lived with aunts, uncles, siblings or other relatives.¹⁵ In other words, the vast majority lived with extended family.

Kinship care is widespread, historical and negotiated within the family. Foster care is a form of alternative care provided by the state.

Civil society groups have repeatedly questioned this shift in policy.¹⁶ The main concern is that the administrative process of placing children in formal foster care depletes the time and resources of social workers and courts to deal with urgent matters of child abuse, neglect and exploitation. A second concern is that, for most of the families who apply for foster care placement of orphaned children, the main incentive is a larger grant. This could easily be provided through a top-up of the CSG, which is much quicker and easier to apply for, and does not require social workers and courts to make the initial placement or to periodically review placements. The underlying issue is the question of whether families can be trusted to make decisions about care arrangements and provide the same quality of care for orphaned children as they would do for children who are not orphaned.

How does the state support or undermine care choices?

According to the Children's Act¹⁷ the "best interests of the child" should inform decisions about care arrangements for all children – and especially those who are orphaned, abandoned or vulnerable. The care arrangements available to such children include kinship care, foster care, cluster foster care and adoption. Generally, a family context is considered the best place for children, rather than institutional care.

Abandonment, abortion and adoption

Most children live with parents or other relatives, but in some cases families are not able to care for children. The law provides for abortion when a pregnant woman chooses not to keep the unborn child, and abortion services are meant to be freely available in the public health sector. The mother may

also choose to give a child up for adoption. Abandonment is illegal but may be a last resort if a child is unwanted and the family has failed to access either abortion or adoption services.

Research by the National Adoption Coalition of South Africa indicates that child abandonment appears to have declined marginally, with estimates just below 3,000 children per year. Social workers say that it is often impossible to find the parents or family of children abandoned into their care. This highlights the importance of alternative child-care solutions, given that formal adoptions continue to decline with only 1,349 adoptions taking place in the 2016/2017 period.¹⁸

Research conducted in 2013 found that rather than supporting adoption as a form of alternative care, government officials are actively preventing adoptions from taking place.¹⁹ This starts in state hospitals where the option of adoption is, in most instances, not communicated to women experiencing a crisis pregnancy, and when actively sought, it is often denied to them. State employed nurses, social workers and police officers all voiced cultural concerns around adoption, believing that it is not the role of the state to create families and kinship connections, but rather that of family, ancestors and/or God. The mothers also feared “punishment” for “giving their child away” which could range from personal and familial suffering to long-term infertility.

The law provides for abortion when a pregnant woman chooses not to keep the unborn child, and abortion services are meant to be freely available in the public health sector.

These cultural concerns are compounded by restrictions in legislation. A girl of any age can request an abortion in a state clinic, however, she must be over the age of 18 years to consent for her child to be adopted, ensuring that this becomes a familial decision rather than an individual choice. And despite progressive legislation, health care providers’ resistance to abortion has made it difficult for women to access abortion services in practice.²⁰

The Birth and Deaths Registration Act enables social workers to apply for registration of the birth of an abandoned or orphaned child.²¹ The law provides that where the details of the parents are available, these should be provided and will be included on the birth certificate.²² If there is a notice of birth (a document issued by the hospital where the child

was born) which makes it apparent that the child is a non-South African citizen (for example, because their parents are recorded on the notice to be citizens of other countries), then the child will be issued with a birth certificate without an ID number.²³

In practice there are cases where Department of Home Affairs officials request social workers to find the parents in order to prove the nationality of the child, before they will register the birth. This is not a legal requirement as the law only stipulates that the parent’s details be provided “where available”.²⁴ This is often done in cases where Home Affairs suspects that the child is a non-South African citizen. This practice unlawfully discriminates against children based on their assumed nationality (with the risk of racial or ethnic stereotyping if the parents are not known) and results in delays or denial of birth registration for abandoned children. The lack of a birth certificate or an ID number on the certificate affects children’s chances of finding permanent family-based care and renders many stateless. The absence of an ID number is also likely to result in a range of exclusions, including from social grants, schools and certain health services.

Why and how should the state support caregivers?

Caregiving is essential to sustain human life and development. Care work is physically and emotionally demanding, and it intensifies the economic pressures on the household. Yet, caregivers’ efforts go largely unrecognised and unsupported. In this section, we therefore consider the forms of care that caregivers, especially grandmothers and parents, may need and the ways in which the state can provide this support.

The importance of caregiver support

Caregivers support children’s well-being and development by responding to their needs and ensuring that they are safe, stimulated and receive nurturing care. Children who receive care in a consistent, sensitive and responsive manner – who are fed when they’re hungry and comforted when they cry – are likely to develop confidence, healthy relational skills and empathy for others. Similarly, by establishing routines, modelling social behaviour, and using positive, non-violent forms of discipline, caregivers promote children’s social-emotional development, helping them learn how to plan, focus attention and regulate their own behaviour.²⁵

A mother’s capacity to manage early infant care is affected by her mental health. Yet caregivers provide care amidst physical and psychological pressures, including their own, tiredness, stress and anxiety. They may also face poverty and unemployment, social isolation, interpersonal and

Table 9: Policies and programmes to support parents and caregivers

Material support	<p>Social assistance: 12 million children benefit from the child support grant (CSG), yet an estimated 1.8 million eligible children are not receiving the grant – many infants under one year. For this reason, the National Integrated ECD Policy recommends pre-birth registration for the CSG. In addition the value of the grant remains below the food poverty line and does not cover the costs of a child.</p> <p>Maintenance: Recent amendments aim to strengthen enforcement of maintenance orders.</p> <p>Job creation and skills development: Unemployment remains stubbornly high at 27% and increases to over 52% of youth aged 15 – 24,²⁶ greater effort is needed to ensure the efficacy and reach of job creation and skills development programmes.²⁷</p> <p>Birth registration and identity documents: Access to most services depends on birth certificates and identity documents. While birth registration has increased, access remains challenging especially for children living in rural areas.²⁸</p>
Child care	<p>Parental leave: Working mothers are entitled to four months unpaid maternity leave, and the Labour Laws Amendment Bill introduces 10 days of parental leave for the other parent, and 10 weeks leave for adoptive parents.</p> <p>Child care and education services: School attendance is high (97%), but there are very few after-school and holiday programmes, so families need to find ways to care for children and keep them safe when they are not in school. No-fee schools have made basic education affordable from grade R onwards, but early learning programmes are not fully funded, with many ECD centres charging fees. Child-care services for young children, such as day mothers and child minders, are not subsidised at all. Child care is therefore not an option for those who cannot afford to pay.</p>
Parenting support	<p>The National Intergrated ECD Policy²⁹ provides for: Public information campaigns; the provision of parenting support through the health services – with potential to build on the new Road-to-Health book and Side-by-Side campaign, and the WHO Care for Development module; parenting programmes provide more targeted support, though currently these have limited reach, and greater investment is needed to take these to scale.</p>
Health care	<p>Early antenatal and postnatal care: Visits early in pregnancy are important because they provide opportunities for support, screening and referral. Early antenatal visits have increased: 65% of pregnant women attending antenatal clinics had their first visit within the first 20 weeks of pregnancy in 2016/17³⁰ – up from 31% in 2005. Postnatal care enables further screening³¹ and support, yet it is not always easy for women who have recently given birth to get to health services, and nearly 30% of new mothers do not do so within the recommended six days after birth.³²</p> <p>Risk screening and referral: Maternal depression and anxiety can compromise child care and development – especially during the first 1,000 days.³³ Further risks include substance abuse, violence and adolescent caregiving. While clear systems for risk identification and referral are proposed in the NIECD policy, they have not yet been implemented, and allied health and social services remain limited.</p> <p>Sexual and reproductive health services: Access to quality reproductive health services, including family planning, is an important area of support. Plans to provide discreet access to condoms through schools and incorporating youth friendly services into the Ideal Clinic initiative may help address adolescents’ dissatisfaction with public health services.³⁴</p>

community violence, physical and mental health conditions, and poor access to support services. Excessive caregiver stress and adversity can hinder the provision of supportive, responsive care – and may contribute to toxic stress – the chronic or excessive activation of the child’s stress response system – that, particularly in the early years, may damage the developing brain and compromise children’s physical, cognitive and emotional development.³⁵ Yet the presence of caring and responsive adults can buffer the damaging effects of toxic stress, and enable children to cope with adversity.³⁶ It is therefore essential that parents and caregivers also receive care and support, starting early in the antenatal period and continuing through to adolescence. This includes:

- **Material support:** including social assistance, maternity benefits, maintenance, and access to adult education, skills development and work opportunities, and poverty alleviation programmes

- **Child-care support and services:** including parental leave for those who work, child minders, day mothers, early childhood development play groups and centres, and after-school and holiday programmes
- **Parenting support services:** including information to help carers promote child development and provide responsive caregiving, positive discipline and healthy family relationships
- **Health care:** including early antenatal care, identification of mental illness, substance abuse, domestic violence and/or food insecurity, and referral to support services.

Examples of state support to caregivers

While there are a number of policies and programmes designed to provide support for caregivers, coverage and quality varies both within and across programmes, as illustrated in Table 9.

Women's presence in the workforce has increased, and alongside this is the growing importance of women's role as contributors to the economy and as financial providers in their own families. But labour participation comes at a cost in an environment where employers do not support the role of women as caregivers of children.

Only mothers can breastfeed but both the state and employers have an important role in supporting working mothers to do so. Breastfeeding is ideal for infants for the

first six months of life, as it boosts immunity, growth and development. It is also good for the mother and promotes bonding. Rates of exclusive breastfeeding in children under six months increased significantly, from 7% in 1998 to 32% in 2016.⁴¹ But structural and personal barriers continue to make exclusive breastfeeding difficult. It is a challenge to breastfeed or express milk at work, whether in the informal sector or in contract employment. The Basic Conditions of Employment Act allows for only four months of maternity leave for women

Box 9: Women informal workers call for quality public child care

Rachel Moussié

The complex relationship between children, families and the state cannot be fully understood without also considering women's working conditions. In many low-income households, women are both primary care providers and income earners. Their working conditions affect the time and resources they have to care for children living in their homes. Across sub-Saharan Africa, more women than men find employment in the informal economy.³⁷ In South Africa, informal employment makes up 29 and 23% of female and male urban employment respectively.³⁸ For instance, of the 530,000 street traders recorded in the South African Quarterly Labour Force Survey (Second Quarter, 2010), 70% were women.³⁹

Conditions of work in the informal economy are characterised by low earnings, limited or no access to social security benefits, and insecure employment. In South Africa, women informal workers with young children do not have access to maternity benefits and their earnings may be too low to pay for child-care services, even when supplemented by a Child Support Grant. Women often choose more flexible work or reduced working hours leading to lower earnings so that they have time to look after their children.

In focus group discussions conducted by Women in Informal Employment: Globalizing and Organizing (WIEGO) in 2016, women street traders in Durban's Warwick Junction Market said that they were unable to sell their goods when it was too hot, rainy or windy as they did not want to expose their young children to the bad weather. This meant that they would lose out on a day's earnings.⁴⁰ Women traders were also concerned that the market, located at the intersection of busy city roads, is not a safe space for children. Some traders relied on family members – mothers, aunts and sisters – for child

care, but this often came with the expectation of financial support and was an additional burden of care, particularly for ageing grandparents.

The traders also used informal child-care centres though they complained that they found that their children were neglected, there were too few child-care workers to provide quality care, and the costs were high. Costs became even higher when the centres were not designed to cater for the needs of working people. For example, if centres opened after work started, workers would have to pay someone to look after their child until the centre opened, as well as for transport if the centre was located far from home.

Calls for quality public child-care services by women informal workers is changing the way the state, including local municipalities, considers women's role in care provision and as workers. Rather than assuming families and kinship networks can take on child care while women work, the state must see that it has a role to play in the provision of child care, and not just in the regulation of private child-care centres.

In 2017, WIEGO launched a global campaign for public child care based on demands emerging from women informal workers in Brazil, Ghana, India, South Africa and Thailand. In Warwick Junction market, informal organisations are negotiating with the municipality for space to set up child-care centres for traders. These efforts delineate new spaces for collaboration and contestation around child care between women, workers organisations and the state.

For more information on the campaign and to see the demands signed by informal workers organisations and global trade union federations go to: <http://www.wiego.org/wiego/wiego-child-care-campaign>

in formal employment, whereas the guidelines recommend six months of exclusive breastfeeding. The same Act allows women two breaks a day to express milk, but this provision is not widely known or implemented. In addition, the absence of private and clean spaces in which to express milk at work makes it extremely difficult for working women to sustain exclusive breastfeeding.

A mother's capacity to manage early infant care is affected by her mental health. Yet caregivers provide care amidst physical and psychological pressures. It is therefore essential that caregivers also receive care and support.

Lack of awareness may also prevent exclusive breastfeeding. Evidence from a study in Soweto found that the health workers at community clinics frequently understood the advice about exclusive breastfeeding to be an HIV preventive strategy only, and so gave little attention to women who were HIV negative.⁴² It is important that service providers in the civil service are properly informed so that they in turn can advise and support mothers appropriately.

Accessing safe, quality childcare can be difficult for mothers and other caregivers who also need to work, and particularly so for those who do not earn enough to pay for child-care services. Even low-cost and unregulated child-care services may be unaffordable, and the cost and time of travel may be prohibitive if the caregiver also needs to get to work. Here again, the state and employers have roles. Some employers provide free or subsidised crèche facilities or nursery schools for the children of their staff in recognition that this improves productivity, advances gender equality in the workplace and contributes to the well-being of employees and their children. But the provision of childcare is not required by law and very few employers offer it.

Different approaches to child care at work include:

- an on- or off-site company child-care centre
- a facility in the community which is linked to the workplace
- financial support (e.g. child-care vouchers, funds or subsidies)
- advice and referral services to help employees find childcare facilities and support.

In addition, employers can make childcare easier by:

- allowing flexi-time so employees can come and go at more convenient hours for childcare.
- allowing work-from-home options.⁴³

The South African government has developed guidelines for the establishment of child-care facilities for its own employees in the public service.⁴⁴ The guidelines give a detailed rationale and a step-by-step overview of the procedures to be followed when establishing child-care facilities, and note that the costs of developing and running these facilities would be borne by the relevant department.

For women who work in the informal sector, the challenges are even greater, as described in Box 9:

On-the-ground and responsive services

Responsive services are necessary to provide support to caregivers as and when needed – for example, during periods of unemployment or teenage pregnancy – and to respond to the changing needs of families over time. Support needs to be provided in ways that promote caregivers' ability to cope with stress and strengthen their support networks.

Caregivers and children often experience multiple and linked forms of deprivation and adversity. For example, depression in pregnant women is associated with food insecurity.⁴⁵ It is therefore important to strengthen referral systems to ensure a smooth and seamless transition between different services, and to respond to families' complex and changing needs. A number of programmes have been developed to link social services and income support – and two are illustrated by the Isibindi and Sihleng'imizi case studies on pages 78 and 79.

The Isibindi intervention is designed as a community-based intervention that can be scaled up and replicated across the country. Almost 300 Isibindi projects serve over 100,000 children. At the same time as providing a child protection response, which includes both practical assistance and therapeutic elements to support children and families, the design of the Isibindi model aims to develop the child and youth care workforce. The Sihleng'imizi programme implemented by the City of Johannesburg links cash transfers (though the CSG) with a programme to support better care in families, as a protective measure for children. It also has the potential to strengthen welfare services in South Africa which are currently poorly funded, largely based in urban areas, and primarily treatment-focused.

Case 9: Isibindi

Debbie Budlender and Zeni Thumbadoo

Isibindi is a community-based intervention developed by the National Association of Childcare Workers (NACCW) to provide prevention and early intervention care for children in poor communities. Child and youth care workers (CYCWs) are recruited from the communities in which they work, receive training in an accredited qualification, and deliver services under the supervision and guidance of mentors. Isibindi therefore not only provides services to children, but also provides training and creates jobs in poor communities.

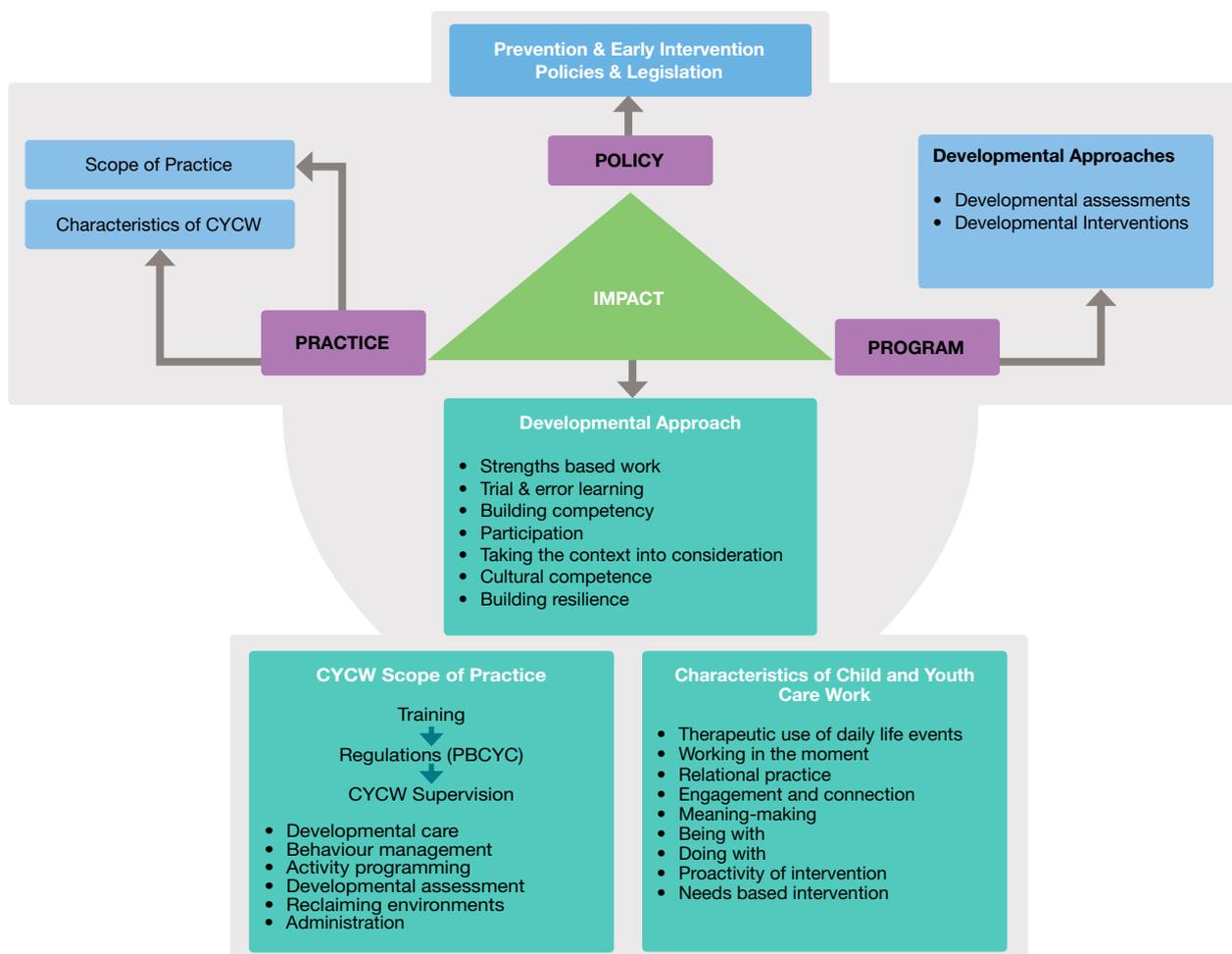
CYCWs use a strength-based approach and work with families to improve areas that need attention, such as domestic violence, abuse of money and alcohol, poor communication and parenting skills.

By working in the “life space” of the child, CYCWs visit families and children in their homes, helping with household chores and educating the family about general hygiene, gardening, health and nutrition. They cook

together with children, teach basic life skills and use ordinary human interaction as a context and means to go beyond basic care and meet the emotional needs of children. They draw up an individual development plan for each child as well as a family development plan to promote the family’s resilience.

CYCWs also help families access other services helping families apply for identity documents, birth certificates and social grants, engaging with schools to facilitate school admission and fee exemption, referring family members for HIV counselling and testing and other health services, helping families access food parcels, seeds and skills for food gardens, and referring child protection cases to social workers. CYCWs also work in multi-disciplinary teams with other professionals helping to address more difficult cases. In these ways CYCWs help bridge the knowledge and information gaps within communities and strengthen linkages between services.

Figure 7: Isibindi: Core for conceptual coherence



Case 10: Sihleng'imizi

Tessa Hochfeld and Leila Patel

Sihleng'imizi (we care for children) aims to build family strengths and prevent social problems associated with income poverty. It recognises that families living in difficult circumstances may need more than just the Child Support Grant (CSG) to ensure child well-being. Sihleng'imizi is designed to strengthen families and the care they already provide to children, based on research that demonstrates how a warm and caring family environment,⁴⁶ social and community supports, and access to responsive services, all have an important protective effect for disadvantaged children.

The 14-week group-based programme is facilitated by trained social workers and supported by qualified ECD workers. Families who receive a CSG for a child in grade R or grade 1 are randomly selected via primary schools. Weekly group sessions are fun and participatory focusing on social education and skills development in areas that can have a substantive effect on a child's well-being, such as nutrition and child health; cognitive and educational development; caregiver stress; family communication;

management of behavioural problems and alternative forms of discipline; social relations and access to community resources. Between sessions, families try out new skills and meet each other to offer social support.

Following an initial pilot study, advanced testing and evaluation was conducted in 2017 in 10 of most deprived wards in Johannesburg, using the city's social workers and infrastructure, and results will be released in late 2018.

A programme of this nature is time- and labour-intensive, but the 2017 pilot demonstrates that it is possible to integrate Sihleng'imizi into municipal social work services. While trade-offs have to be made in relation to time and resources, this intervention has the potential to reduce demand for therapeutic services. As municipal social workers do not undertake statutory work, the programme would not erode resources for those with acute child protection needs. Scale-up will require an organisational mandate and political will from local government to enable a shift from the current focus on treatment to preventive and promotive services.

Comparing the two programmes, Isibindi is an established programme that has been designed, tested and is currently being taken to scale. The Child and Youth Care workforce has been recognized by the Council of Social Services Professionals and the model addresses many priorities set out in the National Development Plan. The Sihleng'imizi programme is relatively new. It demonstrates an alternative approach to linking cash and care. Both programmes are focused on supporting the child in the context of the family or, in the terminology used by Isibindi, "in the life space of the child". Both programmes have already proven to deliver good results for children including improved learning outcomes, youth development, food security, dietary diversity and reduced levels of violence and abuse.

Conclusion

Care is negotiated within families, between families and between families and the state. Care is also highly gendered

and women, more than men, are expected to provide care. When families make decisions about who will provide care, factors such as the quality of relationships between carer and the recipient of care, potential educational and work opportunities, the health and well-being of the carer and the reproductive aspirations of female kin are important considerations. Decisions about who provides care are often weighed up against social and economic factors in the interests of household survival.

Government agencies and service providers need to recognise that child-care arrangements are family strategies. Furthermore, caring for children is demanding and can be stressful, particularly when carers are also coping with other stressors such as poverty, violence and mental illness. Carers therefore need to be given support and such support programmes need to be attuned and respond in coordinated ways to the varied needs of caregivers.

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Stopping family violence: Integrated approaches to address violence against women and children

Lucy Jamieson, Shanaaz Mathews and Stefanie Röhrs

Patterns of violence change across the life-course, yet children of all ages are vulnerable to multiple forms of physical injury and abuse: sexual abuse, psychological and emotional abuse and degradation, maltreatment and neglect.¹ The family has enormous potential to protect children and provide nurturing environments that foster physical and emotional safety. For example, strong parent-child attachment and open communication between family members can protect children from violence.² And, if caregivers know their children's friends, whereabouts and activities, their children are less likely to report having been sexually abused.³ Similarly the state has a duty to support families, and to create safe environments and communities, and when children experience violence within the family, the state has a duty to intervene and protect children.

The family has enormous potential to protect children and foster their physical and emotional safety.

This chapter focuses on family violence. It outlines the nature and extent of violence against children – with an emphasis on corporal punishment. It also introduces new evidence that highlights the intersections between intimate partner violence against women and violence against children within the family. The chapter then outlines South Africa's broad legal and policy commitments and contrasts these commitments with what happens in practice. Finally, the chapter proposes joint strategies for addressing violence against women and children through prevention services that target common risk factors, and responsive protection services that recognise intergenerational trauma and the complexity of family life.

In summary, the chapter seeks to answer these questions:

- What do we know about violence in families?
- What are the interconnections between intimate partner violence and violence against children in the home?
- What are the effects of experiencing or witnessing violence as a child?
- What are the state's obligations to prevent violence?
- What happens in practice?
- What are the best strategies to tackle family violence?

What do we know about violence in families?

Violence against children

There are differences in the reported magnitude of violence against children in South Africa due to variations in study design, but all estimates show that violence is widespread. Recently published findings from the Birth to Twenty Plus (Bt20+) study provided harrowing insights. Bt20+ is the largest and longest running longitudinal study of child and adolescent health and development in Africa and tracks a sample of more than 2,000 children born in Soweto in 1990.⁴ A recent analysis found that 99% of these children had experienced or witnessed some form of violence,ⁱ and more than 40% had multiple experiences of violence in their homes, schools and communities. A greater proportion of boys (44%) had experienced all forms of violence, compared to girls (30%).⁵ This is similar to the findings of the first national prevalence study,⁶ and an earlier community survey.ⁱⁱ The national study estimated that over 355,000 cases of sexual abuse had occurred among 15 – 17-year-olds in 2015. The study reported that girls are twice as likely as boys to be victims of forced penetrative sex and that more boys than girls are affected by non-contact sexual abuse such as exposure to pornography. The Bt20+ data shows that sexual abuse among boys is widespread and increases

i Categories of violence measured in the Bt20+ include: exposure to violence in the community (hearing gunshots), at home (seeing parents physically fighting) and at school (seeing a child beat up another); exposure to peer violence (witnessing gang violence); direct experience or being a victim of violence (mother beating the child; being attacked at school); direct experience of sexual violence (being forced to have sex); and perpetration of violence (fighting, forcing someone to have sex).

ii Fifty-six percent of children report lifetime physical abuse by caregivers, teachers or relatives (Meinck, Cluver & Boyes 2016); 53% girls vs 56% boys report emotional abuse and neglect (Jewkes et al 2010); 39% girls vs 16% of boys experience sexual violence before the age of 18 (Jewkes et al 2009); and 35 – 45% of children witness violence against a mother by her intimate partner (Seedat et al 2009).

Case 11: Long-term effects of physical punishment⁷

I saw him (my father) with the strap, I realised there is major trouble. I do not remember him saying anything... He took me by the one arm, he beat me with his left hand, that's right, he was left handed. He beat me over my neck over my back until I was lying on the floor and his words to me was I will beat you to death you too bad to be alive. This had a huge impact on me, after this in a way I developed an inferiority complex.

with age – from 16% of 13-year-olds to 29% of 18-year-old boys reporting sexual abuse, either in the form of unwanted touching or coerced oral or penetrative sex.⁸

There is no universally accepted definition of family violence, but the World Health Organization (WHO) describes family violence as a form of interpersonal violence that includes a range of abusive behaviours – such as physical, sexual, verbal and emotional abuse and neglect – that occur within relationships of care, kinship, dependency or trust. Therefore, family violence includes violence against women and children in cases where the perpetrator is either a family member or caregiver. Violence against children within families is widely referred to as child maltreatment, be it physical and emotional mistreatment; sexual abuse or neglect. It covers situations where the parent or caregiver either commits an act of violence or fails to provide care, resulting in potential or actual harm,⁹ and in the most extreme cases it can be fatal. A national survey of child homicides found that three in four murders of young children (0 – 4 years) occurred in the context of abuse by a caregiver at home.¹⁰ However, the most common forms of violence experienced and/or witnessed by children in the home are physical punishment and domestic violence. The Bt20+ found that nearly half of preschool children were reported to have experienced physical punishment by parents or caregivers,¹¹ and that physical punishment is often considered to be discipline as outlined in Case 11.

In 2005, 57% of parents sampled from a nationally representative surveyⁱⁱⁱ reported smacking their child/children and 30% reported having done so in the past month.¹² These levels are low compared to a large population-based survey in the Eastern Cape¹³ where 86% of young women and 91%

of young men reported being beaten at home as a form of punishment when they were children, and over one third reported having been beaten daily.^{iv}

The state has a duty to create safe environments and communities, and to intervene to protect children who experience violence within the family.

In South Africa, physical punishment in the home affects boys and girls equally.¹⁴ Children were most likely smacked at age three and four¹⁵ – an age where they cannot seek help – yet young adolescents are also vulnerable to physical abuse¹⁶. What is particularly concerning is the severity of violence in South Africa. A large proportion of children who experienced physical punishment report having been beaten with a belt, stick or other hard object which increases the risk of injury.¹⁷ Although harsher forms of physical punishment are more strongly associated with negative outcomes,¹⁸ even “mild” forms of physical punishment such as spanking can lead to increases in child aggression, delinquent and antisocial behaviour, and have negative effects on child mental health¹⁹.

In addition to high levels of physical punishment, between 25% and 45% of children witness domestic violence including violence against their sibling(s) or their mother by her intimate partner.²⁰

Violence against women

Estimates on the level of violence against women from a community-based prevalence study, using improved measurement tools found that more than one third of women living in Gauteng (38%) reported at least one experience of physical and/or sexual intimate partner violence (IPV) with higher levels of emotional/economic abuse (46%).²¹ Similarly, studies from KwaZulu-Natal show that pregnant women are extremely vulnerable with 36 – 40% of pregnant women reporting physical violence, and 15 – 19% experiencing sexual violence in their intimate relationships.²²

Interconnections between intimate partner violence and violence against children in the home

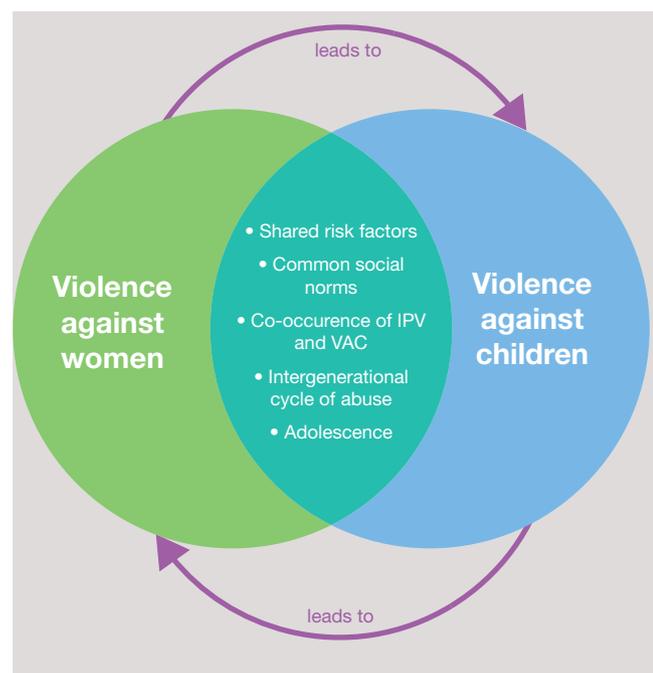
Violence against women and violence against children co-occur in the same households, share common risk factors,

iii The South African Social Attitudes Survey is a nationally representative household survey. However, it is important to note that the parents with children under 18 interviewed about corporal punishment are not strictly representative of the population of parents with children under 18 years, because parents were not the universe from which the sample was selected.

iv The reported differences are, in part, due to differences in study design (the community survey asked young people directly) and how specific forms of violence are measured which affect the reporting of violence experienced.

and are prevalent in societies and communities where social norms condone violence.²³ Both forms of violence lead to similar health outcomes, and have implications for the intergenerational transmission of violence. We will briefly reflect on some of these interconnections, as outlined in Figure 8.²⁴

Figure 8: Intersections and links between violence against women and violence against children



Source: Fulu E, McCook S & Falb K (2017) *What Works Evidence Review: Intersections of violence against women and violence against children*. September 2017. Available at www.whatworks.co.za

Shared risk factors

Shared risk factors for violence against women and children include family conflict; poverty; alcohol and substance abuse;²⁵ patriarchy within the family and in society at large.²⁶ Social norms that justify the use of violence against women and children across different settings underpin violence against both women and children.²⁷ In South Africa, as elsewhere, the prevailing social and cultural context promotes a gendered hierarchy with men in a superior position to women and children, where men's violence towards women and children is widely tolerated – and used to express masculinity, enforce gender norms and discipline children.²⁸ In this context, men's use of violence is associated with their search for respect and power by controlling the behaviour of their female partners and children.²⁹ Male-dominated households and marital conflict in the household have been found to increase the risk for physical punishment and child abuse.³⁰

Family relationships are also shaped by South Africa's political past, with the migrant labour system forcing men

to work away from their families for large parts of the year.³¹ Many fathers do not live with their children or take on a meaningful role in child-rearing which is widely perceived to be a women's domain.³² Ideas about fatherhood shape the role fathers take on and fatherhood is associated with being the "head of the household" and disciplinarian.³³ Nevertheless, nearly 40% of children are raised by a single mother, increasing levels of stress that can result in harsh and inconsistent parenting practices.³⁴

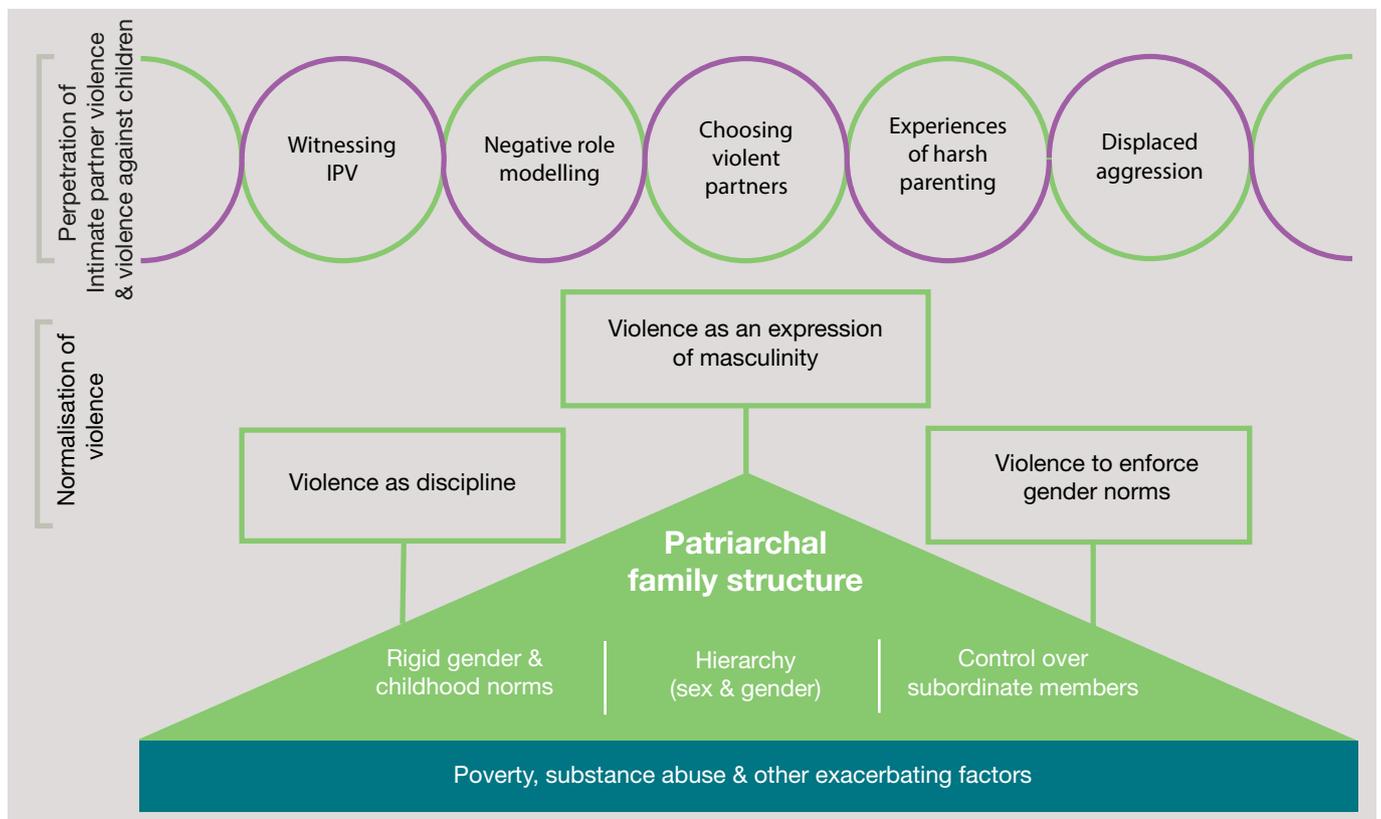
Intergenerational cycle of violence

Intimate partner violence (IPV) and corporal punishment can start an intergenerational cycle of violence. Research shows that males who experienced violent discipline or other maltreatment during childhood are more likely to be violent towards their own children and spouse in adulthood.³⁵ Similarly, witnessing IPV during childhood increases boys' risk of developing violent masculinities and abusing their partners in adulthood.³⁶ Experiencing corporal punishment and witnessing IPV during childhood can thus start an intergenerational cycle of violence (see Figure 9 on page 84). While it is more common for women to use corporal punishment – linked to their role as primary caregivers – experiencing IPV increases the risk of women using corporal punishment. One explanation is *displaced aggression* where women who are victims of IPV take out their frustrations and aggression on their children (see Figure 9).³⁷ Inequitable gender attitudes also play a role in women's use of corporal punishment and women who believe that men are justified in beating their female partners are more likely to endorse and use corporal punishment towards their children.³⁸

Men's violence towards women and children is widely tolerated – and used to express masculinity, enforce gender norms and discipline children.

The work of Fulu and colleagues also highlights how experiences of childhood trauma (i.e., physical, sexual or emotional abuse) increase the risk of IPV in adulthood.³⁹ Figure 10 on page 85 draws on a Durban baseline study and shows that 68% of women who had experienced childhood trauma had also experienced physical and/or sexual IPV in the past 12 months, compared to only 38% of women who had not experienced childhood trauma. Childhood trauma also affected perpetration rates, where 59% of men who had experienced childhood trauma had perpetrated IPV

Figure 9: Intersecting violence in the family



Adapted from: Sexual Violence Research Initiative 2017 *Intersections between violence against women and violence against children*. Viewed 2 October 2018: http://www.svri.org/sites/default/files/attachments/2017-07-20/SVRI_SB_VAW%26VAC_LR.pdf

compared to only 36% of men who had not experienced abuse or neglect. Research among a representative sample of South African men has also shown that childhood trauma increased the risk of repeated incidents of IPV perpetration.⁴⁰

What are the effects of experiencing or witnessing violence as a child?

The effects of violence are wide-ranging and long-lasting. Several studies show that violence is associated with short- and long-term effects on physical and mental health.⁴¹ Children who are abused learn to tolerate violence and are at increased risk of poor mental health (e.g., anxiety and depression), drug and alcohol abuse, risky sexual behaviours and HIV,⁴² externalising behaviour problems (e.g., aggression, delinquency) and poor social functioning.⁴³ Violence or maltreatment commonly results in childhood trauma,⁴⁴ where the child experiences the event as intense and emotionally distressing making them feel that they are not safe and have no control over their life.⁴⁵ Children who are maltreated at home are also at an increased risk of experiencing violence outside the home.⁴⁶

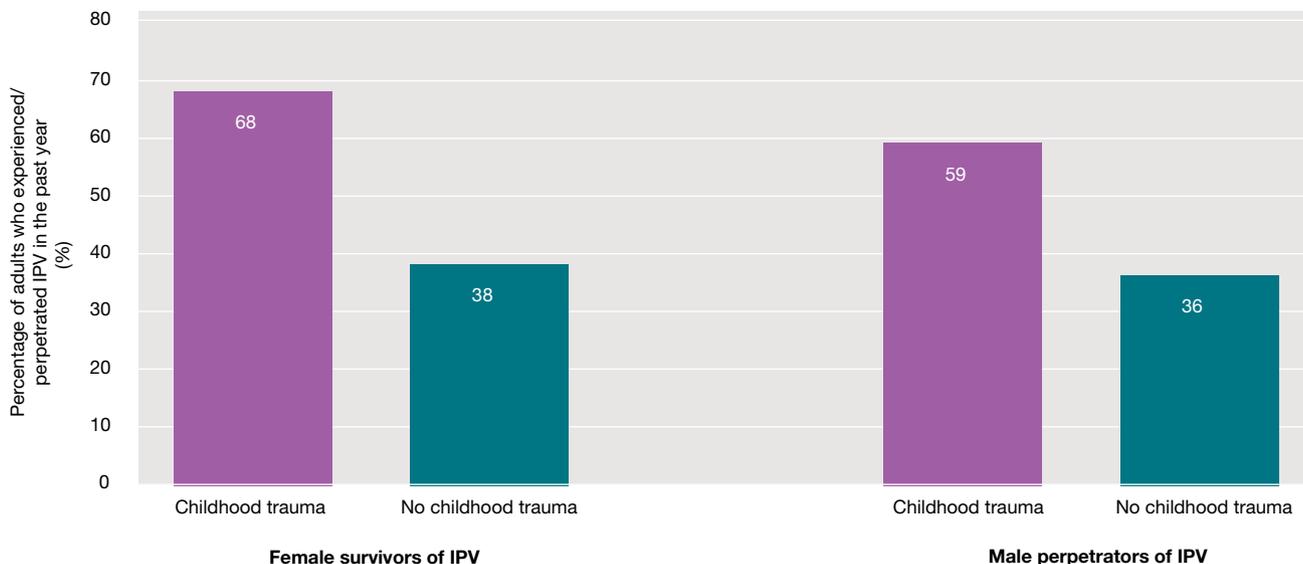
Children who have suffered violence are also more likely to lack empathy towards others and are more likely to perpetrate violence.⁴⁷ In the Bt20+ study, violent behaviour was reported

by more than 65% of primary school children, rising to 89% of adolescents; and while fewer adults committed acts of violence, the acts became more serious.⁴⁸ Interestingly, the study found no significant association between sexual abuse of boys and their mental health outcomes in adulthood when personal and social vulnerabilities were taken into account.⁴⁹ This is contrary to many other studies that found boys' exposure to childhood violence is associated with aggressive behaviour later in life, particularly rape and IPV, and in extreme cases intimate femicide, (see Case 12 on page 85.)

Witnessing violence has a similar effect to experiencing violence

In addition to direct experiences of abuse during childhood, indirect exposure to violence, such as witnessing domestic violence, causes *bystander trauma* increasing the risk for violence perpetration⁵⁰ and victimisation later in life. Women who witnessed their mothers being abused when they were children are more likely to be victims of partner violence as adults.⁵¹ The trauma can cause long-term psychological problems including *repetition compulsion*, where people expose themselves to situations reminiscent of the original trauma, i.e., they subconsciously choose violent partners.⁵² Growing up in violent households affects children's sense

Figure 10: The relationship between childhood trauma and intimate partner violence in adulthood



Adapted from: Fulu E, McCook S & Falb K (2017) *What Works Evidence Review: Intersections of violence against women and violence against children*. September 2017. Available at www.whatworks.co.za

of security and the way they relate to others. When a loved one, who is supposed to keep children safe, inflicts pain and suffering, then children begin to distrust all people and have difficulty in forming attachments.⁵³ In qualitative research with violent men, those who witnessed violence towards their mothers reported that it impacted on their own sense of safety, with many describing feeling “scared” of their fathers. These feelings of powerlessness are intensified by a sense that they should, but cannot, protect their mothers.

In the long-term, this affects their ability to form caring relationships. Children model the behaviours they see, therefore witnessing violence in the home also increases the risk of perpetration.⁵⁵ Boys who witness domestic violence are more likely to perpetrate violence within the community and intimate relationships.⁵⁶ Both boys and girls who witness violence are more likely to become neglectful or abusive parents, and to use harsh parenting with their own children, creating a vicious intergenerational cycle.⁵⁷

Case 12: Violent masculinities and links with violence in childhood⁵⁴

Men who have killed their partners describe mothers who lacked the ability to provide love and care. A man in his forties, speaking about his childhood said:

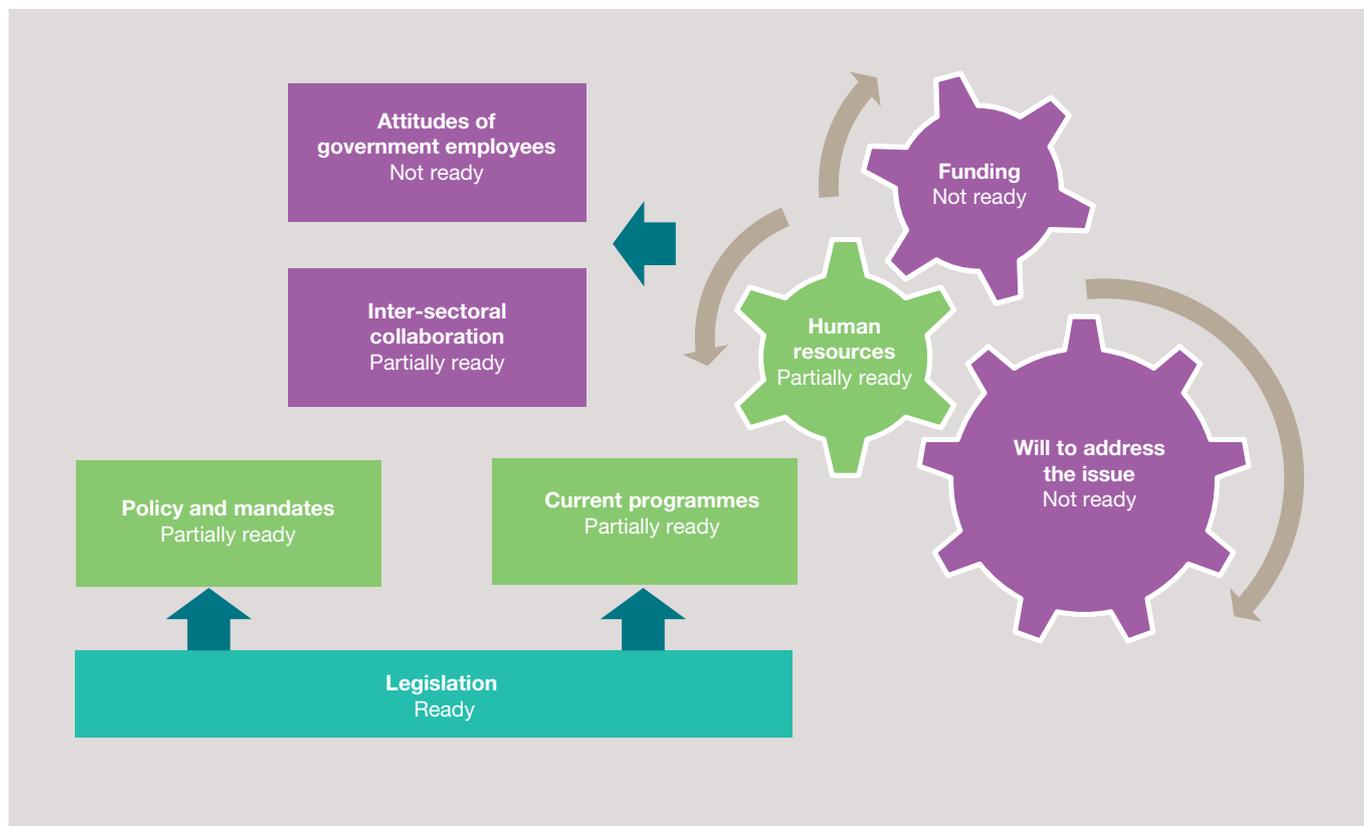
When I was four years old my mother had beaten me that my arm was fractured... that evening when my father came home, and he asked her what had happened. She used my eldest brother to tell my father that I had fallen from the tree.

This was not the only incident of physical violence. He also described how his mother burnt his hand on a hot stove. Making sense of the sadistic violence at the hands of someone who was meant to love and protect him was impossible, and years later he claimed: “Someone else would have hated a mother like this.”

What are the state’s obligations to prevent violence?

Both international and domestic law guarantee women and children the right to protection from all forms of violence and respect for their human dignity.⁵⁸ Women’s rights inside the family are protected by the Domestic Violence Act, which outlaws violence within intimate relationships and provides a mechanism for victims of domestic violence to obtain a protection order; for the arrest of the perpetrator; and for police protection to prevent further domestic violence. However, children do not enjoy the same protection as corporal punishment in the home is still lawful. Proponents of corporal punishment argue that children’s rights to protection must be balanced with parents’ right to freedom of religion, belief and opinion and that the state must approach corporal punishment of children with restraint because it “falls within the private inner sanctum of the family”.⁵⁹ However, the South Gauteng High Court has emphasised that the Constitution is “very explicit” and affords children protection from “all

Figure 11: Government's readiness to respond to violence against women and children



Source: Amisi M (2017) *How Effective is Government in Responding to Violence against Children?* Presentation at a Mandela Initiative Action Dialogue to Combat Violence Against Children, Cape Town. 22 May 2017.

forms of violence, whether from public or *private* sources” [emphasis added], meaning that the state not only can, but has an obligation to, protect children inside the family.⁶⁰

To fulfil its constitutional obligations, government is required to put in place laws, programmes and services and allocate budgets to protect children from violence. The new Child Care and Protection Policy⁶¹ outlines a developmental model that seeks to build measures to protect children from violence into a broader package of services that seeks to promote children’s optimal development. This framework includes universal promotive and prevention services; targeted early intervention; and protection and rehabilitation services in cases where violence has occurred. Because the right to protection from all forms of violence is not subject to progressive realisation, the government must prioritise funding and the allocation of resources.⁶²

What happens in practice?

In 2012, the government created an Inter-Ministerial Committee (IMC) to tackle violence against women and children. The IMC proposed an Integrated Programme of Action Addressing Violence Against Women and Children to address the root and underlying causes of violence and to

strengthen response systems.⁶³ In theory, it sought to provide comprehensive, multi-sectoral and long-term strategic interventions for ending violence. However, the results of a 2016 diagnostic review – designed to assess the effectiveness of government programmes and institutional mechanisms to address violence against women and children – show systemic failings as outlined in Figure 11.⁶⁴

As stated above, the legal framework to protect women and children from violence is comprehensive, with the exception of prohibiting corporal punishment in the home. However, the South Gauteng High Court has already ruled that corporal punishment is inconsistent with the Constitution.

Lack of funding for prevention and early intervention

Non-profit organisations (NPOs) deliver the bulk of prevention and early intervention programmes, but there is no mechanism for funding the full cost of these services, despite NPOs fulfilling government’s constitutional obligation.⁶⁵ The Policy on Financial Awards for Service Providers (FASP)⁶⁶ does not provide cover for the full cost of services, and the amounts paid to NPOs vary from province to province and programme to programme. The FASP has been under review since 2011 when the Free State policy, based on the national

Case 13: Negative attitudes towards victims of family violence⁶⁷

A 12-year-old boy reported to the police that his father had physically assaulted him. His mother and three siblings corroborated his statement. The mother also reported that her husband was a bully and that she herself had been a victim of domestic violence. She also stated that she was initially reluctant to ask her husband to stop assaulting the child because she was afraid of him. The case was withdrawn by the police three days later. The commander noted in the diary: *“This is moderate discipline and even falls short of child abuse. Withdraw.”* The family was not referred to support services.

policy, was declared unconstitutional.⁶⁸ However, a recent assessment shows that there is still a huge gap in the funding of services for children, older persons and vulnerable persons. Government pays NPOs R9.2 billion less than the estimated cost of providing these services which is equivalent to a 71% shortfall.⁶⁹ The funding gap has been well documented, and within a restricted fiscal climate leveraging more funds for the sector will depend on ensuring that violence is seen as a political priority.⁷⁰

Poor implementation

Even though there is growing evidence on the extent, causes, and social and economic costs,⁷¹ violence against women and children are not high political priorities.⁷² As a result, there is

limited financial investment to prevent violence, and due to lower-than-predicted economic growth, the government is under pressure to deliver on other existing priorities.⁷³ The evidence base on effective programmes is limited, especially with regards to programmes that address violence against both women and children.⁷⁴ There is a shortage of skilled staff, and those working in the sector often display negative attitudes causing further harm (as illustrated by Case 13) or discourage individuals from disclosing and seeking help. Despite the existence of the IMC, there is a lack of oversight, coordination is poor and services for women and children are typically delivered in silos by different government agencies, with separate funding streams and strategies.⁷⁵

What are the best strategies to tackle violence against women and children?

Given the emerging evidence that violence against women and children co-occur, share common risk factors, and have similar health outcomes and intergenerational effects, there is growing recognition that it is critical to consolidate efforts to tackle both forms of violence. Guedes et al propose a set of collaborative solutions to tackle violence against women and children,⁷⁶ and the authors have adapted this in line with the WHO’s INSPIRE package to fit the South African context as illustrated in Figure 12. It must be borne in mind that at present there is very little evidence on the impact of joint strategies and programmes, especially in low- and middle-income countries, but we present a few studies with promising findings that should be further investigated. Effective programmes go beyond promoting non-violent behaviour

Figure 12: Integrated approaches to address violence against women and children based on INSPIRE strategies

						
Implementation of laws	Norms and values	Safe environments	Parent and caregiver support	Income and economic support	Response and support services	Education and life skills
Develop integrated implementation strategy and fully funded programme of action that incorporates collaborative solutions	Address structural drivers of violence, poverty, substance abuse	Change social norms underpinning violence against women and children, and promote positive gender and power relations	Improve access to prevention and support services that are age and gender appropriate	Connect families with services timeously - screening combined with interventions	Provide integrated, safe and responsive services for victims of violence that consider the needs of both women and children.	Educate and provide adolescent intimate partner violence prevention programmes

Case 14: SASA! Uganda – a community-based intervention⁷⁷

SASA! is a community-based intervention implemented by a broad range of stakeholders, community activists working in partnership with professionals (such as healthcare workers and the police), and local government leaders. The professionals train activists to shift local norms around violence through discussions about unequal power dynamics, violence and HIV within their communities using contextually relevant communication and training materials. Activists conduct a variety of one-on-one and group activities in their communities helping couples develop communication and relationship skills. These activities are also supported by media and advocacy campaigns.

There are four intervention phases: In the first phase, START, staff from the implementing organisation map formal and informal resources to understand how communities are structured and organised. They also work with community activists to explore the power they hold within themselves to create change. The second phase, AWARENESS, focuses on building activists' confidence as they conduct activities within their communities while also encouraging community members to think critically about men's power over women. During the third phase, SUPPORT, other community members are encouraged to support the activists to foster change in the broader community. In the final ACTION phase, individuals are encouraged to try out new behaviours and celebrate change within their community.

and typically engage multiple stakeholders, challenge social norms about gender relationships and the acceptability of violence, and support greater communication and shared decision-making among family members.

Integrated strategy to implement legislation

The Department of Social Development is in the process of developing a National Programme of Action on Violence Against Women and Children. It is essential that it highlights the intersections between the two forms of violence and promotes a multi-sectoral response that cuts across government departments. It also needs to be fully funded and accompanied by a programme to develop the capacity of the workforce if the commitments outlined above are to translate into improvements in service delivery.

Addressing structural drivers of violence

Interventions at the family level should ideally address the structural drivers that underpin violence against both women and children such as poverty, alcohol abuse and social norms that condone violence in a more integrated way.⁷⁸ Programmes combining community mobilisation and/or economic empowerment paired with gender equality training have proved successful in reducing violence against both women and children but require testing for effectiveness in our setting.⁷⁹

Changing social norms that condone violence and promoting gender equality

Individual and social norms play a significant role in the perpetration of violence against women and children. For instance, the use of corporal punishment is influenced by caregivers' individual attitudes, family context and childhood experiences, and by social norms in the community or country. Research has shown that children are more likely to experience corporal punishment by their caregiver if they live in a context, where social norms support domestic violence and corporal punishment.⁸⁰ Therefore, interventions are needed to challenge and transform patriarchal norms that condone violent behaviour towards women and children.

Given emerging evidence that violence against women and children share common risk factors, it is critical to consolidate efforts to tackle both forms of violence together.

Community-based interventions such as the SASA! programme in Uganda in (Case 14) show that changing social norms in relation to IPV can reduce violence against both women and children.⁸¹ Intimate partner violence fell by 52% and 64% fewer children witnessed domestic partner violence in SASA! communities compared to communities without any exposure to the project.⁸² The intervention reduced communities' acceptance of men using violence against their partners and promoted gender equitable relationships.⁸³ Qualitative data suggested that couples who experienced reduced IPV, also changed their parenting and discipline practices and, in some instances, rejected corporal punishment as a disciplinary method, and some participants reported intervening to prevent violence against children. Primary prevention interventions in South Africa should draw on these lessons from resource constrained contexts,

as community-based interventions are critical to shift social norms underpinning violence against women and children.

Adolescent intimate partner violence prevention programmes

Adolescence provides a critical window of opportunity to change social norms and improve peer and gender relations. However, little work has been done on developing violence prevention programmes specifically for this age group in South Africa. Violence prevention components of broader HIV programmes have shown success. For example, PREPARE is a school-based HIV prevention programme that includes a focus on IPV and sexual violence. The educational component promotes healthy relationship behaviours, challenges harmful constructions of masculinity and femininity, and fosters assertive communication skills. The intervention failed to reduce sexual risk behaviour, however, the cluster randomised control trial showed that participants were less likely to experience IPV (35% vs 41%) following the intervention, compared with no reduction in the comparison group.⁸⁴

Improve access to prevention and support services that are age and gender appropriate

Internationally, there is evidence that child maltreatment can be prevented through support for caregivers such as home visiting or group parenting programmes.⁸⁵ In South Africa, targeted parenting programmes designed to reduce maltreatment have had some positive impacts.⁸⁶ Interventions should also promote gender equality and challenge men's

power over women and children. Emerging evidence in lower- and middle-income countries shows how parenting programmes that target men and address gender norms – such as REAL fathers (in Uganda) and One Man Can (South Africa) – can reduce violence against women and children simultaneously.⁸⁷ In a rigorous evaluation, REAL fathers, a six-month father-centred mentoring programme paired with a community awareness campaign, shifted attitudes regarding corporal punishment, increased fathers' confidence in non-violent discipline and – initially – resulted in reductions in the use of corporal punishment.

While the One Man Can programme has not been rigorously evaluated, qualitative research suggests that it may have helped men to shift from a disciplinary and authoritarian parenting style to playing a more caring and nurturing role in the family. In addition, some men reported reductions in their alcohol and marijuana consumption, improved communication with their partners, and changed views around sexual entitlement towards shared sexual decision-making.⁸⁸

Prevention services should also respond to the diverse needs of children and families across the life-course not just in the early years. Parents often need support with adolescents and Sinovuyo Teens supports families of older children who have behavioural problems or a suspected history of abuse, and although it is designed specifically to address violence against children, it also reported reductions in IPV.⁸⁹

Case 15: Failure to deal with previous experiences of trauma⁹⁰

Ayandaⁱ is a 13-year-old girl from the Eastern Cape who attended a residential therapeutic programme for sexually-abused children. She recently disclosed that she had been sexually abused by a relative starting a few years ago. Ayanda's mother is in a violent relationship with an older man who supports her financially, and she abuses alcohol and drugs as a means of dealing with her pain.

Ayanda and her mother appear to have a difficult relationship and her mother blames Ayanda for the sexual abuse. During an interview with the researcher, Ayanda's mother disclosed how she too was sexually abused as a child and described the difficult relationship she had with her own mother, who had blamed and beaten her after disclosure.

During the interview Ayanda's mother shared her current state of mind:

Eish, it is hard... (pause) Sometimes I think of killing my children because of what happened to me. Now it is happening to Ayanda... (crying). I did not plan to have her. I lost both my parents and I was then abused. Now they (her children) are abused as well. What did I do to the Lord? (silence, crying) ... I even think about killing myself.

It is critical for services to respond to the mother's suicidal ideation and her own trauma to prevent further harm to herself and her children before she will be able to be able to deal with her daughter's trauma.

ⁱ Not her real name.

Connecting children and families with services

Most children experience or are exposed to violence at some point, but reporting is low, so identification and referral mechanisms need to be developed. Understanding patterns of co-occurrence is critical: “if a woman, for example, is identified as experiencing IPV, an opportunity also exists to identify a maltreated child and vice versa”.⁹¹ One approach, recommended by the WHO, is to combine screening with interventions for pregnant women, young children and adolescents⁹², for example:

- Screening both parents during pregnancy to identify IPV and substance abuse; mental health screening of mothers; referral for grants and prevention programmes.
- Screening young children during home visits by community health workers and clinic visits.
- Training teachers, early childhood development workers and child and youth care workers to identify indicators of abuse and neglect, and to link children with services.⁹³

Strengthening identification and referral systems needs to be accompanied by greater investment in both early intervention and response services, so that screening for child maltreatment or partner violence is linked to interventions such as counselling, support groups, shelters, case management and therapeutic services.

Coordinated response services that address the needs of children and caregivers

Violence is interwoven in the lives of women and children and the Know Violence Initiative recommends that services should be responsive to the various forms of family violence.⁹⁴ Service providers should be trained to recognise and respond to violence in a systematic way, to facilitate a coordinated approach between child protection services and services that respond to domestic violence. For instance, in South Africa we have specialised Family Violence, Child Abuse and Sexual Offences Units linked to all police clusters across the country, but police stations are not child- or women-friendly and very seldom provide counselling to both the child and their caregivers. In addition, services such as the Thuthuzela Care Centres should provide age-appropriate care and respond to the health and psychosocial needs of the whole family. Where women access services for violence against women, questions should be asked about their children’s well-being

and safety. Shelters for abused women often do not provide children with the needed psychological support as the focus is on the woman.⁹⁵ It is also vital to address the caregiver’s previous exposure to violence, as the recollection of their own childhood trauma can prevent caregivers from being able to support children⁹⁶ – as illustrated in Case 15 on page 89.

Conclusion

Our understanding of violence against children has recently been strengthened. First, the problem is more widespread than previously imagined. Several South African studies point to the “saturation of violence in the everyday lives of children”.⁹⁷ Second, there is growing evidence that violence against women and children co-occur in the same households and share the same drivers, and that the effects of witnessing violence can be as detrimental as experiencing violence in childhood. The links between gender and violence are also coming into focus. It is now clear that sexual abuse is prevalent among boys as well as girls, and that very young children experience physical violence. There are significant, often gendered, pathways between exposure to violence in childhood and later victimisation or perpetration. Childhood trauma increases the risk of men perpetrating physical/sexual IPV and women experiencing IPV; and of both men and women using corporal punishment against their own children. Hence, the effects last for generations.

Despite repeated commitments to end violence against women and children at the highest level⁹⁸ there is a lack of genuine political will and the country’s response is grossly inadequate. Addressing violence against women and children should be a political priority and we should adopt an approach that recognises that this problem affects every community, every family and every child. Stopping violence requires an integrated approach that shifts social norms and gender relations and supports families to care for children. Interventions should promote positive parenting throughout the life-course not just in the early years, and challenge gender inequality and men’s power over women and children. Preventing violence against women and children also requires a co-ordinated response to violence, recognising that often both children and their caregivers are in need of services and support to address trauma and to heal.

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Income support for children in the context of poverty and inequality

Debbie Budlender

South Africa is one of the wealthiest countries in Africa, with a gross domestic product of R75,080 per capita in 2015.¹ Internationally, it is classified as a middle-income country. Yet Statistics South Africa reports that more than half of the households in South Africa had an income below the upper-bound poverty line of R11,904 per capita per year in 2015.¹ This apparent contradiction is explained by the high levels of inequality in the country.

Lack of income does not tell the full story of poverty and inequality. Proponents of the Human Development Index (which brings together income, health and education measures) and Multi-Dimensional Poverty Index (which brings together even more variables) argue for broader measures of poverty and development that incorporate capabilities, assets or other factors that are generally compromised by poverty. The importance of a monetary measure is that families with sufficient financial resources are better able to purchase the goods and services they need. A focus on income also highlights the state's obligation to provide income support and/or free basic services to those families that cannot otherwise satisfy their own needs.

This chapter focuses on material support for children and addresses the following topics:

- The gendered shape of poverty and what this means for children
- Income levels and sources for different household types
- The cost of raising a child
- Income support within families: balancing cash and care
- Income support and the state.

The gendered shape of poverty and what it means for children

Children are more likely than adults to live in poor households, and women are more likely than men to do so. These two facts are related as women are more likely than men to live with children. As seen in Chapter 2, in 2017, 76% of children were living with their mother but only 38% were living with their father. Where mothers are present but not fathers, the

mothers generally are responsible for providing both care and the financial resources that children need to survive and – hopefully – thrive. Yet this happens in an economy in which women are more likely than men to be unemployed and, when employed, tend to earn less than men.

Women's lesser likelihood of being employed is in part a reflection of their role in the bearing and rearing of children. However, the unemployment rate is consistently higher for women than men – despite being calculated as a proportion of those who are available to work — which suggests that the disadvantage extends beyond the inequitable care burden.

Statistics South Africa's 2010 Time Use Survey reveals the extent to which the child-care burden falls predominantly on women. For example, women account for 89.5% of the time spent on activities related to the care of children.² Women with children younger than seven years of age living in the same household spend an average of 80 minutes a day on child care, compared to an average of 13 minutes spent by the far smaller number of men living with their own children of this age.³

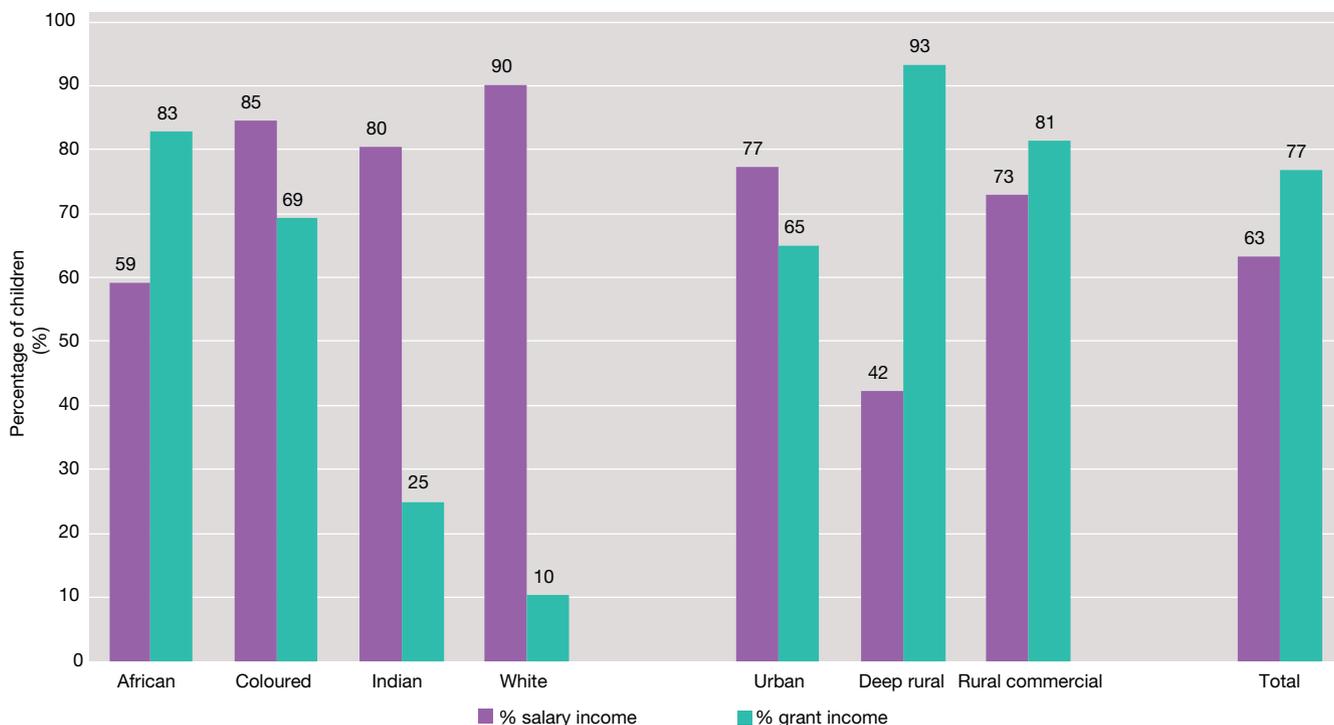
Income levels and sources of income for different household types

Households in South Africa derive income from two main sources: salaries and wages, and social grants from the government. Income may also be received through running a business, remittances (from family members living elsewhere), from renting out property and from private pensions. Non-poor households may also derive income from investments and dividends.

Figure 13 shows the percentage of children in each race group and in each type of area whose households have income from salaries or wages and whose households have income from social grants. The likelihood of the household receiving grant income is highest for African children, followed by Coloured, Indian and then White children. For salary income the differences are smaller, but still substantial. Overall, 63% of children live in households with salary income.

i Calculated using 2015/16 GDP estimate in National Treasury (2017) *Budget Review 2017*. Pretoria: NT. P. 222, and population estimate from Statistics South Africa (2016) *General Household Survey 2015*. Pretoria: Stats SA.

Figure 13: Percentage of children living in households with salary and grant income, by race and type of area



Source: Statistics South Africa (2017) *General Household Survey 2016*. Pretoria: Stats SA. Calculations by Debbie Budlender.

If income generated from running businesses is included, the percentage increases to 69%.

Geographically, more than nine in every 10 children in deep rural areas are in households that benefit from grants, but even in urban areas nearly two-thirds of children are in grant-receiving households. With salaries, the disparities are greater, with fewer than 42% of child-containing households in deep rural areas having salary income. Households dependent only on grant income struggle to meet their needs. Even if the household receives an Older Person’s Grant or Disability Grant, the amount (R1,700 as of April 2018) is less than half the level of the minimum wage proposed in the bill tabled in Parliament in early 2018.

More than four-fifths of children in nuclear householdsⁱⁱ are in households that have salary income, compared to less than half of children in lone-parent households as illustrated in Figure 14. Conversely, just fewer than half of children in nuclear households live in households that receive at least one grant, as compared to 76% of the children in lone-parent households. Lone-parent households are least likely to have access to grants and salaries, and if they do receive grant income, it is most likely to be the relatively small Child Support Grant (CSG). However, in terms of “remittances”, the children in lone-parent households are the best off, with

35% of these households receiving income from remittances, as compared to only 4% of nuclear households.

Where mothers are present but not fathers, the mothers generally are responsible for providing both care and the financial resources that children need.

Child poverty is greatest in extended households (where 85% of children are poor) and in lone-parent households (81%).⁴ These two categories together account for more than three-quarters (77%) of all children. Children living in nuclear households are best off, although even in these households the poverty rate of children is over 50%. A policy that targeted children only by household type as a proxy for poverty would therefore exclude many poor children.

Figure 15 on page 96 shows the average or median per capita income by household type. (The definitions of the different household types are provided in Chapter 2.) The figure confirms that lone-parent and extended households are the poorest, and that households without children

ⁱⁱ Nuclear family type households in which children are living with their biological parents, perhaps siblings, and no other family members

(couples and single-person households) are the wealthiest. This makes sense as there are costs attached to children and children themselves should not be earning income. The median per capita income for couple households is more than double that of lone-parent and extended households.

The cost of raising a child

How much does it cost to raise a child? The Lund Committee, when developing the proposal for the CSG in the late 1990s, proposed that the grant initially be set at the cost of food for a young child under seven years. The committee proposed using the amount calculated by the University of Port Elizabeth in estimating the Household Subsistence Level, i.e. the minimum amount needed by a family to survive. Government acknowledged that food was not the only child-related cost but argued that the CSG should be regarded as part of a larger package of services. The inflation-adjusted value of even the food amount would be insufficient today as the CSG now targets children of all ages.

Leading academics advise against basing poverty lines on survey data.⁵ They note that relying on survey data reflects and may perpetuate current inequalities rather than responding to need. In practice, South Africa's poverty lines are based on a combination of survey and other data.

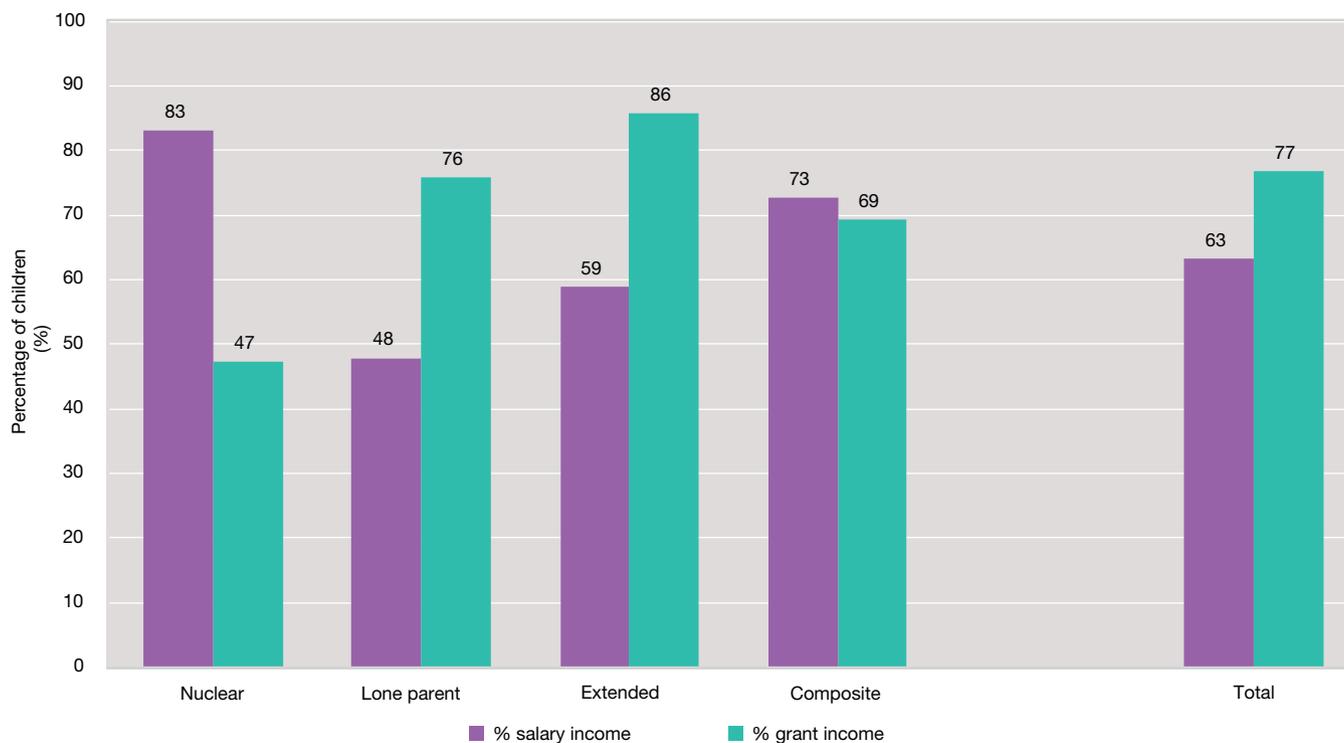
In 2017, the food poverty line was R531 per person per month, the lower-bound poverty line was R758, and the upper-bound poverty line R1,138 per month.⁶ It is only at the upper-bound poverty line that household members are likely to have their basic food needs satisfied.⁷ Yet even the food poverty line is more than the CSG (R410 in October 2018). The CSG is therefore clearly not enough to meet the basic needs of a child.

In February 2018, the Pietermaritzburg Agency for Community Social Action (PACSA) estimated the cost of providing a diet at the minimum required level for a child ranged from R541 per month for a child aged 3 – 9 years to R682 for boys aged 15 years and older.⁸ Again, these amounts show how the CSG is not even sufficient to cover the costs of feeding a child.

Income support within families

The previous sections suggest a consistent pattern whereby children in lone-parent (usually lone-mother) and extended households tend to be the worst off financially. This section explores strategies that families – and women in particular – may use to try to mitigate the risk of poverty while ensuring that their children also receive care. The section also highlights the limited extent to which many fathers assist in this quest.

Figure 14: Percentage of children living in households with salary and grant income by household type



Source: Statistics South Africa (2017) *General Household Survey 2016*. Pretoria: Stats SA. Calculations by Debbie Budlender.

Migration for income-earning purposes

Hall & Posel⁹ argue that the relatively high rates of children living apart from parents should not be seen as evidence of “fragmentation”, but rather as a way in which families attempt to provide for themselves. From this perspective, we need to look beyond the household in understanding how families provide for the needs of children.

Hall & Posel¹⁰ use National Income Dynamics Study (NIDS) data to show that the vast majority (92%) of children with non-resident mothers see their mother at least occasionally, and over half see their mother on at least a monthly basis. They also show a clear relationship between the movements of mothers and children, even when they do not move together. Thus, children of mothers who were seeking work were more likely than other children to move. Just over half of these children’s movements resulted in their being separated from their mothers. Where children moved to join their mothers, the movement was usually to an urban area, while movements that separated children from mothers were more likely to be to rural areas.

Posel & van der Stoep’s¹¹ analysis of General Household Survey data from 2002 suggests strong links between the absence of mothers of African children and mothers’ income-earning activity. They suggest that the causation runs in both

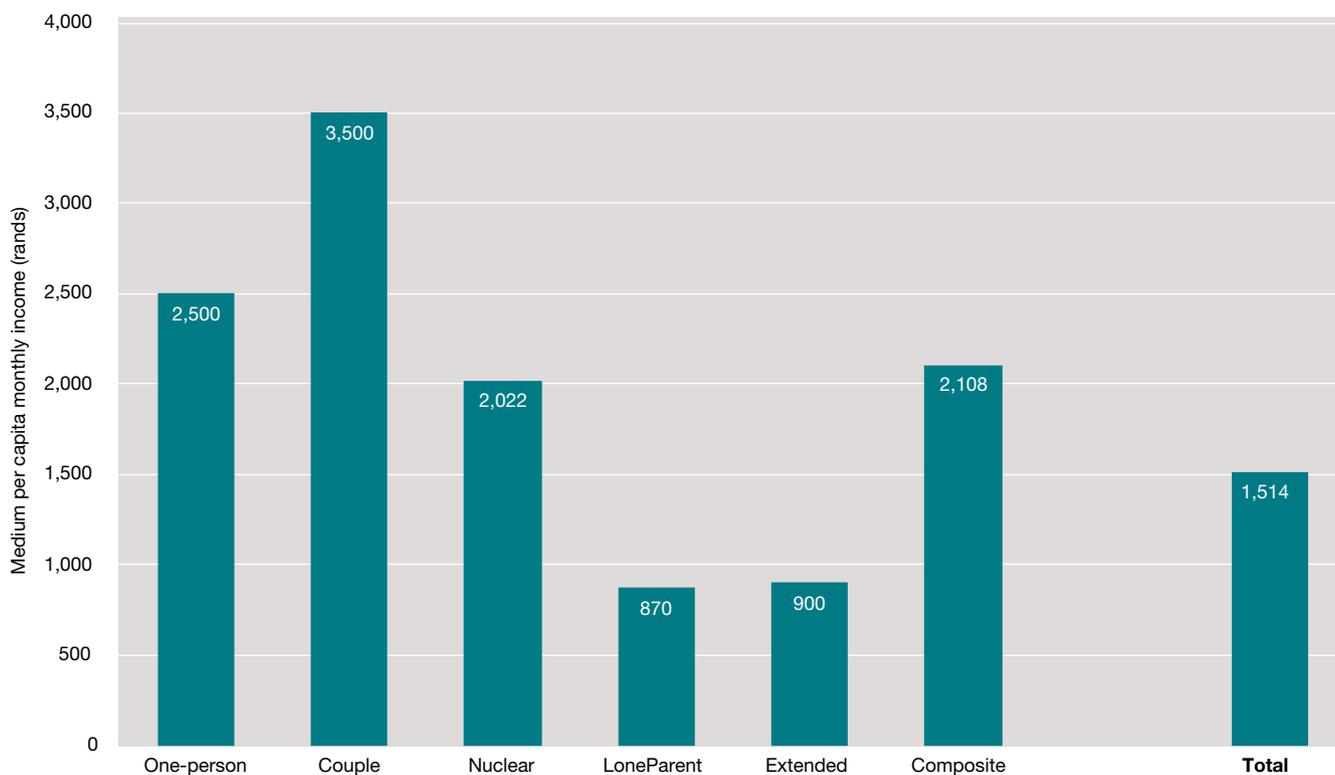
directions. Thus, women who are not responsible for daily child care are more able to do income-earning work, while mothers – especially those living in rural areas – leave their children in the care of others in order to seek work elsewhere.

In 2002, over three-quarters (77%) of African mothers aged 20 – 49 years living apart from their children were either working or looking for work, as compared to 68% of non-mothers, and 61% of mothers living with their children.

Parental contact, income support and care arrangements when parents are absent

There are no specific questions in the General Household Survey to track contact between children and absent parents, or to record whether absent parents help to support their children financially. The failure to include maintenance in the questionnaire could be taken as an indicator of the lack of awareness – and infrequent nature – of such payments. It is possible that some maintenance payments are recorded under either salaries or remittances. If they are not, and maintenance payments are included under “other” sources of income, then the rate of payment is minuscule, with only 1% of children in lone-parent households living in households that receive “other” income, and only 2% of children in all household types combined.

Figure 15: Median per capita monthly income, by household type



Source: Statistics South Africa (2017) *General Household Survey 2016*. Pretoria: Stats SA. Calculations by Debbie Budlender.

*Children in lone-parent
and extended households tend to be
the worst off financially.*

The NIDS questionnaire includes specific questions about who cares for the child (the primary caregiver) as well as secondary caregivers. Hall & Posel found that 8% of children with non-resident mothers never see their mother, and 30% of children never see their non-resident fathers. Thus, while children are less likely to maintain contact with absent fathers than with absent mothers, 70% do see their father at least sometimes. Non-resident fathers (who are regarded as members of the household but stay elsewhere most of the time) are more likely than absent fathers (who are not members of the household) to send money to help support their children. Among African children under 15 years, Hall and Posel found that 83% of those with non-resident fathers received financial support from their fathers, while only 38% of children with absent fathers were supported financially.¹²

Some qualitative researchers have claimed that fathers who do not live with their children are not “disengaged” and do not ignore their obligations. Yet quantitative analysis of NIDS data found that most children without co-resident fathers are cared for both physically and financially by women – whether the biological mother, grandmother or another female relative.¹³ Further adding to the burden of these female caregivers, African children are less likely than other children to have more than one caregiver, despite being more likely to live in households with a larger number of female adults. Where the mother is not the primary caregiver, other women in the household – and grandmothers in particular – are more likely than fathers to be the primary caregiver.

African primary caregivers are not only more likely to be solely responsible for care than those in other race groups: There is also less sharing of the child-related costs. For example, 25% of non-African children have more than one person contributing to their educational expenses, compared to 8% of African children. While this might in part reflect a greater likelihood that African children will attend no-fee schools, there are numerous other costs – including uniform and transport – that must be paid. African children are more likely than non-African children to be financially supported in terms of education by someone outside the household. These outside contributions could be from the father, or from older siblings or other relatives.

Parents were reported to be paying the educational costs of 92% of non-African children, but only about 74% of African

children. However, mothers of African children were nearly three times more likely than fathers to bear these costs, and almost half of African children with an absent mother received income from her.

Hatch & Posel’s findings are consistent with a situation where many absent mothers are living away from their children for work purposes.

The formal maintenance system

The previous section indicates that a substantial portion of the many non-resident fathers in South Africa do not contribute financially to the upkeep of their children. This is despite the fact that South African law places a legal obligation on parents to provide financially for their children. If the parents are unable to provide, there is a similar obligation on their parents – the children’s grandparents.

The father’s obligation exists irrespective of whether the child was born while the parents were married, whether they were ever married at any time, or whether his name is recorded on the child’s birth certificate. If the man denies that he is the biological father, the law provides for a paternity test to be done to settle the dispute. The Maintenance Act¹⁴ sets out the details of this obligation. However, the statistics are not the only evidence that the system is not very effective in ensuring children’s needs are met.

More than two decades ago, the terms of reference for the Lund Committee included that the committee should “investigate the possibility of increasing parental financial support through the private maintenance system.”¹⁵ The underlying assumption was that greater contributions by parents could lessen the financial burden on the state.

*Many non-resident fathers in
South Africa do not contribute
financially to the upkeep
of their children.*

The Lund Committee’s final report included a chapter and an appendix on the maintenance system. The chapter noted that the system was “in disarray” and detailed its many weaknesses.¹⁶ The appendix recommended a series of changes in court administration, training, police assistance, public education and law reform based on a workshop with maintenance-seekers, clerks, lawyers, a member of the South African Law Commission, academics and staff of non-governmental organisations. This appendix was forwarded to the commission.

Box 10: Looking beyond statutory law to customary law and beyond income to wealth

The Maintenance Act is part of statutory law. It applies to all people living in South Africa, whether or not they also consider themselves subject to customary, religious or other laws. It also applies regardless of whether they have made once-off payments such as *isondlo* for impregnating the mother.

Customary law, like statutory law, may have in-built biases reflecting particular conceptions of the family. One should not, however, assume that customary law is more patriarchal and biased against children than statutory law. The concept of “living” customary law that has been recognised and promoted in Constitutional Court rulings recognises that customary law can and does change over time to reflect changing norms and ways of living. For example, in the 2004 judgment in the *Bhe* case,¹⁷ the

judge ruled that the way in which the customary law rule of male primogeniture was applied in relation to inheritance was unconstitutional and invalid because it unfairly discriminated against women and children born outside of marriage. This judgment thus countered the norm of a nuclear family as well as gender inequalities.

The concept of living customary law is not simply an invention of the Constitutional Court. In survey research conducted in three different rural settings in South Africa – Msinga in KwaZulu-Natal, Keiskammahoek in the Eastern Cape and Ramatlabama in North West – there were clear indications that single women (whether never married or widowed), and particularly those with children, were markedly more likely to be allocated land in their own right after 1994 than before that date.¹⁸

Over subsequent years some of the proposed changes have been introduced as illustrated in the chapter on legislative and policy developments. For example, maintenance investigators have been employed (although far fewer than are required), payments can now be made into bank accounts rather than requiring monthly queuing, garnishee orders can be placed on the earnings of the non-resident parent, and non-payers can be blacklisted, among other things. However, the proposal that the amount of maintenance be determined through a formula, as is done in well-functioning systems in other countries, has not been pursued. Instead, the amount of maintenance is left to the discretion of the magistrate.¹⁹

A formula would reduce (a) the influence of the magistrate’s personal biases, (b) the possibility for the amount to be influenced by the relative power of the mother and father, and (c) the animosity that often accompanies arguments over the amounts (which may negatively affect the child). Magistrates are, however, generally reluctant to give up their discretionary powers.

There is an in-built bias against both the custodial parent and the children as it is accepted that the magistrate, when determining the amount of maintenance to be paid, will first allow for the non-custodial parent to have enough to support themselves before considering how much of the remaining income, if any, should be paid in maintenance. A similar protection of the custodial parent’s needs does not exist. The Lund Committee report cites a legal practitioner as follows: “If there is no money, that is the woman’s problem. If the

father can show his expenditure is more than his income, you can’t invoke an order.”²⁰

In addition, magistrates take into account the support obligations that the father has in respect of children from other relationships. While this is appropriate, as these children also have rights, it presents problems in a situation, such as that in South Africa, where a substantial proportion of men, including married men, may have more than one family.

The other major problem with the system is that many fathers are simply not able to pay maintenance because of unemployment or extremely low and/or irregular earnings. Maintenance is also inappropriate in cases where the whereabouts of the father are unknown, or there is a history of domestic violence.

Income support from the state

Section 27 of the Constitution explicitly states that when people are unable to support themselves and their dependents, the state must provide appropriate social assistance. The state is therefore also responsible for the financial maintenance of children when the parents and other family members who bear the primary responsibility cannot afford to provide adequately for them. By the end of March 2018, the CSG was paid to 12.3 million children every month.

There are important differences in the way child grants were targeted before and after 1998, and these differences reveal a change of understanding about the family contexts in which children live. The State Maintenance Grant (SMG) that was in place before this date was targeted at the children of

women who did not have access to a husband's earnings, for example on account of widowhood, divorce, abandonment or imprisonment of the husband. The SMG thus assumed a nuclear family made up of a married couple and their children, with the father's earnings as the primary income and the mother as a homemaker. This assumption did not match the reality of most South African children who lived in families of various shapes and sizes subject to ongoing changes, and where children might themselves move from one household to another during childhood.

The Lund Committee therefore developed an approach that focused on the child rather than the structure of the family. It proposed a grant targeted at an individual child, rather than the family grants that are found in many other countries. The recipient of the grant was to be the main person who cared for the child, whether a mother, father, grandparent or other person. And the grant was meant to "follow" the child if the situation changed, rather than to remain with the person who was the primary caregiver when the grant was first approved.

Substantial numbers of children lose the grant because it fails to follow the child when care arrangements change.

However recent analysis²¹ of administrative data on grants that lapsed during 2017 suggests that substantial numbers of children lose the grant because it fails to follow the child when care arrangements change. The main reason for lapsing was death, with up to 107,000 CSGs lapsing because the child's caregiver died.ⁱⁱⁱ Nearly 81,000 lapsed because the caregiver had not claimed the grant for three months. The reasons here could include that the beneficiary was ill or for some other reason unable to collect the grant, or that they and/or the child had moved. Another 71,000 grants had lapsed because the child was no longer "in the custody" of the beneficiary – in other words, the child was living with another caregiver. In total, nearly 340,000 children had their CSGs lapse for reasons that may be related to changing care arrangements. Where this happened, the child would have been through the upheaval of changing family arrangements or the trauma of losing a caregiver and then, in addition, lost the grant. These findings suggest that the grant may currently not be performing well in terms of "following" the child.

When people are unable to support themselves and their dependents, the state must provide appropriate social assistance.

In addition to child grants, the state has a package of social protection measures designed to reduce the costs of raising children for poor families. These include fee waivers for education, either through no-fee schools, or through partial or complete fee waivers for those who are exempted from paying fees at fee-charging schools in the public sector. Recipients of social grants are entitled to automatic fee exemptions if they enrol in schools that charge fees. For younger children, there is a small subsidy – R15 per day, per child – that is allocated to some ECD centres in respect of the poor children who attend.

Primary health care services, through clinics, are provided free of charge to everyone, while hospital services (secondary and tertiary levels) operate on a sliding tariff scale according to income. Children younger than six years, pregnant women and social grant beneficiaries are automatically exempt from paying for any public health services unless they are covered by private medical aid. Given that around two thirds of children receive social grants, most children are therefore eligible for free health care at all levels.

The government collects money from the population through taxes and other sources. Even the very poor contribute to national revenue because they, like everyone else, must pay VAT on the goods and services that they buy. The government budget, in turn, allocates money for public infrastructure and services, and for programmes targeted to poor families and children. These include social grants, subsidised housing and fee waivers for education and health. In this way, some redistribution is achieved. The important question is whether the value of transfers and quality of services are sufficient to reduce poverty and inequality substantially.

The state has a constitutional duty to provide financial support for children when families cannot do so, and it does this mainly through the CSG. But the grant is too small to cover even the basic nutrition of a child and does not cover the cost of other basic needs.

This chapter has shown that there is a clear relationship between household structure and income level, where children living in lone-parent and extended households are the worst off financially. The differences are partly the result

iii The codes given to the different reasons for lapsing in SOCPEN do not differentiate clearly between the death of the adult caregiver and the death of the child, but the vast majority of these deaths would be caregivers.

of household form. For example, households without child dependants would be expected to have higher per capita income than those with children. Secondly, households without a male adult tend to be poorer because men are

more likely than women to be employed and, if employed, tend to earn more than employed women. Finally, financial contributions by non-resident fathers are generally small, irregular or non-existent.

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Interactions between the family and the state in children's health, education and social development

Linda Richter, with contributions from Andy Dawes, Andrea Juan, Lori Lake, Busi Nkala-Dlamini, Vijay Reddy, Ben Roberts, Nic Spaull and Linda Theron (alphabetically)

The real wealth of a nation is its people. And the purpose of development is to create an enabling environment for people to enjoy long, healthy, and creative lives.

Mahbub al Haq in Nussbaum, 2009¹

This chapter considers how families and the state interact in facilitating human development across childhood, with a particular focus on health, education and social development. Being healthy and educated, having the personal and social skills for mutually caring relationships, and playing a satisfying and useful role in society are all essential aspects of human development. Poverty, low education, ill-health, limited access to services and a lack of civil and political freedoms undermine human freedom, dignity and development.²

Families depend on state support to raise their children, and nurturing children is essential to building the capacity of the state. The state is obliged to protect and provide for children when families are unable to do so. However, there are long-standing debates on how – and when – the state may direct how families raise children. Examples include the prohibition of corporal punishment in the home and the provision of sexual and reproductive goods and services to young people through schools and public health facilities.

Interactions between the state and families are not uniform. Families need the state to provide infrastructure, health, education and basic services. But the level and quality of these provisions vary greatly by race, class, residential location, and the age and gender of the child – as does family engagement in children's development.

Families depend on state support to raise their children, and nurturing children is essential to building the capacity of the state.

Some state-family interactions are constrained by law and procedures, and some by finances. Other interactions

are open-ended where the state relies on families to complement its investments in the health, education and social development of children, and parents' contributions vary depending on their circumstances. For example:

- The state requires parents by law to register their child's birth within 30 days of birth at the nearest Department of Home Affairs office, and for those who struggle to register within this time frame, late registration is more difficult.³
- Parents are also obliged by law to enrol and send their children to school between seven and 15 years of age.⁴ The state supports families by providing subsidised or free schooling, school meals, school transport and school health services, but does so at varying levels of implementation and quality. Families who are able to pay for education have more choice regarding the school their child attends.⁵
- The state provides free immunization services and encourages parents to have young children vaccinated. However, some families choose to purchase these services from private providers rather than using public services, and some choose not to immunize their child despite evidence that high levels of coverage protect the health of others by preventing outbreaks of infectious diseases like measles.⁶
- Infant feeding remains a women's individual choice, but the state actively promotes exclusive breastfeeding because of its proven benefits for health, nutrition and well-being.⁷ It does so through the Mother-Baby Friendly Hospital Initiative, by preventing the formula industry from advertising breastmilk substitutes, and by encouraging families, communities and businesses to play a more proactive role in supporting breastfeeding.

In each area, children's well-being depends on the commitment, integrity and capability of both the state and families. In South Africa, both institutions are severely compromised

Table 10: Examples of state and family investments in the survival, health and well-being of children and adolescents

Area of investment	State services	Family practices and behaviours
Child health	Preventive, promotive and curative services (e.g. immunisation and youth-friendly services)	Surveillance of child well-being Early care-seeking Treatment compliance and return visits
Nutrition	Growth monitoring and nutrition education Food security and safety Micronutrient fortification and supplementation Food subsidies	Exclusive breastfeeding for the first six months Sufficient, healthy and age-appropriate food
Water, sanitation and hygiene	Clean water, basic sanitation and waste removal	Good hygiene practices and supervision of children's personal care
Environmental safety	Road safety laws and enforcement Bans on toxins and warning signs on poisons	Household practices that protect children from environmental hazards
Protection	Social protection, including the Child Support Grant	Family protection and care of children

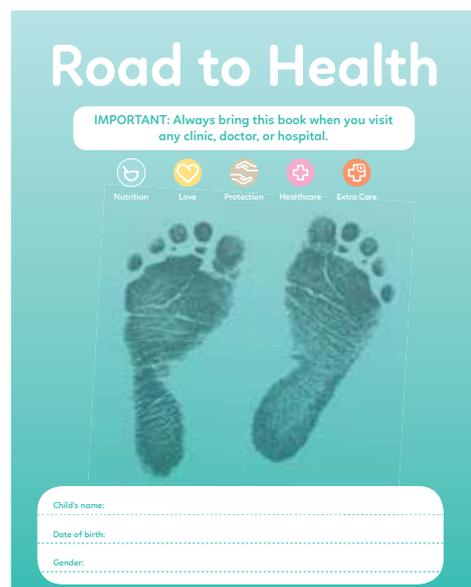
by social and personal history and current circumstances. Apartheid weakened the ability of the state to provide for all South Africans, and corruption continues to divert resources from services. Families were fragmented by migrant labour and apartheid laws, and continue to be challenged by high levels of violence, unemployment and poverty. In this essay, we illustrate the contribution of the state and families to children's health, education and social development, and how these contributions could be strengthened. The inputs of both the state and families in concert with each other are critical to ensuring that all children reach their developmental potential and that no child is left behind.

Collaborating for child health

From pregnancy to age 18, and of course beyond, the state and families make complementary investments to optimise the survival, health and well-being of children, as illustrated in Table 10.

South Africa has high rates of child mortality; an estimated 34 in every 1,000 children die before their fifth birthday.⁸ Most of these deaths could be prevented by the combined efforts of the state and families. Preventive and curative health products and services, such as tetanus toxoid, antibiotics and immunizations are important, but a comprehensive review has shown that more than a third of child deaths are related to

Figure 16: The Road to Health Book affirms the central role of parents and caregivers



THE 5 THEMES OF THE ROAD TO HEALTH BOOK ARE WHAT CHILDREN NEED TO GROW AND DEVELOP

- NUTRITION** Good nutrition is important for you and your child to grow healthy. It starts with breastfeeding.
- LOVE** Your child learns from looking at you when you hold them close to you and love, play and talk to them.
- PROTECTION** Your child can be protected from disease an injury by getting immunised and by playing in safe places.
- HEALTHCARE** Your child needs help from you or a health worker when they are sick or injured.
- EXTRA CARE** Your child may need special care or support and knowing what to do and where to go will help both of you.

Source: Slemming W & Bamford L (2018) The new Road to Health Booklet requires a paradigm shift. *South African Journal of Child Health*, 12(3): 86-87.

under-nutrition and could be prevented by interventions at the household level. These include the promotion of breastfeeding and appropriate complementary feeding, and home use of oral rehydration therapy for children with diarrhoea.⁹ The quality of health care services must also improve, particularly the attitude of health service personnel. A 2011 audit of health care facilities found that patients were met with a “positive and caring attitude” in only 25% of clinics.¹⁰

Young children

The Department of Health has recognised the need to support both health workers and families. In 2018 it launched a new Road to Health Book as the centrepiece of its Side-by-Side Campaign to promote the survival and development of children under five. The campaign affirms the central role of families in the nurture, care and protection of young children, and it encourages health workers to use the book to promote children’s health, care and development, and to develop supportive and respectful relationships with parents and caregivers.

Contact between the state and families through health services for children becomes less intense after two years of age when children are usually taken to health services only when they are sick. The state has recognised that hospitalisation is traumatic for both family and child and introduced lodger mother facilities to enable caregivers to accompany and support sick children during their hospital stay. The KwaZulu-Natal Department of Health’s Boarder Mother’s Policy draws on evidence that the presence and emotional support of a caregiver helps minimise the impact of painful medical procedures, reduces parental anxiety and the workload of nursing staff, improves parent satisfaction and decreases complaints and medico-legal claims.¹¹

South Africa’s Integrated School Health School Programme¹² aims to prevent illness and promote health with an emphasis on identifying barriers to learning in the foundation phase, and sexual and reproductive health in secondary school. Its success depends on effective collaboration between the health and education systems and the degree to which they prioritise interventions that effectively improve children’s health and well-being.¹³

Children with disabilities

Children with disabilities and adolescents also require support from families and the state. Many childhood disabilities could be prevented by better perinatal care and early nutrition,¹⁴ as well as more effective protection from environmental hazards such as pollutants, poisons and injuries.¹⁵ While the

state is responsible for putting policies and programmes in place to prevent injury, this has to be accompanied by family awareness and vigilance to protect children both within and outside the home environment.

Although infant mortality globally has halved since 1990, there has been no decrease in developmental disabilities among surviving children. In fact, the number of affected children has increased by 71% in sub-Saharan Africa since 1990. The lack of progress in reducing disabilities is attributed to absent or inadequate policies and interventions to prevent and detect disabilities, together with a lack of support for affected families and children.¹⁶

In a small number of cases, family care may be compromised by abuse,¹⁷ but the majority of families absorb the costs, emotional drain and additional care despite a lack of state services and stigmatisation by the wider family and community.¹⁸

Adolescent health

Adolescents are at risk of falling between the gaps in protection and support provided by both the state and families. Despite attempts to make facilities more adolescent friendly, the judgemental attitudes of public health service providers, lack of privacy and breaches of confidentiality frequently deter young people from accessing sexual and reproductive health services.¹⁹ Families are often reluctant to discuss sexuality with children as outlined in Case 16, and the compulsory sex education component of the Life Orientation curriculum is seldom effectively covered.²⁰

Case 16: What sex education young people want from their families

A mixed-methods study found that both parents and children lack the confidence to talk about sex and sexuality. Sex education in schools is meant to ease this tension, but many parents feel side lined, and concerned that the state is extending sexual and reproductive health services, such as contraceptives, to girls without parental consent.

While parents seem to implicitly acknowledge that their teenage children are sexually active, their talk to children on the topic is often threatening and focused on the consequences of sexual activity, such as “you dare fall pregnant or impregnate”, instead of what young people say they want: straightforward information, for example, how to prevent pregnancy and use condoms.

For this reason, the consent provisions of the Children's Act are designed to help children and adolescents access essential health care services independently, so that they have the information, guidance and support they need to make informed and responsible choices about sexual and reproductive health. Children can consent to contraception from 12 years, HIV testing from under the age of 12, and termination of a pregnancy from any age – provided they understand the risks, benefits and social implications.²¹ These provisions recognise children's evolving capacities to participate in health care decision-making and enable adolescents to take increasing responsibility for their own sexual and reproductive health as they approach adulthood.

Teen pregnancy

The silence and failure of both families and the state to offer meaningful information, support and services to adolescents may contribute to unwanted teen pregnancies. While the majority of teen births are concentrated amongst 18–19-year-olds, teen childbearing can compromise a young mother's education, as well as the health, nutrition and educational outcomes of her children,²² with younger teens most at risk of falling behind in their grades or dropping out of school.²³

The draft National Policy on the Prevention and Management of Learner Pregnancy in Schools is intended to enable pregnant learners and young mothers to continue their education. However, there seems to be little in the way of systematic support for pregnant teenagers or teen mothers, either through schools or health services.

Optimal health outcomes of parents and children depend on good, quality state services and functional, caring and supportive families working together. Each have a unique and important part to play. The state has a responsibility to translate policies into improved patient experiences by providing accessible and good quality services, and families need to know when to seek out health care, and then act on health information to support their children and achieve the best possible health outcomes.

Collaborating for children's learning and education

Learning starts before birth and provides the foundation for formal education. Foetuses learn to recognise and remember their mother's voice,²⁴ and these memories help the newborn recognise their mother from birth.²⁵ Affectionate and responsive interactions and secure attachment in the first years of life serve as a strong foundation for language and learning,²⁶ and provide young children with the confidence to experiment and explore their environment.

Early childhood development services

This rich learning occurs primarily within the context of relationships with caregivers and family. So what is the role of the state in these early years? The state must provide an enabling environment and support for caregivers, as illustrated in Table 10 with respect to health. This includes social protection and services that support families' efforts to ensure the health, nutrition, early learning, care and safety of their children.²⁷ However, many policies in South Africa are poorly implemented and services of variable quality may intensify rather than lessen existing inequities. In addition, there are no scaled-up social services for vulnerable caregivers of young children, such as adolescent parents, people living with HIV and women who are victims of domestic violence.

From long-term follow-up of children who received services to enrich their learning experiences in infancy and early childhood, we know that the early investments offer greater improvements in education and earning potential than interventions implemented in middle-childhood, adolescence or early adulthood.²⁸

Family involvement in formal schooling

Once children enter school, both the state and families contribute to educational outcomes. There are opportunities for parents to work with schools at several levels, from supporting the learning of the individual child to ensuring good school management through the School Governing Body. The state introduced school meals and transport for children attending schools in poor communities but their implementation is patchy. Although school fees have been eliminated in around 80% of public schools, this has not had a significant impact on school enrolment or educational attainment amongst teenagers beyond the compulsory schooling age (i.e. over 15 years).²⁹ Out-of-pocket costs such as uniforms, stationery, food and transport are burdensome, especially for poor families who are estimated to spend a sixth of their household income on schooling costs, a considerably higher proportion than better-off families.³⁰

Parent and family involvement in school may involve attending school functions, communicating with the child's teacher, helping with homework, reading at home and encouraging children to do their best and go as far as possible in their education. Parents generally care about their children's education and want to help, but many feel intimidated or do not know how to get involved or do not have the confidence or education to help their children with school work. Schools need to reach out to parents and to the community to build collaboration as illustrated in case 17.

Case 17: Actonville Primary School successfully reaches out to parents³¹

Actonville Primary School was a poorly functioning school in an impoverished neighbourhood of Gauteng with high levels of unemployment and serious drug problems, yet in three years it managed to increase its grade 3 Annual National Assessment scores in Maths and English from 23% to 67%. The new principal built support for a strategy that aimed to put children at the heart of the school, improve teaching methods and content knowledge, raise funds to make the school a place of pride in the community, and provide counselling for parents who wanted it.

Key elements for success included efforts to:

- Improve understanding of children's home conditions and help families develop parenting skills and a more

conducive home environment to support children's learning;

- Involve families with their children's homework and other curriculum-related activities and decisions;
- Establish effective communication from school-to-home and home-to-school;
- Include families as participants in school decision-making, and develop parent leaders and representatives;
- Provide a range of volunteer opportunities for different purposes, at different times and in different locations to support the school and its students; and
- Coordinate resources and services for families, students and the school, and provide services to the community.

The impact of income inequality

While family involvement has considerable influence on children's educational performance, there are substantial differences in social and material resources reported by families of children attending fee-paying and no-fee schools, as illustrated Table 11.

Similar differences were found in children's exposure to early stimulation within the home, for example, reading books, playing with alphabets, word games or number toys, and encouraging children to write numbers as illustrated in Figure 17 on page 106.

These analyses suggest that children who attended preschools for two or more years scored significantly higher in the 2015 grade 5 Trends in International Mathematics and Science Study (TIMSS) assessments than those who attended for one

year or less. While preschool attendance is associated with a significant increase in TIMSS scores for children attending fee-paying schools, there was no significant difference in achievement scores between children from no-fee schools who had or had not attended preschool.³²

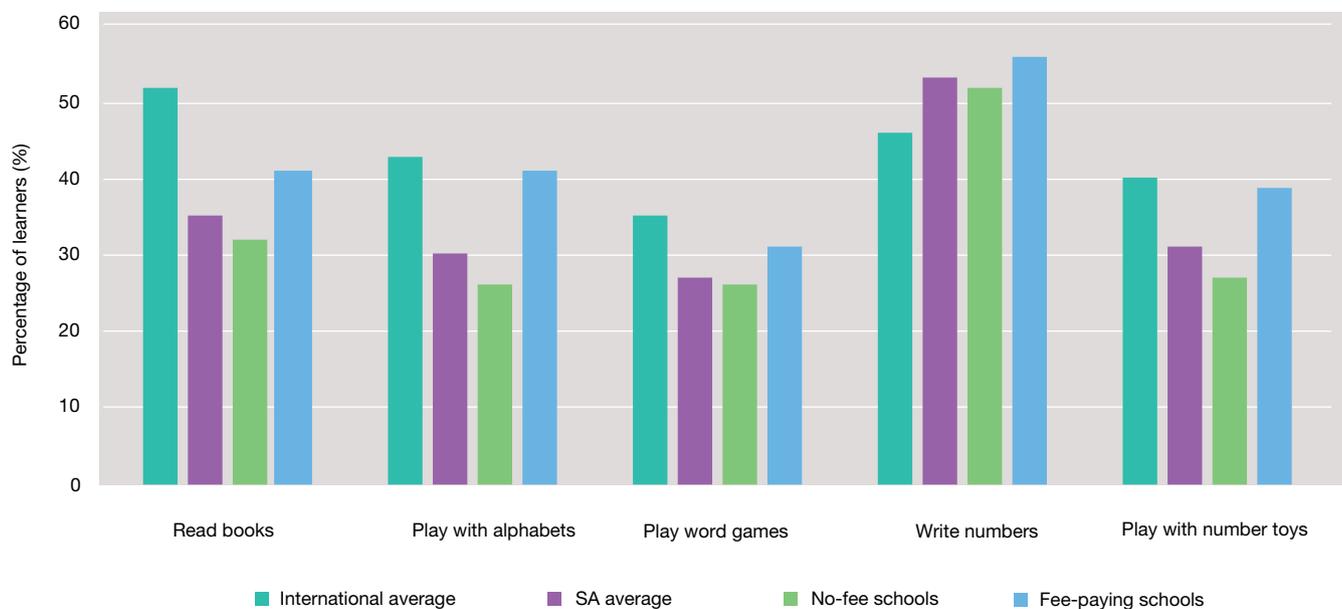
In sum, differences in household socio-economic resources, combined with the extent and nature of home educational experiences, were associated with differences in pre-grade 1 school readiness. School readiness, in turn, was associated with differences in mathematics performance in the grade 5 TIMSS assessment. The findings demonstrate what James Heckman and colleagues call dynamic skill formation.³³ Skills build on earlier skills, and skills acquired early, especially during the critical period of early childhood, make it easier and more motivating to learn new skills later.

Table 11: Household assets and preschool experience by school type

Household resources	National average	School type	
		No-fee schools	Fee paying schools
At least two years preschool education	62%	59%	70%
Maternal education (above Grade 12)	46%	37%	64%
Parent with a professional occupation	18%	11%	34%
More than 25 books in the home	20%	16%	26%
Household in receipt of a social grant	74%	86%	47%
Flush toilet	56%	41%	87%
Electricity	83%	78%	87%
Tap water	64%	59%	77%

Source: Isdale K, Reddy V, Juan A & Arends F (2017) *TIMSS 2015 Grade 5 National Report: Understanding mathematics achievement amongst Grade 5 learners in South Africa*. Cape Town: HSRC Press.

Figure 17: Learners whose parents report “often” engaging in selected early educational activities



Source: Isdale K, Reddy V, Juan A & Arends F (2017) *TIMSS 2015 Grade 5 National Report: Understanding mathematics achievement amongst Grade 5 learners in South Africa*. Cape Town: HSRC Press.

This suggests that young children from poor families have fewer opportunities to learn at home and thus are less ready for formal school learning and have reduced capacities to learn at school. This is compounded by the fact that the schools they attend may provide fewer opportunities for learning.

State expenditure on education

Families and the state also intersect at the macro level. A 13% increase in births from 2003 to 2006 (attributed to the roll-out of HIV treatment) resulted in a corresponding increase in grade 1 enrolments from 2009 to 2015 – with the “surge” reaching grade 8 in 2018.³⁴ Because spending on education has not increased by a similar amount, spending on each school learner has declined by 7% per annum since 2010 (as illustrated in Figure 18).

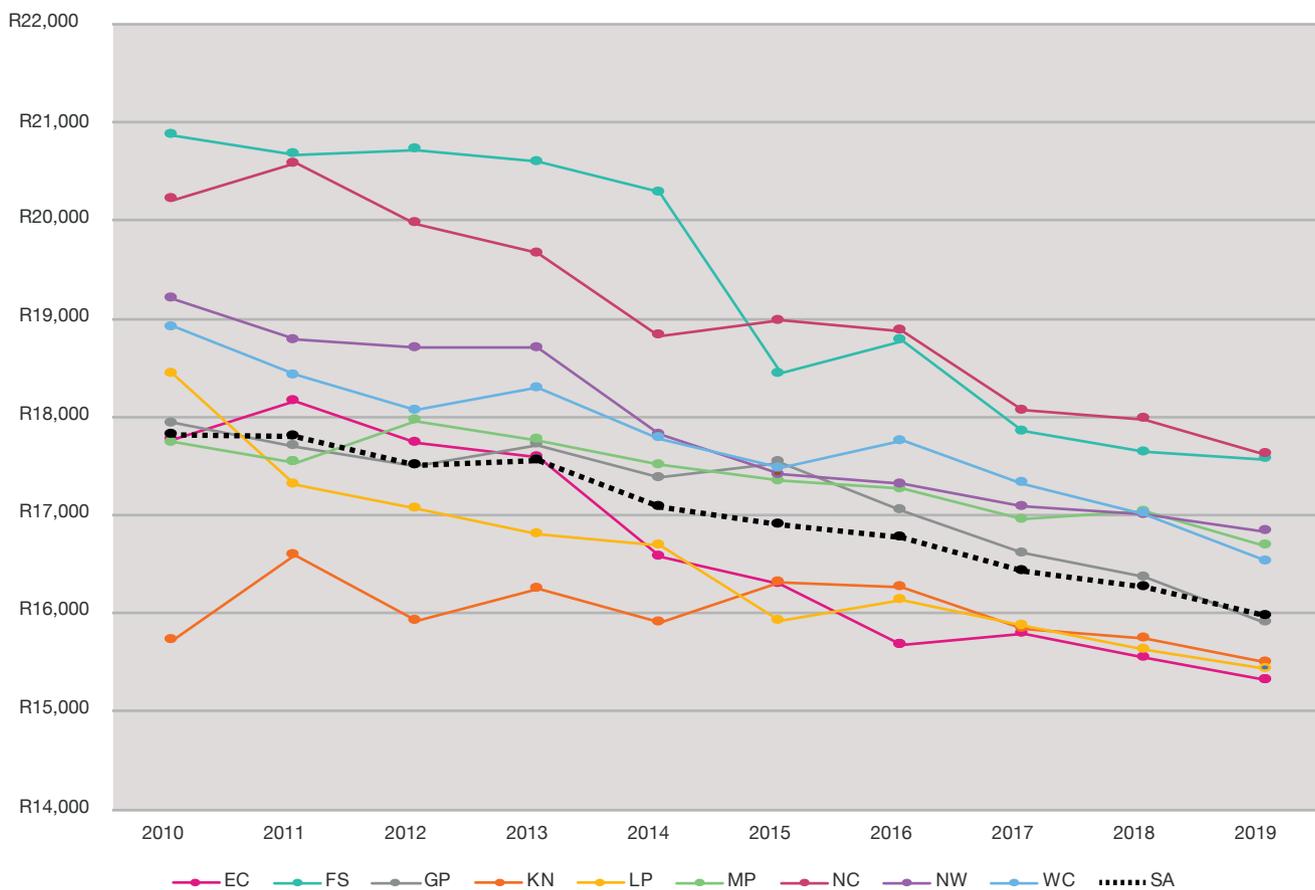
This decline in state funding seems to be affecting learning environments. According to the Progress in International Reading and Literacy Study (PIRLS), the average size of grade 4 classes increased from 40 in 2011 to 45 in 2016. The largest increases were found in the poorest 60% of schools where class sizes increased from 41 to 48 learners, while class sizes only increased from 33 to 35 in the richest 10% of schools. The decline in state funding also appears to be affecting performance in international assessments, with no improvement in reading outcomes on PIRLS (literacy) between 2011 and 2016 and lower gains in TIMSS (mathematics) between 2011 and 2015 than between 2002 and 2011.³⁵

The declining per-pupil expenditure on basic education is occurring in the context of rising per-student spending on higher education. This means that the available budget for schooling is shrinking, and the shrinkage is being felt most severely by poor children and their families, exacerbating inequality. Only about 15% of each cohort of children who start grade 1 enter higher education in South Africa. Amongst children from the poorest 70% of the population, it is less than 5% of a cohort.³⁶

Education is recognised by both families and the state as the most important path for individuals to escape poverty and to contribute to a prosperous and more equal society for all. Bolstered by scientific evidence, it is well accepted that the foundations for learning are laid down in early childhood. Subsequent experiences in preschool, primary and secondary school, supported and intensified by families, can amplify learning and channel children’s talents towards further achievement and productivity. However, socio-economic inequalities can undermine the early development of children from the poorest families, and poor quality schooling can further entrench inequality through incomplete education and low paid work, creating a cycle of disadvantage for the next generation.

The fact that substantial numbers of poor children do overcome the odds against them is a tribute to their families, teachers and schools, and a reminder that this can be done on a large scale given the right improvements to the education system, greater engagement with and by families,

Figure 18: Provincial per learner expenditure on basic education, projections 2010 – 2019



Source: National Treasury's *Estimates of Provincial Revenue and Expenditure 2010 – 2017*, using real cost drivers and expressed in 2017 rands. Projections based on the Medium-Term Expenditure Framework. Calculations by Nic Spaull, Research on Socio-Economic Policy group, University of Stellenbosch.

and early identification and support for children with barriers to learning.

Collaborating for the social development of children

Like health and learning, the social development of children begins at birth and develops in the home. Some values are shared by all societies (e.g. not deliberately hurting other people); others vary in the extent that they are formalised in law (e.g. definitions of child abuse); yet others vary by culture and religion, such as expectations around how boys and girls behave, or how children should conduct themselves in the presence of elders.

In general, while the state attempts to prevent, control and punish anti-social behaviour through criminal laws governing such acts such as murder, assault, abuse, theft and damage to property, the state depends on families to inculcate a range of pro-social behaviours, ranging from saying please and thank you to giving assistance to people when they need it. The state cannot legislate or feasibly enforce these aspects of social behaviour, but they are important for living together harmoniously in society. Social behaviours are also promoted

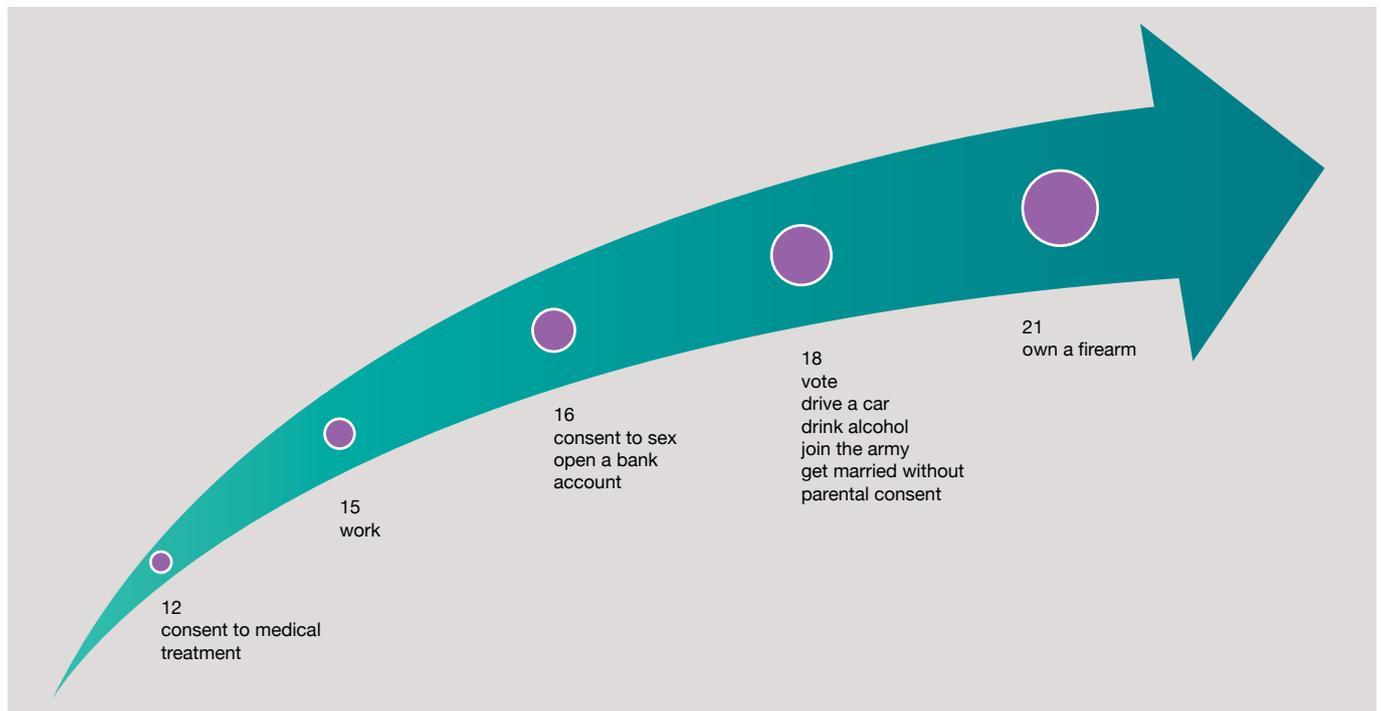
by schools and faith communities, and through laws and regulations introduced by the state. For example, the National Noise Control Regulations enable local government to act against people whose loud parties or power tools disturb the peace.

The process of socialisation

Socialisation is the process by which children become integrated into society through their acquisition of the values, beliefs, behavioural standards and morals of their family, their cultural and religious communities, their peers and the laws of the state to which they are held accountable. Both families and the state recognise children's increasing autonomy and capacity to take responsibility for their own decisions and actions as they get older, as illustrated by some major milestones in Figure 19.

International research suggests that social development is rooted in children's first attachments to their caregivers, and the extent to which these early relationships instil trust, empathy and happiness to shape subsequent relationships.³⁷ The powerful learning mechanisms of identification and modelling³⁸ endure throughout life, and children acquire

Figure 19: Children’s evolving capacities and ages of consent



social attitudes and behaviours – including towards people from different races, religions and gender – from hearing and observing people in their family, school, social groups and communities, and through the media.

By two to three years of age, children have a wide range of social behaviours, facilitated by their increasing language and communication skills. Parents and caregivers continually act to shape children’s social behaviour through injunctions such as “share” and “play nicely”, which are made more effective by modelling the appropriate behaviour, structuring the child’s actions, and praising pro-social behaviours. From early on, caregivers also try to prevent behaviours which are dangerous (like crawling near a fire), costly (breaking a valued household object), or socially undesirable (biting another child).

Family socialisation is extended into crèches and preschools. The Department of Basic Education in the National Curriculum Framework for Children from Birth to Four (NCF) explicitly “draws on the values in our Constitution”³⁹ to provide guidance for parents and those responsible for ECD programmes and is thus an explicit agent of socialisation. Sensitivity to group differences and respect for others is a theme that runs throughout the NCF and receives particular attention in the thematic areas of “identity and belonging” and “knowledge and understanding of the world”. Children’s and adolescents’ positive social behaviours continue to be shaped by encouraging empathy for others, helping children exercise self-control by verbalising their

actions and their consequences, modelling appropriate behaviour, explaining why certain behaviours are kind, helpful or safe, and affirming children and adolescents when they act in pro-social ways.⁴⁰ Of course, this is not a one-way process; children’s behaviour elicits responses from others that may promote pro- or anti-social behaviour. For example, some families try to inhibit dangerous and inconsiderate acts through physical punishment which may encourage compliance, but which often has unintended negative side-effects, prompting withdrawal and anxiety on the one hand, or rebellious aggression on the other.⁴¹

Corporal punishment

Despite a progressive Constitution, which protects children from maltreatment, abuse and neglect, and the abolition of corporal punishment in schools and the criminal justice system, corporal punishment in the home remains pervasive in South Africa. Most parents (62%) think that spanking is an effective mechanism for teaching children right from wrong, as illustrated in Table 12. But most parents also believe that it is always better to talk to children than to smack them when they do wrong, and close to a third of South African parents believe that children should never be spanked.

An analysis of the 2003 Social Attitudes South Africa Survey⁴² found that young children are more likely to experience physical punishment than older children. Three-year-olds are mostly likely to be smacked and four-year-olds most likely to be beaten with an object, such as a belt, shoe, brush or stick. In

Table 12: Attitudes towards child discipline, 2003 and 2012

	Children should never be spanked when they misbehave (%)		When children do wrong, it is always better to talk to them than to give them a smack (%)		Spanking teaches children right from wrong (%)
	2003	2012	2003	2012	2012
Agree	29	28	71	61	62
Neutral	8	14	12	21	17
Disagree	60	57	14	17	21
(Do not know)	2	1	2	0	0
Total	100	100	100	100	100
Number	2459	2503	2464	2505	2502

Source: Human Sciences Research Council *South African Social Attitudes Survey 2003 and 2012*. Analysed by Benjamin Roberts

70% of cases young children were smacked or beaten by their mothers or female caregivers. Older children and adolescents also report abuse and neglect by families and teachers.⁴³

Physical punishment is known to damage children's development because of the pain, humiliation and confusion caused when loved adults behave in cruel ways towards especially young children.⁴⁴ Despite this, some South African parents strongly object to the 2017 court ruling that prohibits the use of corporal punishment in the home (see box on page 16). These families regard smacking as an essential part of their parental duty to regulate their children's behaviour. This contestation between families and the state spills over into schools. Despite the 1996 ban on the use of physical punishment in schools, the 2012 National School Violence Study found that 50% of learners reported having been caned or spanked by an educator or principal as punishment.⁴⁵

Developing social capacities

Self-control, agency and resilience are social capacities that evolve throughout childhood and adolescence, initially within the family and later through schools, peer groups and communities. Despite relentless adversity, the majority of young South Africans achieve positive life outcomes by staying in school, refraining from drug and alcohol abuse, helping in the home, and aspiring to contribute creatively and meaningfully to their society.

When South African adolescents talk about social resources that enable their resilience, they emphasise a network of immediate and extended relatives.⁴⁶ This "family community" encourages agency and provides material support, meaning and understanding of the emotional and other challenges adolescents face in growing towards adulthood.⁴⁷ It is complemented by state support in the form of educational subsidies and social grants⁴⁸.

Many school-going adolescents ascribe their resilience to education-related aspirations and academic progress.⁴⁹ They associate completion of high school with tertiary education, job opportunities, improved future prospects, and better lives for their own families. But young people are sceptical about education's potential in the face of high unemployment. Adolescents also point to other ways in which their resilience is undermined,⁵⁰ such as the lack of law enforcement, safe urban spaces, accessible and helpful social services, and community-based facilities (e.g. youth centres that provide access to computers and recreation opportunities)⁵¹.

Social behaviour is a cornerstone of human development and of social cooperation and inclusion. The processes of socialisation demonstrates the collaboration needed between the state and families to assist young people to acquire the social skills, sensitivities and competencies needed to negotiate their place in society, while according space to others. The elements of social behaviour are acquired at a very early age, principally in the home, and further shaped in schools, peer groups, religious and other social communities. The state depends on families to inculcate appropriate social behaviour and to encourage increasing autonomy and independence as children grow up so that the younger generation can build on the material and social foundations laid by their parents. The state takes action when young people contravene laws, but continues to rely on families to help children and adolescents to recover from encounters with the law.

Conclusion

Health, education and social behaviour, the three pillars of human development, have been dealt with separately in the chapter. But each implies the presence of the other, in a mutually influential triangle, as illustrated in Figure 20.

The state and family contributions to each capacity reinforces the others. For example, social development is enhanced by good health and education; similarly, education is enhanced by health and social development, and health by education and social development. Families do not rear their children for one or the other capacity; rather, they rear a whole child to adulthood. The state also acknowledges the integrated value of human development for individuals and the country, although in practice services are delivered by sector and often in fragmented ways.

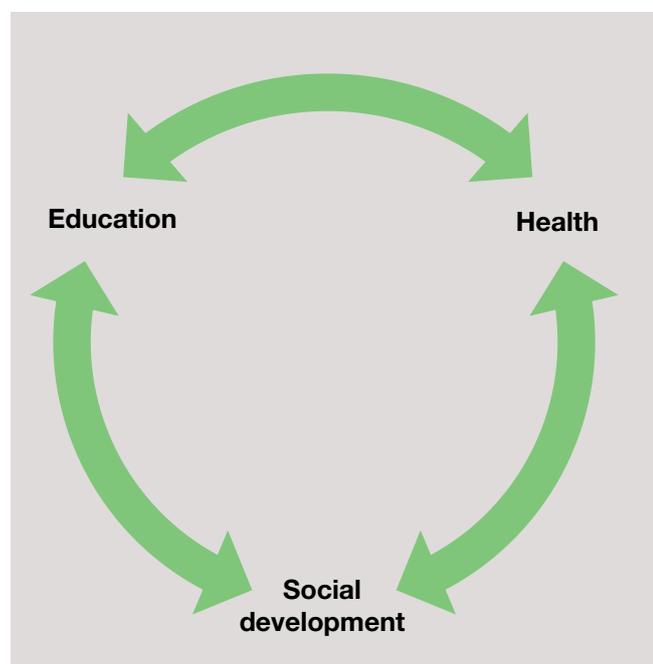
All three capacities develop early, starting at birth and are rooted in children’s relationships with caring adults in their home environment, and subsequently in their schools and among their peers. This means that, for the state to improve the health, education and social development of its citizens, it must invest in families by providing a supportive environment for young children. This is at the heart of the Nurturing Care Framework, launched at the World Health Assembly in May 2018.⁵² As illustrated in Figure 21, children’s receipt of the five components of nurturing care – health, nutrition, responsive caregiving, security and safety, and opportunities for early learning – depends on their families being nested in a supportive environment where enabling policies and supportive services are designed to empower communities and strengthen caregivers’ capabilities.⁵³

As indicated at the start of the chapter, both families and the state are under strain. Persistently high levels of unemployment, poverty, violence and substance abuse

give rise to tensions that spill over into health services, educational institutions and homes. Services are disrupted and infrastructure may be destroyed. Functional families, health facilities and schools do what they can to keep children healthy and in education, aiming for a better life in the future. But fragile families and dysfunctional or non-existent services may combine to fail children. For example, poor caregivers who need to work but have no affordable child care options may be forced to leave young children alone at home, where they are vulnerable to accidents or abuse; children may go hungry and struggle to learn when school lunches are not delivered because corrupt officials divert funds to their own accounts; families may be unable to get treatment for children when clinics run out of drugs or staff are dismissive of patients; learners may wander out of poorly managed schools during school hours, and may make their way to shebeens or other risky places beyond the protection of families.

For the state to improve the health, education and social development of its citizens, it must invest in families by providing a supportive environment for young children.

Figure 20: Health, education and social behaviour contribute to human development



The time is ripe for renewed and conscious collaboration between the state and families to ensure that all children, and especially those who are vulnerable, receive care and support through state services, community inclusion and family support. At this juncture, the two foundational institutions of society need each other desperately. They must combine their strengths and complement each other’s weaknesses to give all South Africa’s children a better chance. As a collective with authority and resources, the state must take the lead. The following actions will help move us forward.

- The state needs to recognise the family’s essential role in children’s education, health and social development – from birth through to adolescence. State policies, programmes and services need to build on this foundation and be delivered in a way that invite collaboration and that respect, affirm and support the efforts of families and caregivers.
- The roles and responsibilities of families must also be appreciated by families themselves. By standing up together and working with civil society organisations, families can demand better quality services for their children. They can speak out on the services and support

Figure 21: Nurturing care in the context of a supportive environment for family care



Source: World Health Organization, UNICEF & the World Bank (2018) *Nurturing Care for Early Childhood Development: A framework for helping children survive and thrive to transform health and human potential*. Geneva, Switzerland: World Health Organization.

they need from the state, civil society and the private sector to realise their roles and responsibilities in the human development of South Africa’s children.

- Civil society, the private sector, the state and media can help to showcase examples of successful collaborations between families and the state for the demonstrated benefit of children.
- Contestations, such as those emanating from different views of children’s autonomy and parental powers should be debated in ways that bring the state and families

closer together for their shared purpose of supporting the health, well-being and education of children.

Children, families and even states are resilient and respond positively to improvements in their conditions. Where the state and families collaborate in the interests of children, they all thrive. This is the goal of governments and families everywhere, too often distorted by short-term interests and distractions. It is time for the state and families to align their efforts and commit to improving the conditions for children.

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Supporting families in South Africa: A policy map

Patricia Martin, Katharine Hall and Lori Lake

When [children's] rights are respected, protected and fulfilled, dividends are returned in the form of global security, sustainability, and human progress.

UN Human Rights Council, 2016¹

The provision of support to families by the state is central to achieving sustainable development. Human rights and development instruments recognise families as key development partners, without whom children's rights and lasting development cannot be achieved.

Development instruments such as the Sustainable Development Goals (SDGs), Africa's Agenda 2063 and Africa's Agenda for Children 2040 recognise that economic and social development depend on realising children's rights – for example to family care, nutrition, water, shelter, health care, social services, social security, protection and education. The United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) recognise families as the primary duty-bearers in securing children's rights and outline the duty of states to take all necessary measures – legislative, financial and administrative – to enable families to nurture, protect and provide for children. This includes providing the necessary services and ensuring that families can access them.

*Support for families at the heart
of human rights and sustainable
development.*

The UN Secretary General recently confirmed the centrality of families and the associated responsibility of states to develop policies that support families and ensure sustainable development. He noted that because:

*... the stability and cohesiveness of communities and societies largely rest on the strength of the family ... the very achievement of development goals depends on how well families are empowered to contribute to the achievement of those goals. Thus, policies focusing on improving the well-being of families are certain to benefit development.*²

A recent analysis confirms that support for families is a proven vehicle for sustainable development. If families are provided with appropriate support to enable them to provide nurturing care, then their children's full potential can be realised – and development accelerated and sustained.³

The report concludes that:

*Across all the SDGs reviewed, the role of family policies is consistently linked to improved outcomes. Mechanisms of delivery matter for different goals – including family participation, targeting, conditionality, and coverage.*⁴

Supporting families makes a difference, but only where the policies and programmes are responsive to families' changing needs, and recognise and value the diversity of family arrangements.⁵ The rights and development instruments create a duty on states to develop policies, laws and programmes that are inclusive of *all* families, so that no child is left behind.

Policies and programmes that support families cut across many sectors and departments and therefore require strong leadership and coordination. A coherent national policy framework should clearly articulate the role of families in promoting sustainable, rights-based development, and provide a mandate to guide the design and delivery of policies, services and support to all families in an inclusive, responsive and integrated way.

The implications of the agenda for sustainable development are clear: policies alone are not enough. A capable state is critical to ensure effective implementation: the state must develop a public system that unites, compels, enables, supports and holds all role players accountable for fulfilling their responsibilities to achieve the shared family support vision and goal. The system's features should include:

1. **Policies** that provide direction and an enabling framework to ensure a shared, developmentally appropriate vision of the family.

2. **Leadership, governance and coordination structures** to coordinate the different sectors and advance the shared vision and goal.
3. **Programmes / platforms** to deliver responsive services and support at a family, community, and facility level.

The national policy framework

South Africa has developed several overarching policies or national frameworks that describe a vision and prescribe mechanisms for delivering a comprehensive suite of services so that families can secure the optimal development and protection of children in their care.

These include the following:

- The National Development Plan 2030: Our Future – Make it work (2012)
- The White Paper for Social Welfare (1997)
- The White Paper on Families in South Africa (2013)
- The National Integrated Early Childhood Development Policy (2015)
- The Child Care and Protection Policy (Draft) (2018)

The **National Development Plan** (NDP) views families broadly, expressly including single-headed families, various cohabitation arrangements, multigenerational families, and families with heterosexual and same-sex parents. It acknowledges that families are subject to many pressures including the persistence of racially segregated communities and that poor residential areas tend to be far from work, limiting family time at home; the difficulties that poor families face in securing adequate education or healthcare for children; and the high levels of interpersonal violence that put family members at risk, both within and beyond the household. It calls for further investigation to inform appropriate policy interventions to “make families better able to provide a loving, supportive and safe environment... in which values such as tolerance, diversity, non-racialism, non-sexism and equity are fostered.” In this way it sees the family not only as a development partner for reproducing and developing the population, but also essential for building social cohesion and tolerance in society.⁶

The specific family support services prescribed by the NDP include health care, early childhood development, water, sanitation and housing services, as well as education and employment support. Many other elements of the NDP’s vision will benefit children and families, including building the economy, reducing unemployment, ensuring household food security, transforming human settlements, building an inclusive rural economy, creating safer communities and promoting social cohesion.

The **White Paper for Social Welfare** articulates South Africa’s developmental and inclusive approach to social welfare. It aims to meet people’s basic needs and build their capacity, so that all South Africans can achieve their aspirations and participate fully in social, economic and political life. The White Paper outlines a comprehensive system of services to ensure that all people have economic and social protection, and access to welfare programmes that promote development. The policy recognises that social welfare needs to be linked to other mechanisms – such as health care, nutrition, education, housing, employment, recreation, rural and urban development and land reform – in order to achieve social development.⁷ Like the NDP, the White Paper places great emphasis on the family, which it sees as a core unit of society. It calls for the development and delivery of a multi-sectoral suite of services and support for families to enable them to provide adequate care for their members, especially children, and in so doing free them from apartheid’s legacy of poverty and inequality.⁸ It sees this integrated approach as essential for addressing the structural drivers of poverty and inequality.

Children in poor families are less likely to attend a group-based early learning programme.

The **White Paper on Families in South Africa** also views family as a key development imperative and seeks to secure government-wide support to enhance the “socializing, caring, nurturing and supporting capabilities of families so that their members are able to contribute effectively to the overall development of the country.”⁹ Like the NDP and Social Welfare Policy, the Family Policy sees a well-integrated, cross-sectoral approach as essential for implementation, including a high-level partnership between government, the private sector and civil society. Within government, implementation depends on a “sound intersectoral and interdepartmental system”¹⁰ at national, provincial and local levels and involves around 20 departments ranging from Social Development, Health and Basic Education to the departments of Labour, Trade and Industry and International Relations. An important question is how to establish effective coordination and accountability as the Department of Social Development does not necessarily have sufficient leverage over other departments, particularly those outside the social cluster. Although the White Paper, like other overarching policies, defines families broadly, some of the detail reveals a much narrower view of what constitutes an “ideal” family, as outlined in Box 11.

Box 11: Contradictory perspectives in the Family White Paper

Marlize Rabe

When family policy is at stake, a specific definition that is sensitive to the socio-historical context is required since it will have consequences for who will receive services and share responsibilities based on family relationships. The South African *White Paper on Families* defines a family as:

*a societal group that is related by blood (kinship), adoption, foster care or the ties of marriage (civil, customary or religious), civil union or cohabitation, and go beyond a particular physical residence.*¹¹

This definition is inclusive of diverse family relationships because it does not narrowly stipulate the various possible relationships between the family members and it recognizes that families often do not share a household. The *White Paper on Families* recognises the wide variety of families in South Africa including families that are split between rural households with income earners living in the city, same-sex couples with or without children, polygamous families, nuclear and extended families.

However, this seemingly positive support for the variety of family forms in the early section of the *White Paper* does not manifest when “ideal” families are outlined. Several authors¹² highlight how the *White Paper* actually promotes a middle class heteronormative view of what families should be by suggesting that married heterosexual couples with enough financial resources are ideal (or “stable”). *Marriage* is portrayed as a mechanism that resolves or prevents conflict since household labour and income earning activities are supposedly shared between adults. These notions may stem from international literature where the link between stable marital unions and family members’ quality of life is often found, and where

unemployment rates are not as high as in South Africa.

Yet, there is confusion between the cause and the outcome in the above argument. For example, if two people are employed, married, have children and make use of paid domestic and child services (e.g. nannies and pre-schools), they are insulated from stresses associated with poverty. The latter may include difficult and long journeys to work, insecure and insufficient income and not having access to reliable child care. Marriage in itself can thus not be portrayed as the source of stability, since class position is more likely responsible for the stability.

Moreover, conflict and domestic violence occur in all types of families and instead of promoting marriage as a solution to problems, conflict resolution strategies should form part of supporting all families. There should also be an acknowledgement that some family members are better off not living together (e.g. when couples divorce or choose not to marry in the first place) but certain parenting responsibilities towards children can still be undertaken, such as social and financial support.

Instead of promoting a particular family ideology, state support towards children and families should be practical and responsive. Examples of such support include low cost housing that caters for various household arrangements (e.g. multi-generational households and lone parent households), conflict resolution services, universal and affordable childcare services, equally accessible birth registration irrespective of marriage status, welcoming of men into maternity wards, and programmes to empower men to become better nurturers and to ensure that fathers pay maintenance.

Two recent policies advance the national vision and require the development of a coherent system of inclusive support and services to enable all families to protect and support the development of children in their care. The **National Integrated Early Childhood Development Policy** (2015) and the **draft National Child Care and Protection Policy** (2018) require relevant government departments to develop and deliver a suite of promotive, preventative and protective services that respond to the specific risks faced by individual families.

Guiding principles

Viewed holistically, South Africa’s overarching policies align with the international and regional development agenda. They

provide direction for the development of inclusive government-wide policies and programmes to support families and secure the foundations of sustainable development.

The family is a critical partner for social and economic development and the care and material support families provide to children will determine the development of the child and their ability, where born into adversity, to transcend the intergenerational cycle of poverty and inequality.

1. Families are diverse and are social units, not necessarily created through marriage or co-parenting, or living in the same household. Families provide children with the best start in life and harbor significant opportunities for children’s development, but families are also under stress.

Many of the stresses are a legacy of apartheid policies which sought systematically to weaken the family. These stressors are exacerbated by persistent and structural unemployment, spatial inequality and poverty.

2. The state is duty-bound to ensure that families receive the support services they need to overcome stress and risks.
3. All families – as expansively defined – must receive services to enable them to play this developmental role.
4. Services can be provided by government or civil society – but it is government’s duty to ensure that all families benefit.

A continuum of family support

The guiding principles recognise that the planning, provisioning, resourcing and monitoring of family support services must be managed through an effective and efficient public system which ensures the provision of a continuum of inclusive, responsive and developmental family support services including:

- **Universal services:** All families benefit from physical and social infrastructure and receive the services necessary to enable them to fulfil their developmental role;
- **Targeted services:** Families under stress or suffering deprivation receive assistance so that they can support and provide for children in their care;
- **Responsive, emergency and specialised services:** Children and families who are exposed to risks or trauma can access the relevant protective or therapeutic services, either on demand or through efficient referral systems. Some services, such as police, fire, ambulance and emergency welfare services, are universal in that they are available to anyone in need, but also responsive in that they need to be relied upon to come quickly in an emergency.

The remainder of this chapter provides an overview of policies and programmes delivering universal, targeted and responsive services and benefits to families and their children. We outline some of these and draw attention to some of the successes, challenges and conceptual flaws in the design or delivery of selected programmes.

Universal services for all families

A range of policies, laws and programmes has been adopted and rolled out with the objective of providing universal services to enable families to provide the nurturing care their children need.

Department of Home Affairs

The Department of Home Affairs is mandated to provide caregivers and children with identification documents such as birth certificates, identity documents, marriage and death certificates, as well as residency documents for foreign migrant families.ⁱ While the policies and laws are generally inclusive and purport to ensure universal access, the ways in which they are narrowly interpreted and implemented discriminate against certain children¹³ (See Box 12).

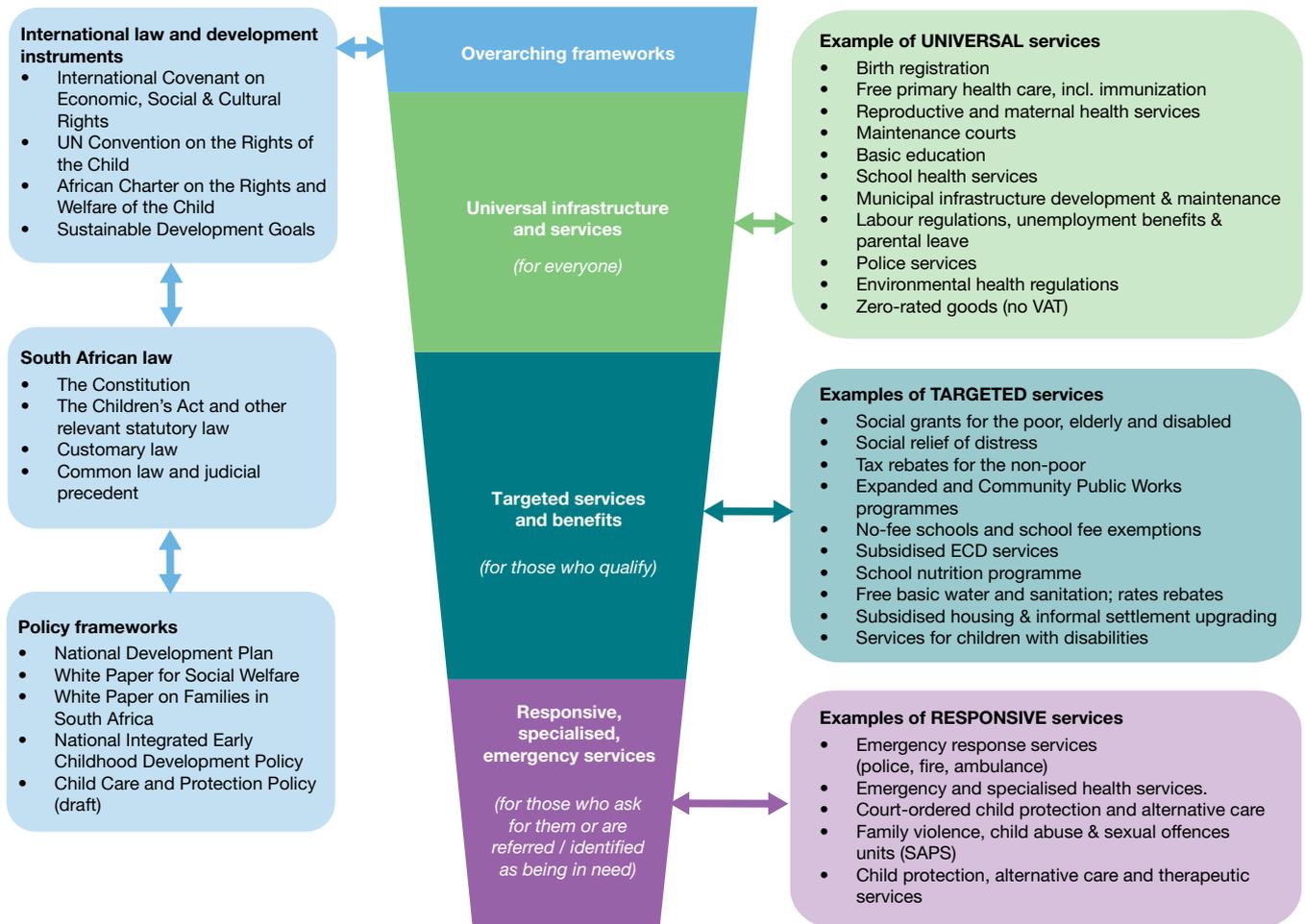
Health and nutrition

The Department of Health is mandated to provide a range of health promotion, prevention and therapeutic services across the life cycle of children and their caregivers. It is supported by a range of other departments such as Social Development; Agriculture, Forestry and Fisheries; Water and Sanitation; Environmental Affairs; and Human Settlements. These other departments provide services designed to address the social and economic determinants of children’s health and that of their families. The range of programmes and services for children and families include:

1. Free primary health care services for all children and families (except those who benefit from a private medical aid).
2. National health insurance,¹⁴ a financing system which (when fully implemented) aims to provide financial risk protection and enable all South Africans to access an affordable package of health care services irrespective of their socio-economic status.
3. The Integrated School Health Policy, which outlines a comprehensive package of services for learners in grades R – 12. These include health education; immunization, deworming, sexual and reproductive health services;¹⁵ screening for chronic illnesses, malnutrition and disabilities; and referrals for follow up care.
4. The Integrated Nutrition Programme, which focuses on children under six, pregnant and breastfeeding women, and provides support to promote optimal feeding practices (including exclusive breastfeeding for the first six months and appropriate complementary feeding), growth monitoring, the provision of micronutrient supplements (such as zinc and vitamin A), and the fortification of foods such as maize, salt and bread.
5. The recently adopted National Strategic Plan for HIV, TB and STIs 2017 – 2022,¹⁶ which aims to accelerate prevention, and provide treatment, care and adherence support for all.

i The right of all families and children to a birth certificate and other enabling documents is guaranteed by, inter alia, the National Integrated ECD Policy; the Draft Child Care and Protection Policy; the Births and Deaths Registration No 51 of 1992 as amended; the Marriage Act No 25 of 1961; the Recognition of Customary Marriages Act No 120 of 1998; the South African Citizenship Act No 88 of 1995; the Refugees Act No 30 of 1998; and the Immigration Act No 13 of 2002; the Sex Description and Sex Status Act of 2003; and the Children’s Act no 38 of 2005.

Figure 22: From overarching frameworks to responsive services



Water and sanitation

Access to clean running water and adequate sanitation is critical for children's health, nutrition and development. Several policies and programmes recognise the right of all children and their families to have access to basic water and sanitation, and set minimum norms and standards for the design of residential developments, health care facilities, early learning centres and schools.ⁱⁱ The Strategic Framework for Water Services (2003) requires that all people are progressively provided with at least basic water and sanitation services.¹⁷

Early childhood development

The National Integrated Early Childhood Development Policy¹⁸ outlines a package of essential services designed to promote the optimal health, care and development of young children. The state is responsible for ensuring sufficient quantity, spread and quality of these essential services. In addition to birth

registration, health care, nutrition, and environmental health services, the essential package includes:

- Income and psychosocial support for caregivers.
- Information about positive parenting practices and how best to promote young children's health, growth, early learning and development.
- Quality childcare programmes that are safe and promote early learning.

Responsibility for implementing these early care and learning is vested in several departments:

- The **Department of Health** is responsible for a suite of health and nutrition services, as well as parenting support and education for pregnant women and caregivers of young children under the age of two years. These interventions have been integrated into the revised Road to Health Booklet and Side-by-Side campaign to strengthen support for caregivers of young children.

ⁱⁱ Policies and programmes include the National Sanitation Policy 2016, the Strategic Framework of Water Services 2003, the Upgrading of Informal Settlements Programme, the Children's Act No 38 of 2005, National Environmental Health Norms and Standards for Premises and Acceptable Monitoring Standards for Environmental Health Practitioners, Regulations relating to minimum uniform norms and standards for public school Infrastructure, 2013.

Box 12: A closer look at birth certificates

Paula Proudlock

Access to services often depends on whether family members and children have identity documents and birth certificates. Other important enabling documents include marriage and death certificates.

The issuing of a birth certificate represents formal recognition by the state of the child's existence. It is the document that allows registration of the child on the national population register. It also records the identity of the biological parents, which is important for establishing parental responsibilities and proving orphan status if parents die.

Enabling documents are essential for:

- Population-level planning and adequate resourcing of supportive services;
- Access to subsidised early learning programmes, school, writing matric exams, free basic services and housing subsidy applications, child protection services and alternative care;
- Enjoyment of inheritance rights and access to disability and death benefits upon the death or injury of a spouse or caregiver;
- Claiming maintenance from parents or social security benefits from the state (eg. the Road Accident Fund or the CSG);
- Access to social and economic opportunities, including opening a bank account, applying for a job or bank loan, or purchasing a cell phone;
- Protecting children from child labour and early marriage, and establishing their age for purposes of legal consent.

The Births and Deaths Registration Act can be read to enable a diversity of caregivers to access birth certificates irrespective of whether or how the parents are married, the parents and/or child's nationality, or whether the child is living with parents or other family members.¹⁹

However, in practice the law is narrowly interpreted and applied, while the supporting computer systems, procedural protocols, and attitudes of Home Affairs leaders and officials prevent timely access to full birth registration for many children, especially when the parents are not married, when both or one parent is a foreign national, or when the caregiver is not a biological parent. Such delays can push registration beyond the 30-day limit, after which additional onerous requirements for late birth

registration apply. Discouraged parents and caregivers either give up or have to approach advice offices or public interest law organisations for legal assistance.

- **Unmarried parents** face greater difficulty than married parents in securing a full birth certificate that includes the father's name. The father's details may be added if he acknowledges paternity on the application form in the presence of a Home Affairs official. The father therefore needs to be with the mother when the birth registration is done. The majority of birth certificates in South Africa (62% in 2017) contain only the mother's details.²⁰
- **Unmarried fathers** can apply, after the birth certificate has been issued, for the inclusion of their name and the issue of a revised birth certificate. If the mother consents, then this can be done by both parents signing an affidavit at the Home Affairs office. But if the mother cannot consent (for example because she is dead, absent or lacks capacity) the father must apply to the High Court for an order confirming his paternity. This process is too costly and inaccessible for most fathers.
- **Foreign national parents** also face onerous procedural requirements. In the case of unmarried parents, if Home Affairs suspects that one parent is not a South African citizen they request the parents and child to undergo a DNA test at their own cost (approximately R2,200).²¹ Temporary residents, asylum seekers and parents with work permits or visas must submit a copy of their passport and their permit or visa. Many foreigners who are legitimately in the country do not have a passport or have expired permits due to the long delays in processing of refugee permits. If the mother's permit has expired at the time her baby is born or her passport is missing, she will not be allowed to register the child's birth at all, and Home Affairs tends to refuse applications in the father's name in these cases, even if the father's documents are in order.
- **Family members** (such as grandparents) caring for children whose biological parents are alive but not living with them, are no longer able to register the birth of the child. Only where both the biological parents are deceased may they do so.²² Where one parent is deceased and the other is unknown or has abandoned the child, a social worker needs to assist in obtaining a

Children's Court order before Home Affairs will accept the birth registration application, but they are often required to search for the remaining parent first (for example, by advertising in newspapers). Given that social workers already have very heavy caseloads these processes can delay birth registration by a year or more.

- **Mothers without identity documents** cannot obtain a birth certificate for their baby until they have first

completed their own late birth registration process. Birth registration for a person over the age of 7 years is very onerous as it requires detailed information on the person's life events, numerous certified supporting documents, and possible interviews with a range of people. This is particularly difficult for teenage mothers who may face stigma and may struggle to obtain all the supporting information.²³

- The **Department of Social Development** is responsible for providing (or funding NPOs to provide) and regulating crèches and ECD programmes for children aged 0 – 4.
- The **Department of Basic Education** is responsible for the development of the early learning curriculum, the training of ECD practitioners, overseeing the implementation of the early learning curriculum and integration of ECD messaging into the school curriculum.²⁴
- **Local government** must ensure that registered centres comply with norms and standards. In addition, the ECD Policy requires local municipalities to register child-minding services.²⁵

Workplace support

Several policies, laws and programmes have been adopted to ensure parents and caregivers receive support from their employers to enable them to fulfil their parenting responsibilities. The implementation of the services involves two key role players. The Department of Labour is responsible for overseeing implementation of the governing legislation, while employers (businesses, government departments, NGOs and others) are responsible for actual implementation. Key workplace support programmes include:

- **Unemployment insurance:** In terms of the Unemployment Insurance Fund Act²⁶ workers and employers are required to make monthly contributions to the unemployment

insurance fund. In the event of retrenchment, death, illness or the birth or adoption of a child, the employee or his or her dependents can claim from the fund. For example, workers who fall pregnant while contributing may claim up to 121 days of benefits.

- **Parental leave:** The Basic Conditions of Employment Act²⁷ currently guarantees women four months' unpaid maternity leave. The new Labour Laws Amendment Bill²⁸ (not yet in force) makes provision for increased UIF and maternity benefits, and will afford new fathers 10 days paid paternity leave as outlined in Box 13.
- **Support for breastfeeding in the workplace:** The Code of Good Practice on the Protection of Employees during Pregnancy and After the Birth of a Child²⁹ is designed to safeguard the health of pregnant women and new mothers. It requires employers to allow mothers two 30-minute breaks a day to express milk or breastfeed their babies. Although the Code creates a duty which may be enforceable through arbitration and the courts, the Department of Labour does not monitor or enforce its provisions. The Code is not widely known and is rarely implemented by employers in the public, private or NGO sectors, and women in the informal sector could not benefit from this protection even if it were enforced. Though designed to be universal, the Code is far from universal in practice.³⁰

Box 13: A closer look at parental leave

The adoption of the Labour Laws Amendment Bill marks a positive development in our governing labour framework. As noted in the following commentary, the amendment gives effect to the broader, inclusive understanding of family as the fundamental social structure upon which our national development depends, and its expansion of support to fathers and adoptive parents strengthens the developmental foundations of the country:

Fathers would now be able to assist their partner/ spouse when their child is born or adopted and would also be able to bond with the baby. Furthermore, it will go a long way to ensure that society does not view mothers as the only primary caregivers of children. Paid paternity leave could pave the way for fathers to know that the South African Legislature values the roles that they play in the upbringing of their children.³¹

Child maintenance

South Africa's laws³² recognise and reinforce the duty of both parents (and additional family members such as grandparents) to support their children in accordance with their means. The Department of Justice and Constitutional Development has developed systems to help enforce the payment of maintenance and track down maintenance defaulters, for example through Operation Isondlo. (See the chapter on Legislative Developments for the latest developments in maintenance law)

Basic education

The South African government has adopted a range of policies and laws that support parents and family members to realise the children's right to basic education. For example, the South African Schools Act³³ makes primary and lower secondary schooling compulsory for all children between the ages of 7 and 15 years. The Act obliges every parent to ensure their children are enrolled at school and attend school and obliges the Department of Basic Education to ensure that there are enough school spaces to accommodate all children.³⁴ In addition, the Policy on Learner Attendance³⁵ obliges schools to monitor daily attendance of learners and take supportive action where they are unlawfully absent. (See the chapter on Legislative Developments for recent developments around compulsory school attendance.)

Regulation of harmful business and cultural practices

Families are primarily responsible for ensuring that their children are protected from harm. However, modern

economies and technological advances create risks for children that families have little control over. The South African government has therefore taken measures to protect children by regulating potentially harmful practices. This includes regulating the marketing and sale of tobacco,³⁶ alcohol,³⁷ toys, health and nutritional services,³⁸ and the prohibition of child pornography³⁹ and child labour.⁴⁰ A range of departments is responsible for the implementation of these protective measures, including the departments of Telecommunications and Postal Services, Labour and Health. While the Children's Act regulates the age at which children may participate in customary practices, it also affords them the right to refuse to participate at all.⁴¹

Targeted services and benefits for children and their families

Poverty and other forms of deprivation prevent many children and families from benefitting from the diversity of universal programmes described above. Poverty often intersects with other risk factors to amplify the adversities faced by children, and particularly those whose families have been historically marginalised. The government has therefore developed a range of targeted programmes to support children and their caregivers, households and families.

Targeted programmes are designed to reach particular groups or sub-categories of the population who are defined as eligible for a benefit or service. Targeted programmes are subject to two main types of error: errors of inclusion (where those who are not eligible manage to receive the service or benefit anyway), and errors of exclusion (where those who are

Box 14: A closer look at the CSG means test

The Child Support Grant (CSG) is the biggest of all the social grants in terms of the numbers of people reached, but the smallest in value. CSGs, valued at R410 from October 2018, are paid to the caregivers of over 12 million children each month. To be eligible for a child support grant the child's caregiver must pass a means test based on *the income of the child's primary caregiver and, if married, his/her spouse*. If single, the income threshold is ten times the value of the grant (eg. R4,100 per month). If married, it is double that.

There are two important concepts here: first, the law does not assume that the child's primary caregiver is their biological parent. This is appropriate in a context where many children are cared for by other family members. Family members may therefore also apply for the grant but are required to supply proof that they are the primary

caregiver. This can be an affidavit by a police officer, a report from a social worker, a letter from the school principal, or an affidavit by the child's parent.

Second, if the caregiver (usually a woman) is married, then her spouse's income is included in the means test. This assumption does not apply if the caregiver is in an unmarried partnership, so in effect the Department discriminates based on marital status. Caregivers who are unmarried must pass a much more stringent means test: their income must be half of that allowed to married caregivers in order to be eligible for the grant. Implicit in the differentiated means test thresholds is an assumption that if the caregiver is married then her spouse is contributing to the cost of the child irrespective of his relationship to the child or even whether he lives in the same household.

meant to receive the benefit fail to do so). Errors of inclusion or “leakage” are a concern because the state must try not to waste resources on those who do not need them. But errors of exclusion are arguably an even greater concern because it is often the most vulnerable and marginalized who are unable to access the services that they desperately need and to which they are entitled, and because this failure to reach those most in need is a violation of their rights. For example, approximately 2 million eligible poor children, in particular infants and orphans, do not benefit from the Child Support Grant.

The Social Welfare White Paper emphasizes the developmental importance of targeted programmes including cash transfers and services to ensure that people have adequate economic and social protection during times of unemployment, ill-health, maternity, child-rearing, disability or old age. “Social welfare programmes of this nature contribute to human resource development by enabling impoverished households to provide adequate care for their members, especially children and those who are vulnerable.”⁴²

Multiple departments have developed a host of targeted programmes to alleviate income poverty, to promote health and access to education and to provide adequate living environments. We outline some of the programmes offered by different departments and include some critical reflections on their targeting design or implementation.

Social assistance

The state provides three non-contributory cash grants to the caregivers of children at risk:

- **The Child Support Grant:** An unconditional cash transfer paid to the primary caregivers of children living in poverty (determined by a means test – see Box 14 below) to help them provide for the basic needs of the child.
- **The Foster Child Grant:** A cash transfer paid to a court-appointed foster parent caring for children who are in need of care and protection (for example because they have been abandoned or removed from their family because of abuse or neglect). All foster parents qualify for the grant, regardless of their income and regardless of whether they are permanent residents or refugees.
- **The Care Dependency Grant:** A cash transfer paid to the primary caregiver of a child who must “require and receive permanent care or support services due to his or her physical or mental disability.”⁴³ Beneficiaries may include biological and adoptive parents, primary caregivers (de-

facto carers) or foster parents. To qualify, the monthly income of the caregiver and spouse (if married) must fall below the prescribed income threshold and the child’s status must be verified by a medical officer.

Housing and basic services

The state provides subsidised housing and free basic water and sanitation.

- **Subsidised housing:** The National Housing Subsidy Scheme aims to redress some of the imbalances of the past by progressively ensuring that everyone has access to housing that is of an adequate standard and is accompanied by basic services, security of tenure and access to facilities and employment opportunities. The Department of Human Settlements offers a range of housing subsidies to vulnerable groups who are eligible. These include subsidies for families living in poverty, older persons living in poverty and people with disabilities.⁴⁴ Despite a broad targeting mechanism, the subsidy scheme has been critiqued for its focus on quantity rather than quality and for the proliferation of small matchbox-type housing developments on the urban periphery, far from work opportunities and social infrastructure. Well-located social housing, a housing option that could have served families well, has been deprioritized. Despite its broad targeting in terms of eligible family forms, the housing subsidy scheme has vast errors of exclusion, evidenced by long waiting lists, and has been relatively inflexible in the type of accommodation it can provide for families, as outlined in Box 15 on page 122.
- **Free basic water and sanitation:** The Free Basic Services Policy, White Paper on Basic Household Sanitation (2001) and the National Sanitation Policy (2016) commit local governments to provide a minimum level of free basic water and sanitation services to poor households. This is achieved through tariff rebates, flow restrictors or, in the case of communal services in informal settlements, an assumption that people who must carry water manually cannot consume more than the basic amount.

Education fee waivers

The cost of education – early, basic and tertiary – remains a major barrier to education for children in the care of poor families. The Department of Basic Education offers free schooling to children living in poverty, calculated on the poverty rankings of the surrounding community, or alternatively through a means test. All schools in quintiles 1 – 3 (the poorest 60%) and many in quintile 4 are designated

Box 15: A closer look how families are defined for housing subsidies

Since 1995 the Department of Housing (now Human Settlements) has provided nearly four million housing subsidies for low-cost housing. To be eligible for a subsidy house a range of requirements must be met, including being a first-time property owner and passing a means test. In terms of family and household arrangements the *applicant must be married or cohabiting in a permanent partnership and/or have dependants*.⁴⁵ This suggests that the Department of Human Settlements has a broad view of what a family can be. It does not require marriage or the presence of children, and where there are children it allows for single parent families. In effect, the only household forms excluded from the housing subsidy are single adults without dependants (a household form that

is on the increase) and child-headed households (which are very small in number). Based on the eligibility criteria, the housing subsidy could, in theory, cater for families with a wide range of shapes and sizes.

But when one considers the size of the dwelling the options are much more limited. The first million or so “RDP” houses were just 30m² (for example, 5 x 6 metres for the whole house, including bathroom and kitchen). Even when they were increased to 40m² they were still far too small to accommodate the large and extended family arrangements that were so common. The rapid decline in average household size after 1994 has been partly attributed to the roll-out of the housing subsidy programme.⁴⁶

as no-fee schools and may not charge any fees.ⁱⁱⁱ The caregivers of poor children attending fee-paying schools are entitled to apply for a school fee exemption, and certain children automatically qualify for an exemption, including children in receipt of a social grant, children in foster care or other forms of alternative care, and children in child-headed households. In addition, the South African Schools Act prohibits discrimination against any child (for example, exclusion or withholding reports) because of their caregiver's inability to pay school fees. The school fee exemption policy has been challenged because it discriminates against single parents (see Box 16).

Support for poor families to enable their children's participation in schools extends beyond free schooling to include the right of all parents to participate in decisions about the fees charged at their schools. The Funding Norms and Standards oblige schools to consult the parent body at an annual general meeting, to discuss and decide on the school fees to be charged by that school.

There are other costs of schooling, including uniform, transport and opportunity costs, that remain a barrier to education. Although uniform and school transport policies have been developed with a view to reducing or eliminating these costs for poor families, they have not yet been systematically implemented or adequately funded.

Early childhood development subsidies

The National Development Plan, the National Integrated ECD Policy and the draft Child Care and Protection Policy all recognise education from the early years as critical to

achieving sustainable development. They prioritise increasing investments in early learning programmes to ensure school readiness and secure access to quality education, especially for historically marginalised children.

Provincial Departments of Social Development pay a subsidy of R15 per-child per day to early childhood centres for those children whose family income falls below a specified means test. The subsidy is paid only to centres that are registered with DSD. The subsidy is used to contribute to the costs of services provided by the centre, including the purchase and provision of food and staff salaries. Due to the low value of the subsidy versus the basic costs of running a centre, most centres continue to charge fees even if they receive a subsidy, and cost remains a key barrier for the poorest of families and their children.⁴⁷ As a result, children living in poor families are far less likely than less poor children to attend a group-based early learning programme. For example, “a 4-year-old from a poor household has a 50% chance of being enrolled in a group learning programme. A child of the same age from a wealthy household has a 90% chance of enjoying this benefit.”⁴⁸ Moreover, no additional subsidy is paid to centres to accommodate the needs of children with disabilities.

Health and nutrition support programmes

- **Health fee waivers:** Although primary health care services (clinics) are free for everyone, there are multiple ways in which children and their families can qualify for reduced fees at secondary and tertiary levels in the public sector (general and specialized hospitals). Pregnant women,

iii No fee schools and school fee exemptions are governed by the National Norms and Standards for Public School Funding (1998) as amended.

children under six years and those who receive social grants automatically receive free health care at all levels. For those who do not fall within these categories, a sliding tariff may be applied so that, for the very poor, all public health services are effectively free.

- **School feeding policy:** The Department of Basic Education offers a National School Nutrition Programme that provides nutrition education, deworming, micronutrient supplementation and daily food to learners attending schools in quintiles 1 – 3.
- **Supplementation programmes for malnourished children:** The Department of Health provides targeted nutritional support for pregnant women and children who are identified as under-nourished. The Nutrition Supplementation Programme provides nutritional support for children who experience growth faltering and nutritionally at-risk pregnant women, and where necessary, hospitalization for children with severe and acute malnutrition.

Targeted services for families of children with specific risks

Several specialised policies and programmes have been developed and rolled out to provide support to families caring for children with specific risks. These include for example:

- **Disability policies and programmes:** South Africa has developed a range of policies and strategies delineating the roles of different departments and their respective responsibilities. Programmes for children with disabilities include developmental screening, free health care services, and inclusive and special education facilities. Government has also established a disability service and information portal to provide access to information on disability services, including counselling, peer support, therapeutic, educational and economic programmes.⁴⁹
- **Community-based support for families at risk:** Departments such as Social Development and Health provide a range of home- and community-based services to support families caring for children at risk, including those living in poverty, with disabilities, with chronic illness, children who are orphaned and others made vulnerable by HIV and AIDS, and those or who live in remote or under-serviced areas. Programmes such as the Community Health Worker Programme, Community Caregivers and the Isibindi programme provide services which include screening for poverty, substance abuse, violence, abuse, neglect and exploitation; referrals for social and material support; psychosocial and parenting support where needed. The effectiveness of these services depends on

Box 16: A closer look at the means test for school-fee exemptions

Over 70% of government schools do not charge fees. The rest may charge fees but are required to apply the national school-fee exemption policy. The policy is designed to ensure that children are not excluded from fee-charging schools because of poverty (although this often happens in practice, for example because of application fees or profiling in the admissions process).

The means test for the school fee exemption calculates the *combined annual gross income of both parents of the child* – in other words, it is expected that both biological parents should be contributing to the child's educational and other costs, irrespective of the relationship between the parents, their marital status or their living arrangements. This has created difficulties for single and divorced mothers who applied for exemptions, but who did not receive maintenance from the other parent and could not easily provide details of the other parents' earnings. In 2017 a court order ruled that in circumstances where one parent has refused or failed to provide their income details, public schools can grant a conditional fee

exemption to the custodial parent, having regard only to her or his income. The court noted:

*Historically, mothers have been the primary caregivers of children in this country. That continues to be so. It is almost always mothers who become custodial parents and have to care for children on the breakdown of their marriage or other significant relationships. That places an additional financial burden on them and the sad reality is that they then become overburdened in terms of responsibilities and under-resourced in terms of means.*⁵⁰

The judgement provides for an exception to the means test in cases when the custodial parent cannot provide proof of the other parent's income. For the most part, school fee exemptions will continue to be based on the income of both biological parents. This is clearly a different approach to that of the Child Support Grant (CSG) (where the means test is based on the income of the child's caregiver and, if married, her spouses income), although receipt of a CSG also entitles the child to an automatic school fee exemption.

Case 18: Addressing bias among social services professionals

Andre Lewaks

In South Africa around two thirds of children do not live with their biological fathers. There are many reasons for father absence including labour migration, violence, abandonment, HIV/AIDS, paternal deaths, poverty and unemployment.⁵¹ Yet even when fathers don't live with their children, men can play a positive role in children's lives.⁵²

The MenCare programme is a global campaign designed to promote gender equality in the home and society by encouraging fathers to assume an active and non-violent role in the care of their children and to contribute equally to domestic work and sexual and reproductive health. The MenCare Child Care and Protection Programme led by Sonke Gender Justice trains social services professionals to run positive parenting interventions with fathers in South Africa.

While social services professionals render a range of social services to families, some are reluctant to include fathers in parenting interventions and decisions about child care because they themselves have socially conservative assumptions about the role of fathers. It is for this reason that Sonke entered into a partnership with UNICEF South Africa and the National Department of Social Development, to train social services professionals

to implement parenting interventions with fathers. The programme has trained 115 social services professionals in five provinces and included a pre- and post-test analysis to evaluate changes in social service professionals' perceptions and attitudes about gender, care and contraceptive use. The results indicate that the programme has been successful in promoting a more positive view of men's role in the family and in the care of their children. The evaluation also revealed that a significant number of social services professionals were exposed to violence in their own childhood, interpersonal relationships and work with abused women and children, raising concerns that this may impact on the quality of services that they render and their approach to men as clients.

The findings highlight the need to include gender transformative programming in the curriculum of social services professionals to ensure that they are better equipped to engage with men as fathers. In addition, the South African Council of Social Services Professionals should introduce a care-for-the-caregiver programme and compulsory counselling sessions for all social services professionals providing services to abused women and children.

how they are implemented in practice by the individuals who engage with families. Case 18 provides an example of how important it is for practitioners to overcome their own biases and assumptions when dealing with families.

Employment opportunities and expanded social services

The Departments of Social Development, Basic Education and Health together with local government are responsible for the Expanded Public Works Programme (EPWP) which serves a dual purpose: It provides short-term skills development and employment for unemployed adults and youth, thereby addressing unemployment and providing some income relief (albeit in a limited way); and it contributes to social programmes that provide expanded access to essential services.

Well-located social housing, a housing option that could have served families well, has been deprioritized.

The EPWP Social Sector provides work to unemployed and unskilled people through the delivery of social development and community protection services such as:⁵³

- **Early Childhood Development:** provides care and stimulation to children in the temporary absence of their parents or adult caregivers.
- **Home- and Community-based Care:** provides basic health services to people in their own homes or home-based care that families can access closer to their homes.
- **School Nutrition Programme:** employs community members as food handlers to provide food to children from needy families and thus address malnutrition.
- **Community Crime Prevention:** aims to encourage community members to help reduce crime by employing volunteers in EPWP projects to be active in helping to identify community safety priorities for their neighbourhoods.
- **School Mass Participation:** provides work opportunities to sports coaches and encourages members of the public to participate actively in sports with the objectives of promoting good health, self-realisation, community development and social cohesion.

Responsive and protective services

South Africa has developed a comprehensive legal framework that defines child abuse, neglect and maltreatment and obliges government to establish a child protection system that provides a broad range of services. The goal is to create a safe and friendly society for children. It aims to:

- prevent violence against children;
- protect child victims from further harm by strengthening the capacity of the family to care for the child, removing the threat of the perpetrator or as a last resort removing the child to a safe environment; and
- support and treat children who have experienced violence and restore them to physical and psychological health.

While the DSD is the lead department for the child protection system, others – such as the Police, and the departments of Health, Home Affairs, Basic Education, Justice and Correctional Services – also play an important role. Co-operation between government and civil society is also crucial since most social services are being delivered by the NGO sector. The laws and policies outline a cooperative implementation model and oblige different agencies to cross-refer cases and work together to protect children.

The duty to report

Section 110 of the Children’s Act creates a mandatory duty on certain professionals who work with children, such as teachers, child and youth care workers, and health professionals to identify and refer children who have been sexually abused, physically abused causing injury, or deliberately neglected, to social services and/or the police for investigation.

These professionals can face criminal charges if they do not report abuse. The Act also states that anyone can make a report if they believe that a child and family are at risk of any kind of abuse, exploitation or harm and that a social worker or police officer must investigate the matter. The police and social services also have a duty to share reports with each other.

Assessment and investigation

Once referred, the designated social worker must investigate the family’s situation and take appropriate action to ensure the child and family receive the support they need. In the first instance the police officer or social worker must ensure the safety of the child. They have the power to remove anyone who poses a risk to the child from the household, but this power is rarely used and it is much more common for the child to be removed. Once the child is safe, the social worker

must investigate fully to establish what happened, determine what the needs of the child are and the capacity of the family to meet those needs. If the child is in need of care and protection, as defined in the Children’s Act, the social worker must submit a report to the Children’s Court.

Court-ordered protection

A family member or a social worker to whom a child and family are referred may approach a magistrate’s or a children’s court for an order to secure support and protection. Any magistrate’s court may, upon application by a victim of domestic violence, including a child, issue a protection order requiring the cessation of all further abuse.^{iv} A children’s court may order the caregiver and/or child to attend a prevention programme, place the family under the supervision of a social worker, and/or as a last resort, order the removal and placement of a child in alternative care, including temporary safe care; foster care or a child and youth care centre.

Therapeutic and restorative services

Children and families who have experienced abuse, neglect or exploitation are also entitled to therapeutic and restorative services, including:

- Preventative HIV treatment for children and adults who have been sexually assaulted;
- Psychological evaluation to determine the needs and capacity of child and caregiver;
- Therapeutic services for both child and caregiver including home visits, counselling, and specialist support to deal with complex and continuous trauma;
- Rehabilitation and reintegration services for children who have been removed from their own families and placed in alternative care. These services should promote their physical and psychological recovery and reintegration into their families and society;
- Family reunification services that secure family development, family skills training, family group conferencing and mentorship, that ensure the return of the child into a developmentally promotive family environment; and
- Aftercare services to support families to care for children following their release from alternative care.

Social Relief of Distress

The Social Relief of Distress grant provides temporary financial assistance (for a maximum of three months) and is the same value as the CSG (R410 in 2018). It is meant to be paid to persons living in poverty who are in urgent need of

^{iv} Protection orders are governed by the Domestic Violence Act No 116 of 1998.

immediate temporary assistance. Eligible categories include caregivers waiting for payment of another grant; caregivers not receiving maintenance from a parent, child or spouse; caregivers in a household where the breadwinner has died; single parents who have to care for a child and cannot take up employment because of this responsibility; children who live alone and have no access to daily meals; and families with children who are malnourished or stunted. This is potentially a huge eligible population yet only 410,000 grants are envisaged in the social development budget.⁵⁴

This section has briefly outlined some examples of specialised and responsive services for children and their families. Other emergency response services include ambulance and paramedic services, emergency fire and rescue services, emergency services that respond to flooding or other natural disasters, emergency police services and social welfare services that should respond immediately when requested in a crisis situation. Many of these services are under-resourced, under-capacitated or too far from where families live to be able to respond promptly to emergencies.

Does the current policy framework meet the developmental imperative?

A review of the Social Welfare White Paper some 20 years after its adoption confirmed that South Africa has made significant progress in its developmental journey.⁵⁵ Since 1997 there has been a groundswell in supportive services for families to enable them to provide nurturing care for their children. These services are recognised as providing a continuum of developmental support including:

1. Universal (or promotive) services that “enhance the capabilities of individuals, communities and institutions to participate in all spheres of activity”⁵⁶, including early childhood development and education;
2. Targeted (or preventive) services for families and individuals, including comprehensive social protection services targeted at economically and socially excluded families; and
3. Responsive (or protective) services to protect families and children in need of immediate support and intervention, including children who have experienced abuse and/or neglect.

The reviewers noted that, despite the growth in services and supporting budgets, the country’s overarching social developmental goals have yet to be achieved. Poverty, violence, abuse and neglect remain the experience of many families and their children, and inequality has increased. The extensive suite of services has not enabled families to break the inter-generational cycle of exclusion and poor development outcomes.

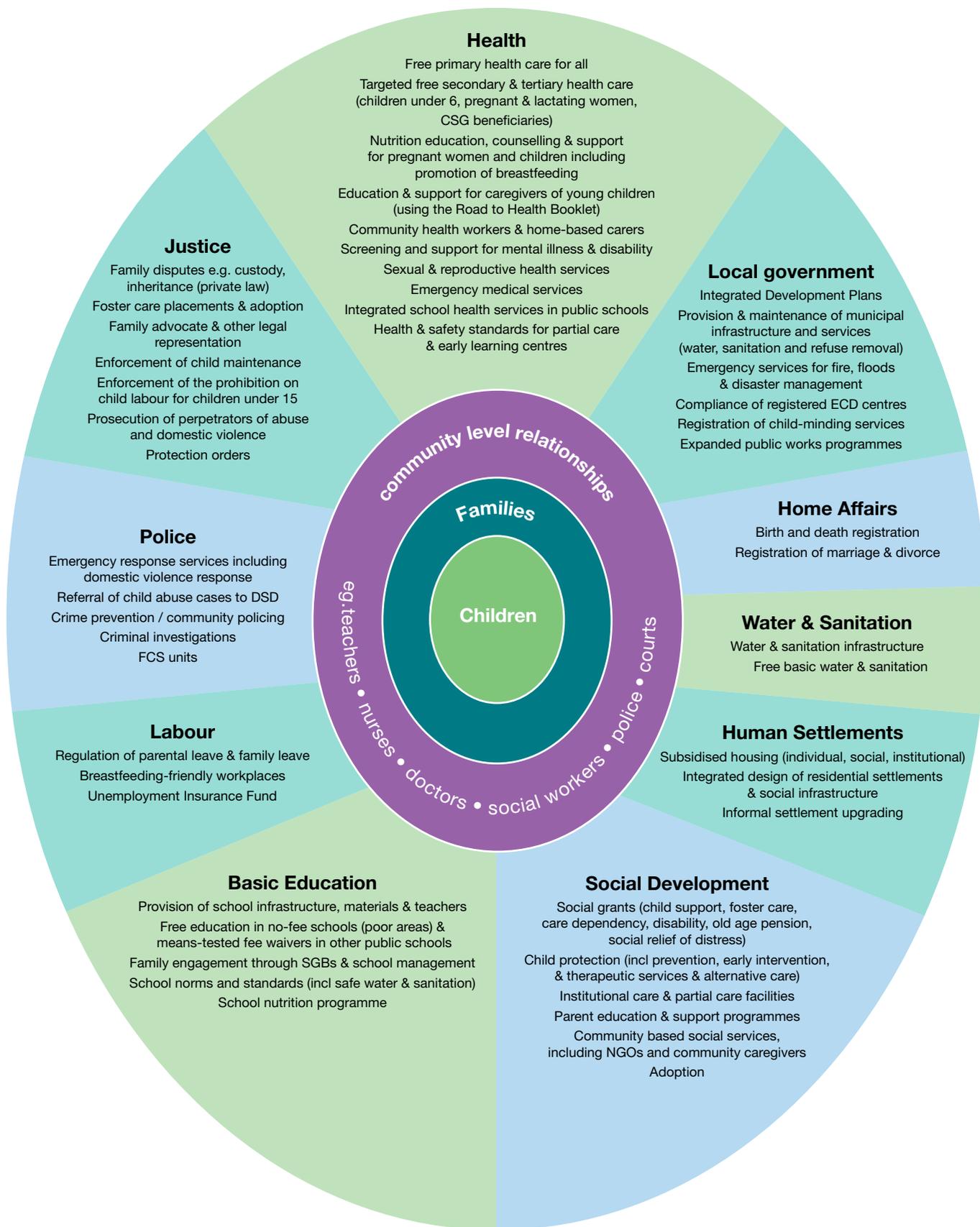
The review identifies the lack of a shared understanding of what developmental social welfare services mean and what this requires as one of the underlying causes of the country’s limited progress. There is evidence of a similar failure to understand the developmental role of the family and the range of support services required to help realise this potential. The resulting policy incoherence has led to fragmentation in the design, targeting and reach of services, resulting in the exclusion of many vulnerable families from critical services. Responsive services such as emergency and child protection services need to be strengthened to ensure that they are able to respond immediately and efficiently in times of crisis.

*Rights and development instruments
create a duty on states to develop
policies, laws and programmes that
are inclusive of all families.*

Figure 23 illustrates the broad range of government departments that must work in harmony to support the health, wellbeing and development of children and their families. It also foregrounds the central role of frontline workers in mediating between different departments and the children and families they serve.

The gaps highlighted in this chapter call for stronger national and provincial leadership. A clear mandate must be given to ensure that all policies and programmes – across all departments, levels of government and services – give effect to a shared and inclusive understanding of the family. The priority is to ensure that *all families* are supported to become the building blocks of South Africa’s sustainable development.

Figure 23: Illustrative map of multi-sectoral programmes and services for children and families



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PART 3

Children Count – The Numbers

Part three presents child-centred data to monitor progress and track the realisation of their socio-economic rights in South Africa.

This year it presents data from 2002 to 2017 and identifies the main trends over this 16-year period. A set of key indicators tracks progress in the following domains:

- Demography of South Africa's children, including orphaning, child-headed households and parent co-residence;
- Income poverty, unemployment and social grants;
- Child health and teenage pregnancy;
- Education;
- Housing; and
- Basic services.

A full set of indicators and detailed commentaries are available on www.childrencount.ci.uct.za

Introducing Children Count

South Africa's commitment to the realisation of socio-economic rights is contained in the Constitution, the highest law of the land, which includes provisions to ensure that no person should be without the basic necessities of life. These are specified in the Bill of Rights, particularly section 26 (access to adequate housing); section 27 (health care, sufficient food, water and social security); section 28 (the special rights of children) and section 29 (education).

Children are specifically mentioned, and are also included under the general rights: every child has the right to basic nutrition, shelter, basic health care services and social services. These form part of what are collectively known as socio-economic rights. While these rights are guaranteed by the Constitution, the question is: how well is South Africa doing in realising these rights for all children? In order to answer this question, it is necessary to monitor the situation of children, which means there is a need for regular information that is specifically about them.

A rights-based approach

Children Count, an ongoing data and advocacy project of the Children's Institute, was established in 2005 to monitor progress for children. It provides reliable and accessible child-centred information which can be used to inform the design and targeting of policies, programmes and interventions, and as a tool for tracking progress in the realisation of children's rights.

Child-centred data

Any monitoring project needs regular and reliable data, and South Africa is fortunate to be a fairly data-rich country. There is an array of administrative data sets, and the national statistics body, Statistics South Africa, undertakes regular national population surveys which provide useful information on a range of issues. However, most information about the social and economic situation of people living in South Africa does not focus on children, but rather counts all individuals or households. This is the standard way for central statistics organs to present national data, but it is of limited use for those interested in understanding the situation of children.

"Child-centred" data does not only mean the use of data about children specifically. It also means using national population or household data, but analysing it at the level of the child. This is important, because the numbers can differ enormously depending on the unit of analysis. For example, national statistics describe the unemployment rate, but only a child-centred analysis can tell how many children live in households where no adult is employed. National statistics show what proportion of households is without adequate sanitation, but when a child-centred analysis is used, the proportion is significantly higher.

Counting South Africa's children

Children Count presents child-centred data on many of the areas covered under socio-economic rights. As new data become available with the release of national surveys and other data sources, it is possible to track changes in the conditions of children and their access to services over time. This year, national survey data are presented for each year from 2002 to 2017, and many of the indicators in this issue compare the situation of children over this 16-year period.

The tables on the following pages give basic information about children's demographics, care arrangements, income poverty and social security, education, health and nutritional status, housing and basic services. Each table is accompanied by commentary that provides context and gives a brief interpretation of the data. The data are presented for all children in South Africa and, where possible, by province.

The indicators in this *South African Child Gauge* are a sub-set of the *Children Count* indicators on demographics and socio-economic rights. The project's website contains the full range of indicators and more detailed data, as well as links to websites and useful documents. It can be accessed at www.childrencount.uct.ac.za.

Confidence intervals

Sample surveys are subject to error. The proportions or percentages simply reflect the mid-point of a possible range, but the true values could fall anywhere between the upper and lower bounds. The confidence intervals indicate the reliability of the estimate at the 95% level. This means that, if independent samples were repeatedly taken from the same population, we would expect the proportion to lie between upper and lower bounds of the confidence interval 95% of the time.

It is important to look at the confidence intervals when assessing whether apparent differences between provinces or sub-groups are real: the wider the confidence interval, the more uncertain the proportion. Where confidence intervals overlap for different sub-populations or time periods, it is not possible to claim that there is a real difference in the proportion, even if the mid-point proportions differ. In the accompanying bar graphs, the confidence intervals are represented by vertical lines at the top of each bar (I).

Data sources and citations

Children Count uses a number of data sources. Most of the indicators draw on the General Household Survey conducted by Statistics South Africa, while some draw on administrative databases used by government departments (Health, Education, and Social Development) to record and monitor the services they deliver.

Most of the indicators presented were developed specifically for this project. Data sources are carefully considered before inclusion, and the strengths and limitations of each are outlined on the project website. Definitions and technical notes for the indicators are included in the accompanying commentary, and can also be found on the website.

Here are a couple of examples of how to reference Children Count data correctly. When referencing from the Demography section in this publication, for example:

Hall K & Sambu W (2018) Demography of South Africa's children. In: Hall K, Richter L, Mokomane Z & Lake L (eds) *South African Child Gauge 2018*. Cape Town: Children's Institute, University of Cape Town.

When referencing from the Housing and Services online section, for example:

Hall K (2018) *Housing and Services – Access to adequate water*. Children Count website, Children's Institute, University of Cape Town. Accessed on 20 November 2018: www.childrencount.uct.ac.za

Each domain is introduced below and key findings are highlighted.

Demography of South Africa's children

(pages 132 – 136)

This section provides child population figures and gives a profile of South Africa's children and their care arrangements, including children's co-residence with biological parents, the number and proportion of orphans and children living in child-only households. There were 19.6 million children in South Africa in 2017. Fourteen percent of children are orphans who have lost either their mother, father or both parents; 21% of children do not live with either of their biological parents; and 0.3% of children live in child-only households.

Income poverty, unemployment and social grants

(pages 137 – 143)

In 2017, over half of children (65%) lived below the "upper bound" poverty line (with a per capita income below R1,138 per month), and 30% lived in households where no adults were employed. Social assistance grants are therefore an important source of income for caregivers to meet children's basic needs. In March 2018, just over 12 million children received the Child Support Grant; 416,000 children received the Foster Child Grant; and a further 147,000 children received the Care Dependency Grant.

Child health

(pages 144 – 148)

This section monitors child health through a range of indicators. Under-five mortality has decreased from 81 deaths per 1,000 live births in 2003 to 34 deaths per 1,000 live births in 2016. The infant mortality rate has followed a similar trend and is estimated at 25 deaths per 1,000 live births for 2016. A fifth (20%) of children travel far to reach their primary health care facility and 12% of children live in households that reported child hunger.

Children's access to education

(pages 149 – 156)

Many children in South Africa travel long distances to school. One in seven children (13%) live far from their primary school and this increases to nearly one in five children (21%) in secondary school. Despite these barriers, South Africa has made significant strides in improving access to education with a gross attendance rate of 98% in 2017. Access is also increasing in the preschool years, with 92% of 5 – 6-year-olds attending some kind of educational institution or care facility. However, this does not necessarily translate into improved educational outcomes or progress through school. In 2017, 89% of 10 – 11-year-olds had completed grade 3, and only 69% of 16 – 17-year-olds had completed grade 9.

Children's access to housing

(pages 157 – 159)

This domain presents data on children living in rural or urban areas, and in adequate housing. The latest available data show that, in 2017, 57% of children were living in urban areas, and 79% of children lived in formal housing. Just 1.6 million children lived in backyard dwellings and shacks in informal settlements, and one in six children (18%) lived in overcrowded households.

Children's access to basic services

(pages 160 – 162)

Without water and sanitation, children face substantial health risks. In 2017, 70% of children had access to drinking water on site, while children's access to adequate toilet facilities rose to 78%.

Demography of South Africa's children

Katharine Hall and Winnie Sambu

The UN General Guidelines for Periodic Reports on the Convention on the Rights of the Child, paragraph 7, says that reports made by states should be accompanied by "detailed statistical information ... Quantitative information should indicate variations between various areas of the country ... and between groups of children ...".¹

The child population in South Africa

In mid-2017, South Africa's total population was estimated at 56.5 million people, of whom 19.6 million were children under 18 years. Children therefore make up 35% of the total population.

The distribution of children across provinces is slightly different to that of adults, with a greater share of children living in provinces with large rural populations. Together, KwaZulu-Natal, the Eastern Cape and Limpopo accommodate almost half of all children in South Africa. A fifth of children live in Gauteng, a mainly metropolitan province, and 10% live in the Western Cape. Despite being the smallest province in the country, Gauteng accommodates 29% of all households and 28% of adults, but only 20% of children. This difference is because of the relatively large number of adult-only households in the province.

There have been striking changes in the provincial child populations since 2002. The number of children living in the Eastern Cape and Limpopo has decreased, while the numbers of children living in Gauteng and Western Cape have risen by 40% and 21% respectively. This is partly the result of population movement (for example, when children are part of migrant households or move to join existing urban households), and partly the result of natural population growth (new births within the province).

We can look at inequality by dividing all households into five equal groups or income quintiles, based on total income to the household (including earnings and social grants) and dividing that by the number of household members, with quintile 1 being

the poorest 20% of households, quintile 2 being the next poorest and so on. Quintile 5 consists of the least-poor 20%. More than two-thirds of children live in the poorest 40% of households (i.e. the poorest two quintiles).

Children are fairly equally distributed across the age groups, with an average of just over one million children in each year under 18. The gender split is equal for children. In terms of the apartheid-era racial categories, 85% of children are African, 8% are Coloured, 5% White and 2% Indian.

These population estimates are based on the General Household Survey (GHS), which is conducted annually by Statistics South Africa. The population numbers derived from the survey are weighted to the mid-year population estimates using weights provided by Statistics South Africa. Using previously weighted data (the 2013 population model), it appeared that the child population had remained fairly stable, with a marginal reduction of 0.2% in the population size between 2002 and 2015. However there was considerable uncertainty around the official population estimates, particularly in the younger age groups.² In 2017, Statistics South Africa updated the model and recalibrated the mid-year population estimates all the way back to 2002,³ and re-released the data with new weights in 2018. The Children Count team reanalysed all the data retrospectively. Based on the recently revised weights it appears that child population has grown by 8%, increasing from 18.1 million in 2002 to 19.6 million in 2017.

Table 1: Distribution of households, adults and children in South Africa, by province, 2017

PROVINCE	HOUSEHOLDS		ADULTS		CHILDREN		
	N	%	N	%	N	%	% change 2002 – 2017
Eastern Cape	1,667,000	10%	3,965,000	11%	2,534,000	13%	-13%
Free State	882,000	5%	1,860,000	5%	1,007,000	5%	1%
Gauteng	4,709,000	29%	10,170,000	28%	4,108,000	21%	40%
KwaZulu-Natal	2,827,000	17%	6,915,000	19%	4,159,000	21%	0%
Limpopo	1,537,000	9%	3,404,000	9%	2,374,000	12%	-2%
Mpumalanga	1,248,000	8%	2,782,000	8%	1,662,000	8%	9%
North West	1,172,000	7%	2,508,000	7%	1,348,000	7%	16%
Northern Cape	333,000	2%	782,000	2%	432,000	2%	9%
Western Cape	1,823,000	11%	4,556,000	12%	1,954,000	10%	21%
South Africa	16,199,000	100%	36,943,000	100%	19,579,000	100%	8%

Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

Children living with their biological parents

Many children in South Africa do not live consistently in the same household as their biological parents. This is a long-established feature of childhoods in South Africa, and international studies have shown that the country is unique to the extent that parents are absent from children's daily lives.⁴ Parental absence is related to many factors, including historic population control, labour migration, poverty, housing and educational opportunities, low marriage and cohabitation rates, as well as customary care arrangements.⁵ It is common for relatives to play a substantial role in child-rearing. Many children experience a sequence of different caregivers, are raised without fathers, or live in different households to their biological siblings.

Parental absence does not necessarily mean parental abandonment. Many parents continue to support and see their children regularly even if they have to live elsewhere.⁶

Virtually all children live with at least one adult, and the vast majority live in households where there are two or more co-resident adults. This indicator examines co-residence between children and their biological parents specifically. Although many children live with just one of their biological parents (usually the mother), this does not mean that the mother is a "single parent" as she is not necessarily the only adult caregiver in the household. In most cases, there are other adult household members such as aunts, uncles and grandparents who may contribute to the care of children.

The share of children living with both parents decreased from 39% in 2002 to 34% in 2017. Forty-one percent of all children (8.1 million children) live with their mothers but not with their fathers. Only 3% of children live in households where their fathers are present and their mothers absent. Twenty-one percent do not

have either of their biological parents living with them. This does not necessarily mean that they are orphaned: most children without any co-resident parents have at least one parent who is alive but living elsewhere.

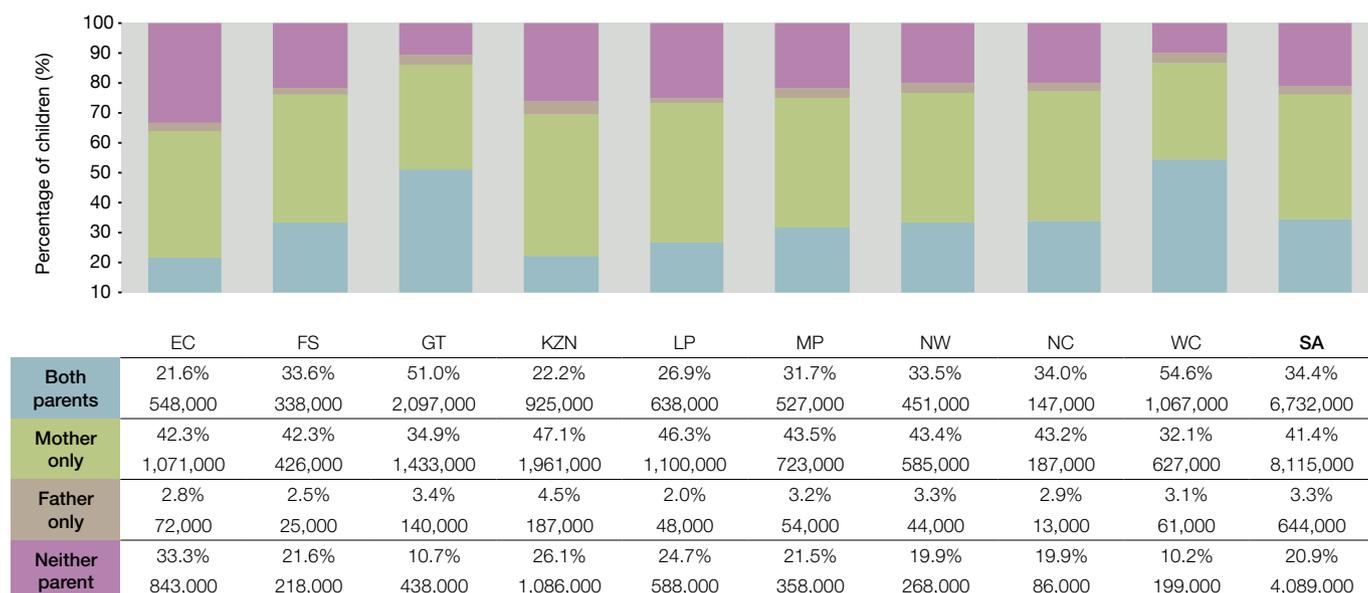
There is some provincial variation in these patterns. In the Western Cape and Gauteng, the share of children living with both parents is significantly higher than the national average, with around half of children resident with both parents (55% and 51%, respectively). Similarly, the number of children living with neither parent is relatively low in these two provinces (10% and 11%, respectively). In contrast, close to a third of children (33%) in the Eastern Cape live with neither parent. These patterns are consistent from 2002 to 2017.

Children in the poorest 20% of households are least likely to live with both parents: only 16% have both parents living with them, compared with 76% of children in the wealthiest 20% of households.

Less than one-third (30%) of African children live with both their parents, while the vast majority of Indian and White children (83% and 78%, respectively) reside with both biological parents. Almost a quarter of all African children do not live with either parent and a further 44% live with their mothers but not their fathers. These figures are striking for the way in which they suggest the limited presence of biological fathers in the home lives of large numbers of African children.

Younger children are more likely than older children to have co-resident mothers, while older children are more likely to be living with neither parent. While 13% of children aged 0 – 5 years (909,000) live with neither parent, this increases to 28% of children (1.63 million) aged 12 – 17 years.

Figure 1a: Children living with their biological parents, by province, 2017



Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

Orphaned children

An orphan is defined as a child under the age of 18 years whose mother, father or both biological parents have died (including those whose living status is reported as unknown, but excluding those whose living status is unspecified). For the purpose of this indicator, orphans are defined in three mutually exclusive categories:

- A maternal orphan is a child whose mother has died but whose father is alive.
- A paternal orphan is a child whose father has died but whose mother is alive.
- A double orphan is a child whose mother and father have both died.

The total number of orphans is the sum of maternal, paternal and double orphans. This definition differs from those commonly used by United Nations agencies and the Actuarial Society of South Africa (ASSA), where the definition of maternal and paternal orphans includes children who are double orphans.

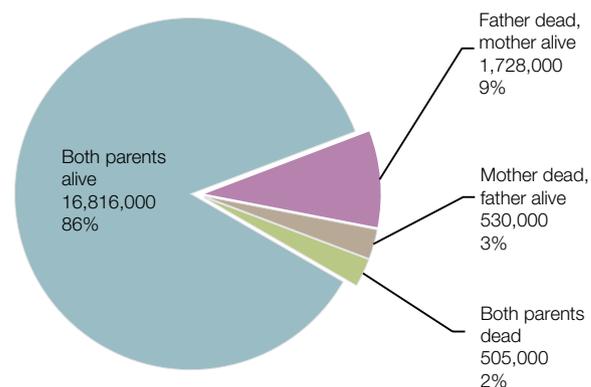
In 2017, there were 2.8 million orphans in South Africa. This includes children without a living biological mother, father or both parents, and is equivalent to 14% of all children in South Africa.

The total number of orphans increased by over a million between 2002 and 2009, after which the trend reversed. By 2017, orphan numbers had fallen to below 2002 levels. This was largely the result of improved access to antiretrovirals.

Orphan status is not necessarily an indicator of the quality of care that children receive. It is important to disaggregate the total orphan figures because the death of one parent may have different implications for children than the death of both parents. In particular, it seems that children who are maternally orphaned are at risk of poorer outcomes than paternal orphans – for example, in relation to education.⁷

The majority (63%) of all orphans in South Africa are paternal orphans (with living mothers). In 2017, 3% of children were maternal orphans with living fathers, 9% were paternal orphans with living mothers, and a further 3% were recorded as double

Figure 1b: Children living in South Africa, by orphanhood status, 2017

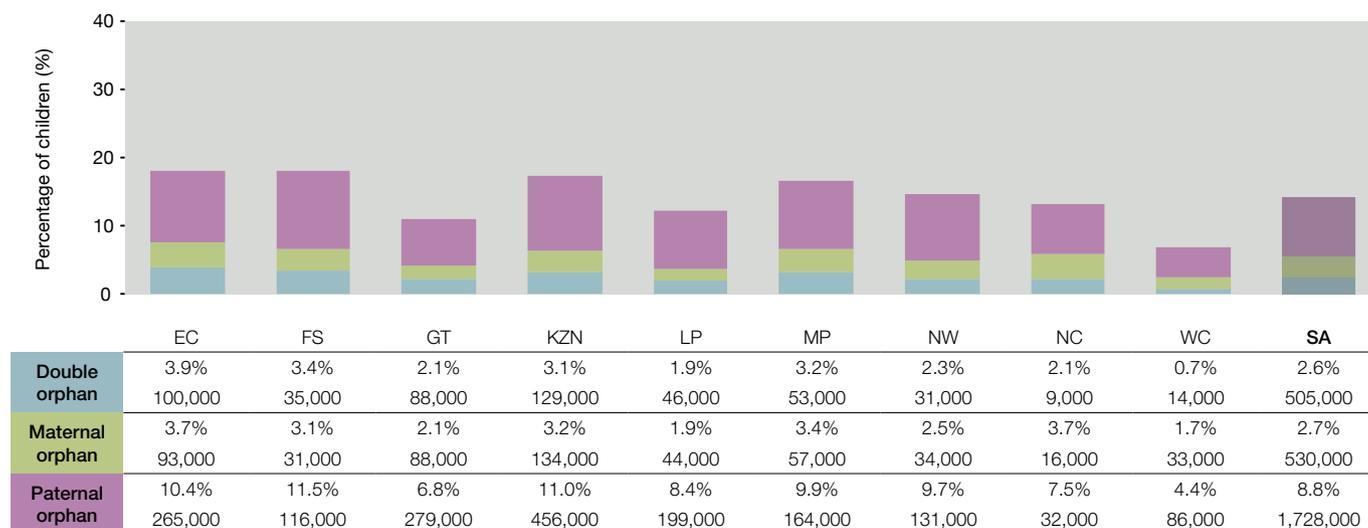


Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

orphans. This means that 6% of children in South Africa did not have a living biological mother and twice that number did not have a living biological father. The numbers of paternal orphans are high because of the higher mortality rates of men in South Africa, as well as the frequent absence of fathers in their children's lives (1.6% or 314,000 children have fathers whose vital status is reported to be "unknown", compared with 0.3% or 54,000 children whose mothers' status is unknown).

The number and share of children who are double orphans more than doubled between 2002 and 2009, from approximately 361,000 to 866,000 after which the rates fell again. In 2017, 505,000 children had lost both their parents. Orphaning rates are particularly high in provinces that contain the former homelands, as these areas bear a large burden of care for orphaned children. Fifty-four percent of double orphans live in either the Eastern Cape, KwaZulu-Natal or Limpopo provinces.

Figure 1c: Number and percentage of orphans, by province, 2017



Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

KwaZulu-Natal has the largest child population and the highest orphan numbers, with 17% of children in that province recorded as orphans who have lost a mother, a father or both parents. Orphaning rates in the Eastern Cape (18%) and the Free State (18%) are similarly high. The lowest orphaning rates are in the Gauteng (where 11% of children have lost at least one parent), and the Western Cape (7%).

The poorest households carry the greatest burden of care for orphans. Close to half (49%) of all orphans are resident in

the poorest 20% of households. Eighteen percent of children in the poorest 20% of households are orphans, compared with the richest 20% where total orphaning rates are around 4%.

The likelihood of orphaning increases with age. Across all age groups, the main form of orphaning is paternal orphaning, which increases from 4% among children under six years of age, to 15% among children aged 12 – 17 years. While 1% of children under six years are maternal orphans, this increases to 5% in children aged 12 – 17 years.

Child-only households

A child-only household is defined as a household in which all members are younger than 18 years. These households are also commonly referred to as “child-headed households”, although this definition differs from the one contained in the Children’s Act. The Children’s Act definition of a child-headed household includes households where there are adults who may be too sick or too old to effectively head the household and a child over 16 years bears this responsibility.

While orphaning undoubtedly places a large burden on families, there is little evidence to suggest that their capacity to care for orphans has been saturated, as commentators feared in the past. Rather than seeing increasing numbers of orphaned children living on their own, the vast majority of orphans live with adult family members.

There were about 58,000 children living in a total of 32,000 child-only households across South Africa in 2017. This equates to 0.3% of all children. While children living in child-only households are rare relative to those residing in other household forms, the number of children living in this extreme situation is of concern.

Importantly, however, there has been no increase in the share of children living in child-only households in the period 2002 – 2017. If anything, the number has dropped. Predictions of rapidly increasing numbers of child-headed households as a

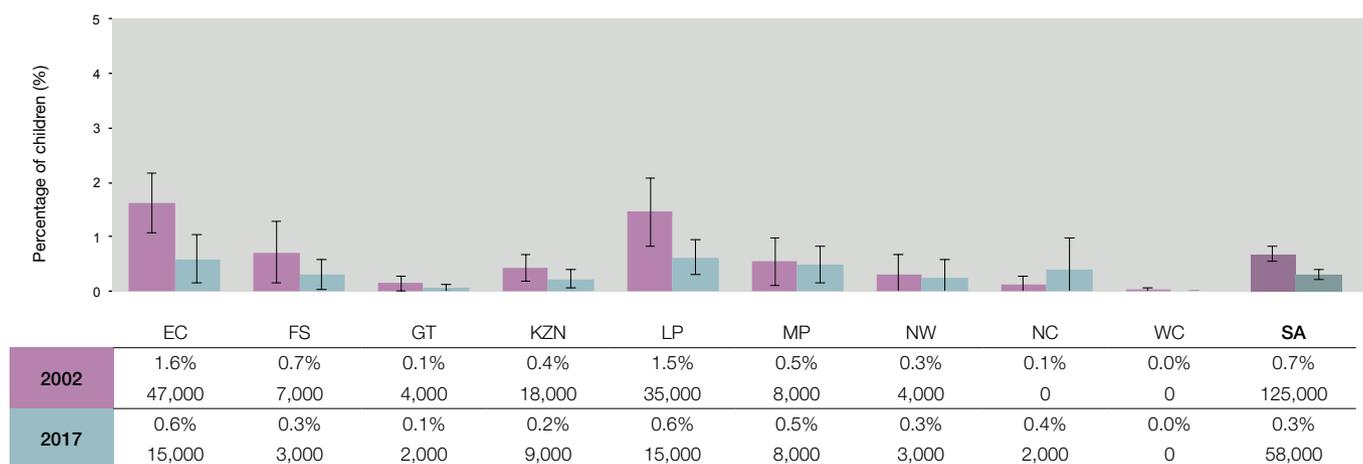
result of HIV are at this point unrealised. An analysis of national household surveys to examine the circumstances of children in child-headed households in South Africa revealed that most children in child-only households are not orphans⁸ and 84% have a living mother. These findings suggest that social processes other than HIV-related mortality may play important roles in the formation of these households. For example, leaving teenage boys to look after a rural homestead while parents migrate to work may be a livelihood strategy for the household.

While it is not ideal for any child to live without an adult resident, it is positive that more than half (57%) of all children living in child-only households are aged 15 years and above. Children can work legally from the age of 15, and from 16 they can obtain an identity document and receive grants on behalf of younger children. Only 6% of children in child-headed households are under six years of age.

Research suggests that child-only households are frequently temporary arrangements, and often exist just for a short period, for example while adult migrant workers are away, or for easy access to school during term time, or after the death of an adult and prior to other arrangements being made to care for the children (such as other adults moving in or the children moving to live with other relatives).⁹

Figure 1d: Children living in child-only households, by province, 2002 & 2017

(Y-axis reduced to 5%)



Source: Statistics South Africa (2002; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

More than 50% of all children in child-only households live in two provinces: Limpopo and Eastern Cape, each with 26% of children in child-only households. From 2002 to 2017, these provinces have consistently been home to the majority of children living in child-only households. The number of child-only households in KwaZulu-Natal appears to have dropped, but this may not be significant because the numbers are so small and the confidence intervals relatively wide.

Relative to children in mixed-generation households, child-only households are vulnerable in a number of ways. Child-only households are predominantly clustered in the poorest households: 88% of children living in child-only households are in the poorest 20% of households. In addition to the absence of

adult members who may provide care and security, they are at risk of living in poorer conditions, with poor access to services, less (and less reliable) income, and low levels of access to social grants.

There has been very little robust data on child-headed households in South Africa to date. The figures should be treated with caution as the number of child-only households forms just a very small sub-sample of the General Household Survey. In particular, we caution against reading too much into the provincial breakdowns. When comparing the overall estimates nationally, the number of children in child-headed households seems to have declined since 2002.

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Income poverty, unemployment and social grants

Katharine Hall and Winnie Sambu

The Constitution of South Africa, section 27(1)(c), says that “everyone has the right to have access to ... social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”.¹

The UN Convention on the Rights of the Child, article 27, states that every child has the right “to a standard of living adequate for his or her development” and obliges the state “in case of need” to “provide material assistance”. Article 26 guarantees “every child the right to benefit from social security”.²

Children living in income poverty

This indicator shows the number and share of children living in households that are income-poor. As money is needed to access a range of services, income poverty is often closely related to poor health, reduced access to education and physical environments that compromise personal safety.

International law and the Constitution recognise the link between income and the realisation of basic human rights and acknowledge that children have the right to social assistance (social grants) when families cannot meet children’s basic needs. Income poverty measures are therefore important for determining how many people need social assistance, and for evaluating the state’s progress in realising the right to social assistance.

No poverty line is perfect. Using a single income measure tells us nothing about how resources are distributed between family members, or how money is spent. But this measure does give some indication of how many children are living in households with severely constrained resources.

The measure used is the Statistics South Africa “upper-bound” poverty line, set at R779 per person per month in 2011 prices. Poverty lines increase with inflation and in 2017 the real

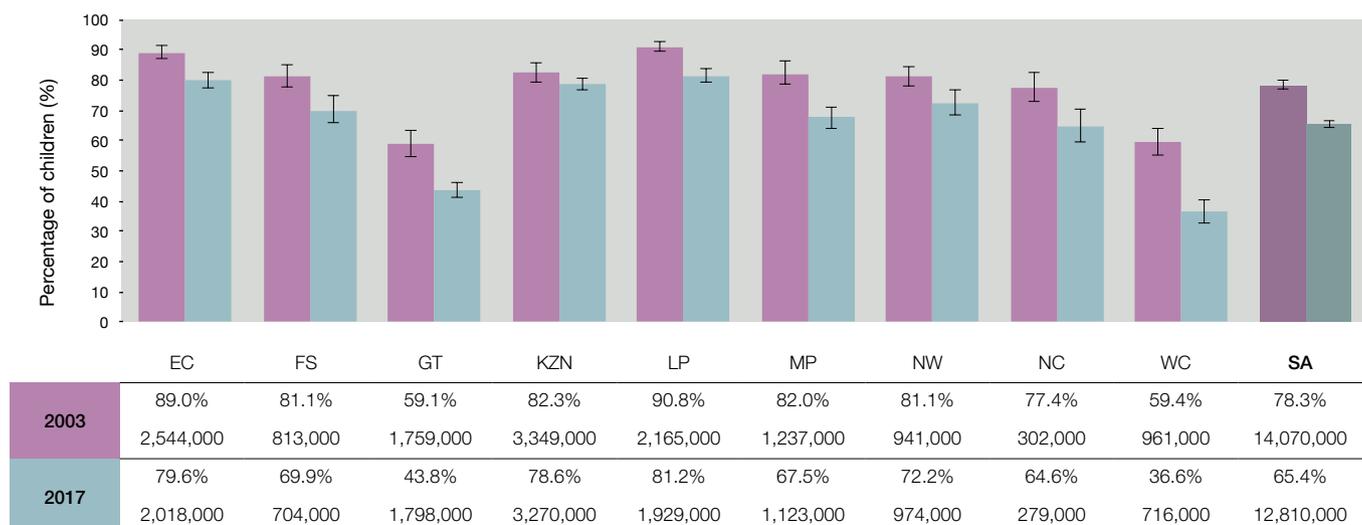
value of the upper-bound line was R1,138.³ Per capita income is calculated by adding all reported income for household members older than 15 years, and social grants received by anyone in the household, and dividing the total household income by the number of household members.

Statistics South Africa proposed two other poverty lines:

- A “lower-bound” poverty line is calculated by adding to the food line the average expenditure on essential non-food items by households whose food expenditure is below but close to the food line. The value of the lower-bound poverty line in 2011 prices was R501 per person per month (R758 in 2017 prices). *Those living below this line would not be able to pay for the minimum non-food expenses or would be sacrificing their basic nutrition in order to pay for non-food expenses.*
- A “food” poverty line is based on the cost of the minimum nutritional requirement of 2,100 kilocalories per person per day, without any allowance for non-food basic necessities. The value of the food poverty line in 2011 prices was R335 per person per month (R531 in 2017). *Anyone living below this line will be malnourished and their health and survival may be at risk.*

Figure 2a: Children living in income poverty, by province, 2003 & 2017

(Upper-bound poverty line: Households with monthly per capita income less than R1,138, in 2017 rands)



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA.
Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

We use the upper-bound poverty line as our indicator for tracking child poverty as this is linked to the minimum requirement for basic nutrition as well as other basic needs such as clothing and shelter. In other words, this is the only poverty line that meets the minimum requirement for children's basic needs.

South Africa has very high rates of child poverty. In 2017, 65% of children lived below the upper-bound poverty line. Income poverty rates have fallen substantially since 2003, when 78% (14.1 million) children were defined as "poor" at this income threshold. The reduction in the child poverty headcount is partly the result of a massive expansion in the reach of the Child Support Grant over the same period. Although there have been reductions in the child poverty rate, large numbers of children still live in poverty: in 2017, 12.8 million children lived below the upper-bound poverty line.

There are substantial differences in poverty rates across the provinces. Using the upper-bound poverty line, more than three quarters of children in Limpopo, Eastern Cape, and KwaZulu-Natal are poor. Gauteng and the Western Cape have the lowest child poverty rates – at 44% and 37% respectively. Child poverty remains most prominent in the rural areas of the former homelands, where 86% of children are below the poverty line. The urban child poverty rate, by contrast, is 51%.

There are glaring racial disparities in income poverty: while 72% of African children lived in poor households in 2017, and 45% of Coloured children were defined as poor, only 2% of White

children lived below this poverty line. There are no significant differences in child poverty levels across gender or between different age groups in the child population.

Using Statistics South Africa's lower-bound poverty line (which does not provide enough for basic essentials), 50% of children (9.8 million) were poor in 2017, and 36% (7 million children) were below the food poverty line, meaning that they were not getting enough nutrition.

The international ultra-poverty line used to track progress towards the Sustainable Development Goals (SDGs) is \$1.90 per person per day. This translated to R351 per person per month in 2017, using the IMF purchasing power parity conversion. This poverty line is extremely low – below survival level – and is not appropriate for South Africa. No child should be below it. In 2003, 52% of children (9.3 million) lived below the equivalent of the SDG poverty line. By 2017, this decreased to 22% (4.3 million).

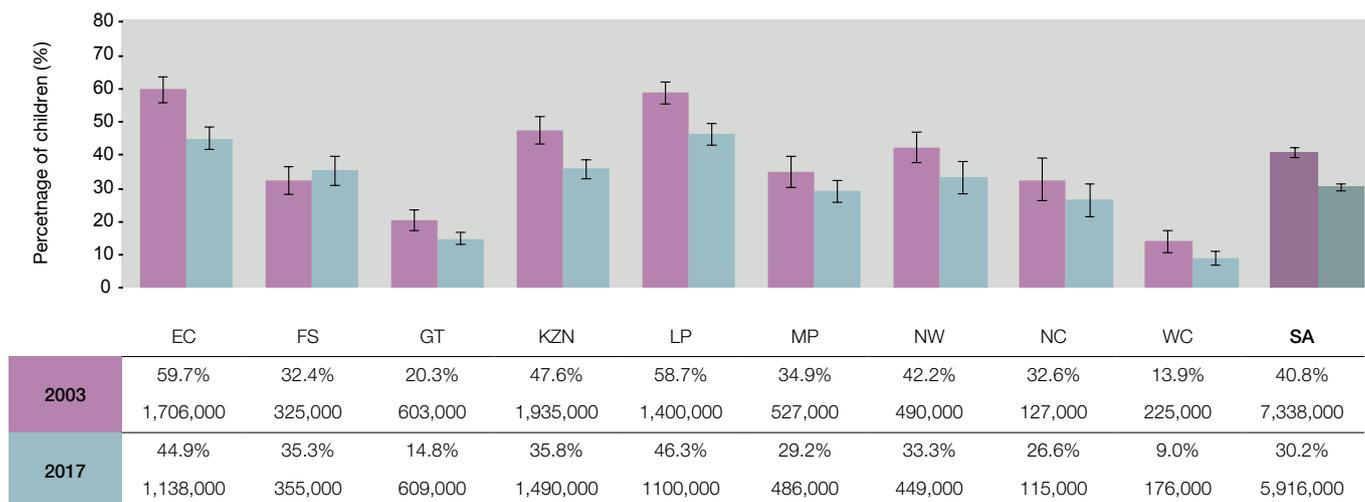
The Sustainable Development Goals replaced the Millennium Development Goals in 2015 and set the global agenda for development by 2030. Target 1.1 is to eradicate extreme poverty using the same international poverty line of \$1.90 per person per day. Target 1.2 is that by 2030 countries should reduce by at least half the proportion of men, women and children of all ages living in poverty in all its dimensions, according to national definitions. In terms of income poverty, this would mean reducing the number of children below the upper-bound poverty line by at least two million.

Children living in households without an employed adult

This indicator measures unemployment from a children's perspective and gives the number and proportion of children who live in households where no adults are employed in either the formal or informal sector. It therefore shows the proportion of children living in "unemployed" households where it is unlikely that any household members derive income from labour or income-generating activities.

Unemployment in South Africa continues to be a serious problem. The official national unemployment rate was 27.7% in the third quarter of 2017.⁴ This rate is based on a narrow definition of unemployment that includes only those adults who are defined as economically active (i.e. they are not studying or retired or voluntarily staying at home) and who actively looked but failed to find work in the four weeks preceding the survey. An expanded

Figure 2b: Children living in households without an employed adult, by province, 2003 & 2017



Source: Statistics South Africa (2004; 2018) *General Household Survey 2003; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

definition of unemployment, which includes “discouraged work-seekers” who were unemployed but not actively looking for work in the month preceding the survey, would give a higher, more accurate, indication of unemployment. The expanded unemployment rate (which includes those who are not actively looking for work) was 36.8%. Gender differences in employment are relevant for children, as it is mainly women who provide for children’s care and material needs. Unemployment rates (narrowly defined) remain higher for women (29.8%) than for men (26%).⁵

Apart from providing regular income, an employed adult may bring other benefits to the household, including health insurance, unemployment insurance and parental leave that can contribute to children’s health, development and education. The definition of “employment” is derived from the Quarterly Labour Force Survey and includes regular or irregular work for wages or salary, as well as various forms of self-employment, including unpaid work in a family business.

In 2017, 70% of children in South Africa lived in households with at least one working adult. The other 30% (5.9 million children) lived in households where no adults were working. The number of children living in workless households has decreased by 1.4 million since 2003, when 41% of children lived in households where there was no employment.

This indicator is very closely related to the income poverty indicator in that provinces with relatively high proportions of children living in unemployed households also have high rates of child poverty. Nearly 50% of children in the Eastern Cape and Limpopo live in households without any employed adults. These two provinces are home to large numbers of children and have the highest rates of child poverty. In contrast, Gauteng and the Western Cape have the lowest poverty rates, and the lowest unemployment rates.

Racial inequalities are striking: 34% of African children have no working adult at home, while 11% of Coloured children, 6% of Indian children and 4% of White children live in these circumstances. There are no significant differences in child-centred unemployment measures when comparing girls and boys. However, older children are slightly more likely than younger children to live in households where there is no employment. In the rural former homelands, 49% of children live in households where nobody works.

Income inequality is clearly associated with unemployment. Two thirds of children in the poorest income quintile (5.1 million) live in households where no adults are employed.

Children receiving the Child Support Grant

This indicator shows the number of children receiving the Child Support Grant (CSG), as reported by the South African Social Security Agency (SASSA) which disburses social grants on behalf of the Department of Social Development.

The right to social assistance is designed to ensure that people living in poverty can meet basic subsistence needs. Government is obliged to support children directly when their parents or caregivers are too poor to do so. Income support is provided through social assistance programmes such as the CSG, which is an unconditional cash grant paid to the caregivers of eligible children.

Introduced in 1998 with an initial value of R100, the CSG has become the single biggest programme for alleviating child poverty in South Africa. Take-up of the CSG has increased dramatically over the years and the grant amount is increased slightly each year, more or less keeping pace with overall inflation. At the end of March 2018, a monthly CSG of R400 was paid to 12,274,000 children aged 0 – 17 years. The value of the CSG increased to R410 per month from the beginning of October 2018.

There have been two important changes in eligibility criteria. The first concerns age eligibility. Initially the CSG was only available for children younger than seven years. From 2003 it was gradually extended to older children up to the age of 14. Since January 2012, following a second phased extension, children are eligible for the grant until they turn 18.

The second important change concerns the income threshold or means test. The income threshold remained static for 10 years until a formula was introduced – set at 10 times the amount of the grant. This means that every time the grant is increased, the means test also increases. From April 2018 the income threshold was R4,000 per month for a single caregiver and R8,000 per month for the joint income of the caregiver and spouse, if the

caregiver is married. These increased to R4,100 and R8,200 per month respectively in October.

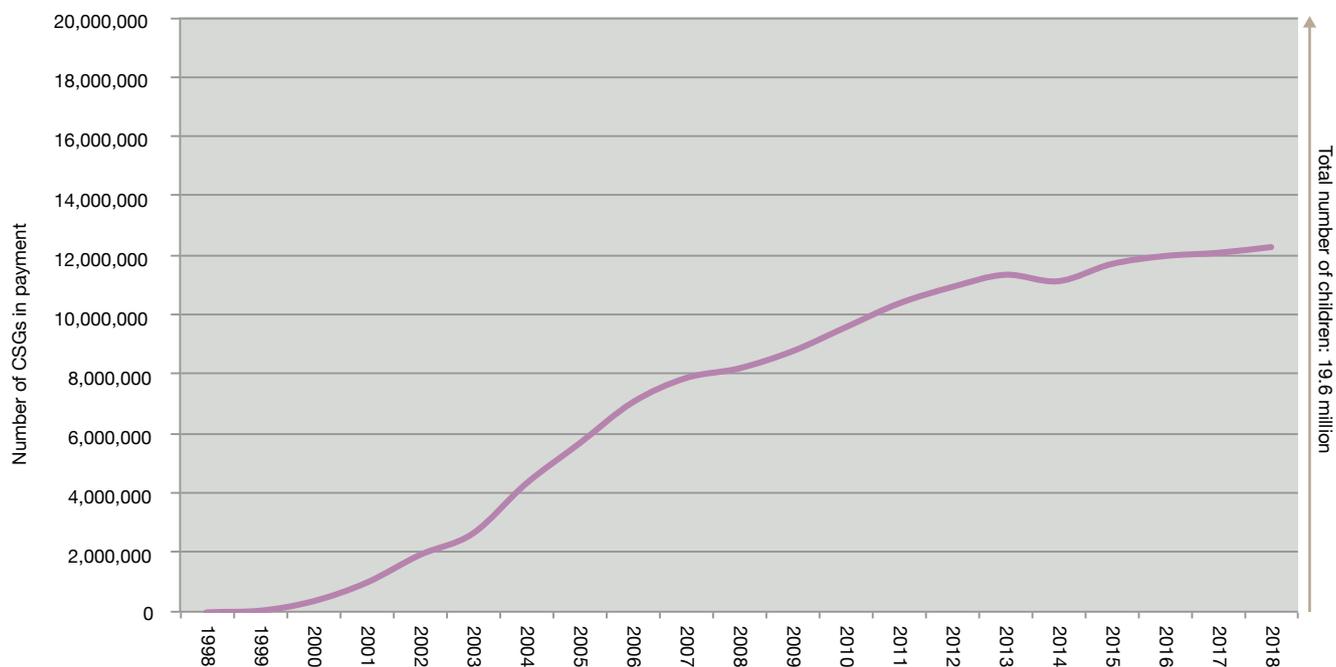
There is substantial evidence that grants, including the CSG, are being spent on food, education and basic goods and services. This evidence shows that the grant not only helps to alleviate income poverty and realise children’s right to social assistance, but is also associated with improved nutritional, health and education outcomes.⁶

Table 2a: Children receiving the Child Support Grant, by province and age group, 2018

Province	Number of child beneficiaries at end March 2018			
	0 – 5 years	6 – 11 years	12 – 17 years	TOTAL
Eastern Cape	622,010	707,208	568,666	1,897,884
Free State	224,669	255,707	205,729	686,105
Gauteng	633,484	685,320	517,720	1,836,524
KwaZulu-Natal	926,784	1,023,433	842,510	2,792,727
Limpopo	669,434	651,813	492,598	1,813,845
Mpumalanga	376,032	390,262	320,641	1,086,935
North West	288,806	311,490	244,318	844,614
Northern Cape	108,768	110,441	89,921	309,130
Western Cape	329,545	383,669	292,922	1,006,136
South Africa	4,179,532	4,519,343	3,575,025	12,273,900

Source: South African Social Security Agency (2018) SOCPEN database – special request. Pretoria: SASSA.

Figure 2c: Children receiving the Child Support Grant, 1998 – 2018



Sources: 1998 – 2007: National Treasury Intergovernmental Fiscal Reviews. 2008 – 2018: South African Social Security Agency SOCPEN monthly reports, by special request.

Given the positive and cumulative effects of the grant, it is important that caregivers are able to access it for their children as early as possible. One of the main concerns is the slow take-up for young children. An analysis of exclusions from the CSG found that exclusion rates for eligible infants under a year were as high as 43% in 2014, up only three percentage points from 47% in 2008. Exclusion rates were found to be highest in the Western Cape and Gauteng.

The total rate of exclusion for all ages was estimated at 17.5% (more than 1.8 million children).⁷ Barriers to take-up include confusion about eligibility requirements and the means test in particular; lack of documentation (mainly identity books or birth certificates, and proof of school enrolment, although the latter is not an eligibility requirement); and problems of institutional access (including the time and cost of reaching SASSA offices, long queues and lack of baby-friendly facilities).

Children receiving the Foster Child Grant

This indicator shows the number of children who are accessing the Foster Child Grant (FCG) in South Africa, as recorded in the SOCPEN administrative data system of the SASSA.

The FCG is available to foster parents who have a child placed in their care by an order of the court. It is a non-contributory cash grant valued at R960 per month from April 2018. The grant was initially intended as financial support for children removed from their families and placed in foster care for protection in situations of abuse or neglect. The relatively large value of the grant, compared to the CSG, is justified on the basis that the child is technically a ward of the state, and the state is therefore directly responsible for all the child's needs. However, the FCG has increasingly been used to provide financial support to caregivers of children who are orphaned and has effectively been used as a poverty alleviation grant for orphans in kinship care. The appropriateness and effectiveness of this approach was questioned as far back as 2003, particularly because many children live with kin, whether or not their parents are alive.⁸

The number of FCGs remained stable for many years when foster care applied mainly to children who were in need of care

and protection because of abuse or neglect, or because they were awaiting adoption. Its rapid expansion since 2003 coincides with the rise in HIV-related orphaning and an implied policy change by the Department of Social Development, which from 2003 started encouraging family members (particularly grandmothers) caring for orphaned children to apply for foster care and the FCG. During the subsequent five years, the number of FCGs increased by over 50,000 per year as orphans were brought into the foster care system. The increases were greatest in provinces with large numbers of orphaned children: the Eastern Cape, KwaZulu-Natal, Limpopo and Mpumalanga.

However, by 2010 more than 500,000 FCGs were in payment and the foster care system was struggling to keep pace with the numbers due to the required initial investigations and reports by social workers, court-ordered placements, and additional two-yearly social worker reviews and court-ordered extensions. SASSA is not allowed to pay the FCG without a valid court order or extension order, and more than 110,000 FCGs lapsed between April 2009 and March 2011 because of backlogs in the extensions of court orders.⁹

In 2011 a court-ordered settlement stipulated that the foster care court orders that had expired – or that were going to expire in the following two years – must be deemed to have been extended until 8 June 2013. This effectively placed a moratorium on the lapsing of these FCGs. As a temporary solution, social workers could extend orders administratively until December 2014, by which date a comprehensive legal solution should have been found to prevent qualifying families from losing their grants in future.¹⁰ Yet no policy solution had been developed by the 2014 cut-off date. Instead, the Department of Social Development sought (and received) an urgent court order extending the date to the end of 2018.

Since 2012 the number of FCGs has declined, and there has been a substantial increase in the number of grants that terminate at the end of each year, when children turn 18. At the end of 2014, 300,000 court orders had expired, representing more than 60% of all foster care placements.¹¹ The grants remained in payment only because of a High Court order which prevented them from lapsing. In March 2018, 416,000 FCGs were paid to caregivers of children in foster care, substantially down from 2012 when 537,000 grants were in payment. The FCG is therefore now back to below 2008 levels. The most dramatic drop has been in KwaZulu-Natal, where the number of FCGs fell by 35%, from 142,000 to 92,000.

It is not possible to calculate a take-up rate for the FCG as there is no accurate record of how many children are eligible for placement in foster care – and indeed, no clear guidelines about how it should be targeted in the context of high orphaning rates. If all double orphans were to be placed in foster care, this would require just over 500,000 foster care placements, excluding those who need to be placed in foster care because they are awaiting adoption or have been removed from their families for reasons

Table 2b: Children receiving the Foster Child Grant, by province, 2012 & 2018

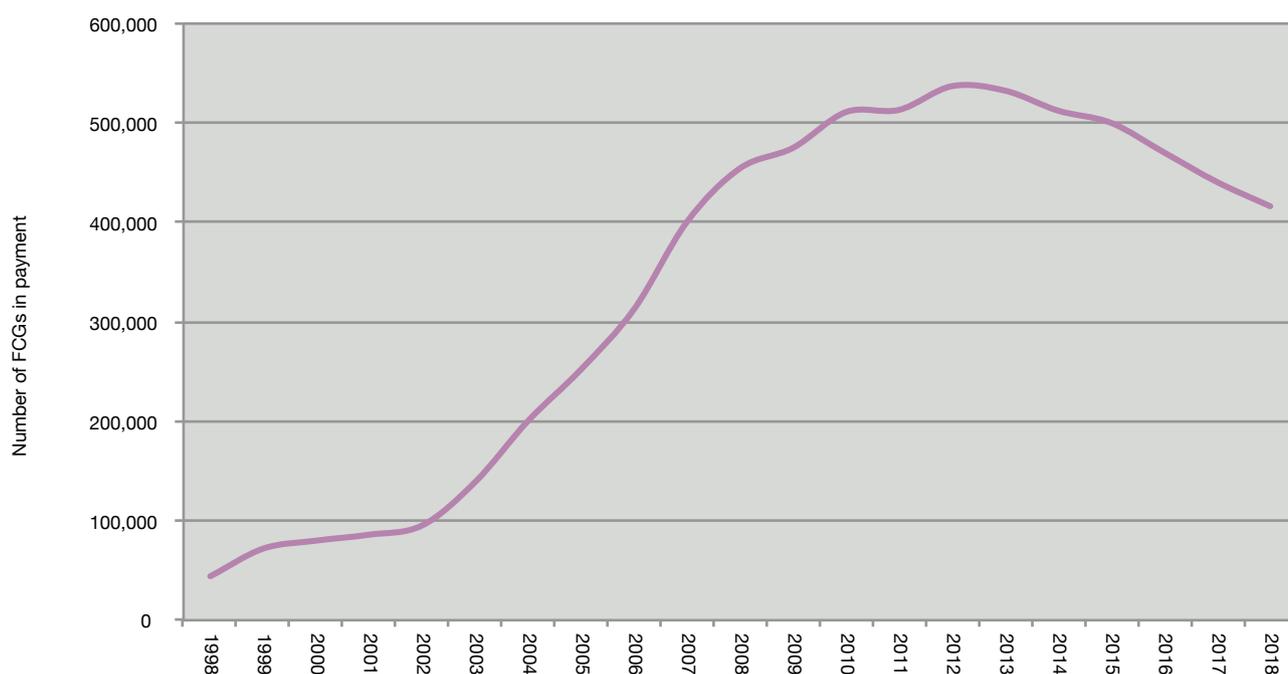
Province	2012	2018	Difference	% difference
Eastern Cape	116,826	99,033	-17,793	-15%
Free State	43,311	30,991	-12,320	-28%
Gauteng	56,451	48,132	-8,319	-15%
KwaZulu-Natal	142,114	83,525	-58,589	-41%
Limpopo	56,066	46,341	-9,725	-17%
Mpumalanga	32,886	30,351	-2,535	-8%
North West	45,634	33,094	-12,540	-27%
Northern Cape	14,456	12,880	-1,576	-11%
Western Cape	29,003	31,669	2,666	9%
South Africa	536,747	416,016	-120,731	-22%

Source: South African Social Security Agency (2012; 2018) SOCPEN database – special request. Pretoria: SASSA.

of abuse or neglect. This would once again send the number of children in foster care well above half a million – a level that the system has not previously been able to support.

The systemic problems that caused FCGs to lapse and reduced social worker capacity to respond to children in need of protection services will need to be addressed through legislative amendment to clarify the eligibility criteria for foster care. An option currently under consideration is to provide a larger CSG for orphaned children living with kin (colloquially called the

Figure 2d: Children receiving the Foster Child Grant, 1998 – 2018



Source: South African Social Security Agency (2009 – 2018) SOCPEN database – special request. Pretoria: SASSA.

“CSG top-up”). This would create inequalities in grant values between different categories of children living in the same levels of poverty but may alleviate the pressure on welfare services caused by high foster care caseloads.¹² An amendment to the Social Assistance Act was tabled in Parliament in April 2018,

providing for a CSG top-up for orphaned children living with kin. This would give them access to a larger child grant, around half-way between the value of the CSG and the FCG, without first having to go through a foster care placement.

Children receiving the Care Dependency Grant

This indicator shows the number of children who are accessing the Care Dependency Grant (CDG) in South Africa, as recorded in the SOCPEN administrative data system of the SASSA.

The CDG is a non-contributory monthly cash transfer to caregivers of children with disabilities who require permanent care or support services. It excludes those children who are cared for in state institutions because the purpose of the grant is to cover the additional costs (including opportunity costs) that the parent or caregiver might incur as a result of the child’s disability. The child needs to undergo a medical assessment to determine eligibility and the parent must pass an income or “means” test.

Although the CDG targets children with disabilities, children with chronic illnesses are eligible for the grant once the illness becomes disabling, for example children who are very sick with AIDS-related illnesses. Children with disabilities and chronic illnesses need substantial care and attention, and parents may need to stay at home or employ a caregiver to tend to the child. Children with health conditions may need medication, equipment or to attend hospital often. These extra costs can put strain on families that are already struggling to make ends meet. Poverty and chronic health conditions are therefore strongly related.

It is not possible to calculate a take-up rate for the CDG because there is no reliable data on the number of children with disabilities or who are chronically ill, and in need of permanent care or support services. At the end of March 2018, 147,000 children were receiving the CDG, and from the beginning of April 2018, the grant was valued at R1,690 per month (increasing to R1,700 in October).

The provincial distribution of CDGs is fairly consistent with the distribution of children. The provinces with the largest numbers of children, KwaZulu-Natal and the Eastern Cape, receive the largest share of CDGs. There has been a gradual but consistent increase in access to the CDG each year since 1998, when only 8,000 CDGs were disbursed.

Table 2c: Children receiving the Care Dependency Grant, by province, 2018

Province	Children
Eastern Cape	22,453
Free State	8,147
Gauteng	19,369
KwaZulu-Natal	39,517
Limpopo	15,436
Mpumalanga	11,345
North West	10,047
Northern Cape	6,004
Western Cape	15,147
South Africa	147,465

Source: South African Social Security Agency (2018) SOCPEN database – special request. Pretoria: SASSA.

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Child health

Updated by Katharine Hall, Nadine Nannan and Winnie Sambu

Section 27 of the Constitution of South Africa provides that everyone has the right to have access to health care services. In addition, section 28 (1)(c) gives children “the right to basic nutrition and basic health care services”.¹

Article 14(1) of the African Charter on the Rights and Welfare of the Child states that “every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health”.²

Article 24 of the UN Convention on the Rights of a Child says that state parties should recognise “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”. It obliges the state to take measures “to diminish infant and child mortality” and “to combat disease and malnutrition”.³

The infant and under-five mortality rate

Nadine Nannan

The infant and under-five mortality rates are key indicators of health and development. They are associated with a broad range of bio-demographic, health and environmental factors which are not only important determinants of child health but are also informative about the health status of the broader population.

The infant mortality rate (IMR) is defined as the probability of dying within the first year of life and refers to the number of babies under 12 months who die in a year, per 1,000 live births during the same year. Similarly, the under-five mortality rate (U5MR) refers to the number of children under five years old who die in a year, per 1,000 live births in the same year.

This information is ideally obtained from vital registration systems. However, as in many middle- and lower-income countries, the under-reporting of births and deaths renders the South African system inadequate for monitoring purposes. South Africa is therefore reliant on alternative methods, such as survey and census data, to measure child mortality. Despite several surveys which should have provided information to monitor progress, the lack of reliable data since 2000 led to considerable uncertainty around the level of childhood mortality for a prolonged period. However, the second South Africa National Burden of Disease Study has produced national and provincial infant and under-five mortality trends from 1997 up until 2012.ⁱ

An alternative approach to monitor age-specific mortality nationally since 2009 is the rapid mortality surveillance system (RMS) based on the deaths recorded on the population register by the Department of Home Affairs.⁴ The RMS data have been recommended by the Health Data Advisory and Co-ordinating Committee because corrections have been made for known biases. In other words, the indicators shown in Table 3 are nationally representative. The RMS reports vital registration data adjusted for under-reporting which allow for evaluation of annual trends. They suggest the IMR peaked in 2003 when it was 53 per 1,000 and decreased to 25 per 1,000 in 2016. During the same period, the U5MR decreased from 81 per 1,000 to 34 per 1,000.

Table 3: Child mortality indicators, 2012 – 2016

INDICATOR	2012	2013	2014	2015	2016
Under-five mortality rate per 1,000 live births	41	41	40	37	34
Infant mortality rate per 1,000 live births	27	28	28	27	25
Neonatal mortality	12	11	12	12	12

Source: Dorrington RE, Bradshaw D, Laubscher R & Nannan, N (2018) *Rapid Mortality Surveillance Report 2016*. Cape Town: South African Medical Research Council.

The neonatal mortality rate (NMR) is the probability of dying within the first 28 days of life, per 1,000 live births. The NMR was 12 deaths per 1,000 live births in 2016. Estimates of the NMR are derived directly from vital registration data (i.e. registered deaths and births without adjustment for incompleteness) up to 2013, and from 2013 onwards the estimates were derived directly from neonatal deaths and live births recorded in the District Health Information System for 2011–2016.

The South African Demographic and Health Survey (SADHS) also reports child mortality rates. After a long gap (since 2003) the SADHS was conducted again in 2016.⁵ For the period 2012 – 2016 the RMS estimated a slightly higher overall under-5 mortality rate than the Demographic and Health Survey – 42 vs 39 per 1,000. However, the SADHS infant mortality rate (IMR) for recent years is much higher than the IMR from the RMS (35 vs 27 per 1,000 live births for the period 2012 – 2016). The SADHS estimates are likely too high because the neonatal mortality rate is too high.

i These profiles can be seen at: <http://www.mrc.ac.za/bod/reports.htm>

Children living far from their health facility

This indicator reflects the distance from a child's household to the health facility they normally attend. Distance is measured as the length of time travelled to reach the health facility, by whatever form of transport is usually used. The health facility is regarded as "far" if a child would have to travel more than 30 minutes to reach it, irrespective of mode of transport.

A review of international evidence suggests that universal access to key preventive and treatment interventions could avert up to two-thirds of under-five deaths in developing countries.⁶ Preventative measures include promotion of breast and complementary feeding, micronutrient supplements (vitamin A and zinc), immunisation, and the prevention of mother-to-child transmission of HIV, amongst others. Curative interventions provided through the government's Integrated Management of Childhood Illness strategy include oral rehydration, infant resuscitation and the dispensing of medication.

According to the UN Committee on Economic, Social and Cultural Rights, primary health care should be available (in sufficient supply), accessible (easily reached and affordable), acceptable and of good quality.⁷ In 1996, primary level care was made free to everyone in South Africa, but the availability and physical accessibility of health care services remain a problem, particularly for people living in remote areas.

Physical inaccessibility poses particular challenges when it comes to health services because the people who need these services are often unwell or injured, or need to be carried because they are too young, too old or too weak to walk. Physical inaccessibility can be related to distance, transport options and costs, or road infrastructure. Physical distance and poor roads also make it difficult for mobile clinics and emergency services to reach outlying areas. Within South Africa, patterns of health care utilisation are influenced by the distance to the health service provider: those who live further from their nearest health facility are less likely to use the facility. This "distance decay" is found even in the uptake of services that are required for all children, including immunisation and maintaining the Road-to-Health book.⁸

A fifth (20%) of South Africa's children live far from the primary health care facility they normally use, and 94% attend the facility closest to their home. Within the poorest 40% of households, only 3% do not use their nearest facility, while 16% of children in upper quintile households (the richest 20%) travel beyond their nearest health facility to seek care. The main reasons for attending a more distant health service relate to choices based on perceptions of quality: preference for a private doctor, or wanting to avoid long waiting times, inconvenient opening times, unavailable medicines and (in 4% of cases) rude staff.⁹

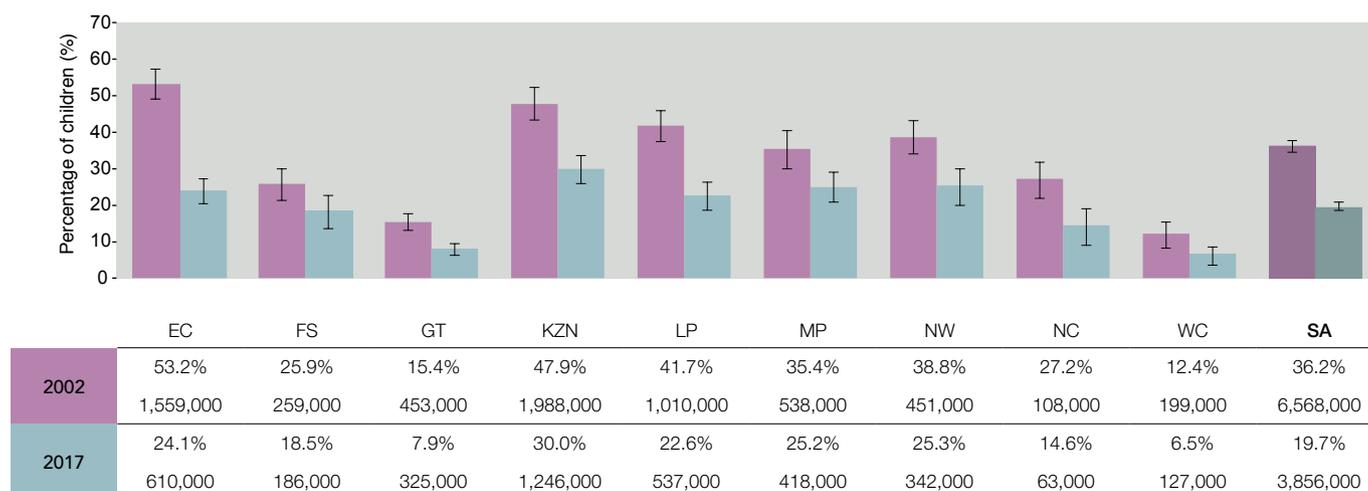
In total, 3.9 million children travel more than 30 minutes to reach their usual health facility. This is a significant improvement since 2002, when 36% of children lived far from their nearest clinic.

It is encouraging that the greatest improvements are in provinces which performed worst in 2002: the Eastern Cape (where poor access to health facilities dropped from 53% in 2002 to 24% in 2017), KwaZulu-Natal (down from 48% to 30%), Limpopo (from 42% to 23%) and North West (from 39% to 25%) over the 16-year period. Provinces with the highest rates of access are the largely metropolitan provinces of the Western Cape (where only 6% of children live far from their usual health care service) and Gauteng (8%).

There are also significant differences between population groups. A quarter (22%) of African children travel far to reach a health care facility, compared with between 6%, 8% and 9% of Indian, White and Coloured children respectively. Racial inequalities are amplified by access to transport: if in need of medical attention, 90% of White children would be transported to their health facility in a private car, compared with only 10% of African children and 23% of Coloured children.

Poor children bear the greatest burden of disease, due to under-nutrition and poorer living conditions and access to services (water and sanitation). Yet health facilities are least accessible to the poor. More than a quarter of children (28%) in the poorest 20% of households have to travel far to access health care, compared with 7% of children in the richest 20% of households. There are no significant differences between different sex and age groups.

Figure 3a: Children living far from their health facility, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

Children living in households where there is reported child hunger

Section 28(1)(c) of the Bill of Rights in the Constitution gives every child the right to basic nutrition. The fulfilment of this right depends on children's access to sufficient food. This indicator shows the number and proportion of children living in households where children are reported to go hungry "sometimes", "often" or "always" because there isn't enough food. Child hunger is emotive and subjective, and this is likely to undermine the reliability of estimates on the extent and frequency of reported hunger, but it is assumed that variation and reporting error will be reasonably consistent so that it is possible to monitor trends from year to year.

The government has introduced a number of programmes to alleviate income poverty and to reduce hunger, malnutrition and food insecurity, yet 2.3 million children (12%) lived in households where child hunger was reported in 2017. There was a significant drop in reported child hunger, from 30% of children in 2002 to 16% in 2006. Since then the rate has remained fairly consistent, suggesting that despite the expansion of social grants, school feeding schemes and other efforts to combat hunger amongst children, many households remain vulnerable to food insecurity. South Africa therefore has some way to go if it is to achieve the Sustainable Development Goal target of ending hunger by 2030.¹⁰

There are large disparities between provinces and population groups. Provinces with relatively large numbers of children and high rates of child hunger are the KwaZulu-Natal (18%), North West (16%), Free State (15%), Mpumalanga (14%), and the Western Cape (11%). Together these provinces have over 1.6 million children living in households that report having insufficient food for children. The Northern Cape has the highest percentage of children living in households where there was child hunger, though the province has the lowest child population in the country. The Eastern Cape has had the largest decrease between 2002 and 2017, with reported child hunger being

reduced by 41 percentage points over the 16-year-period from 48% to 7%. Limpopo has a large rural child population with high rates of unemployment and income poverty, yet child hunger has remained well below the national average, reported at 3% in 2017.

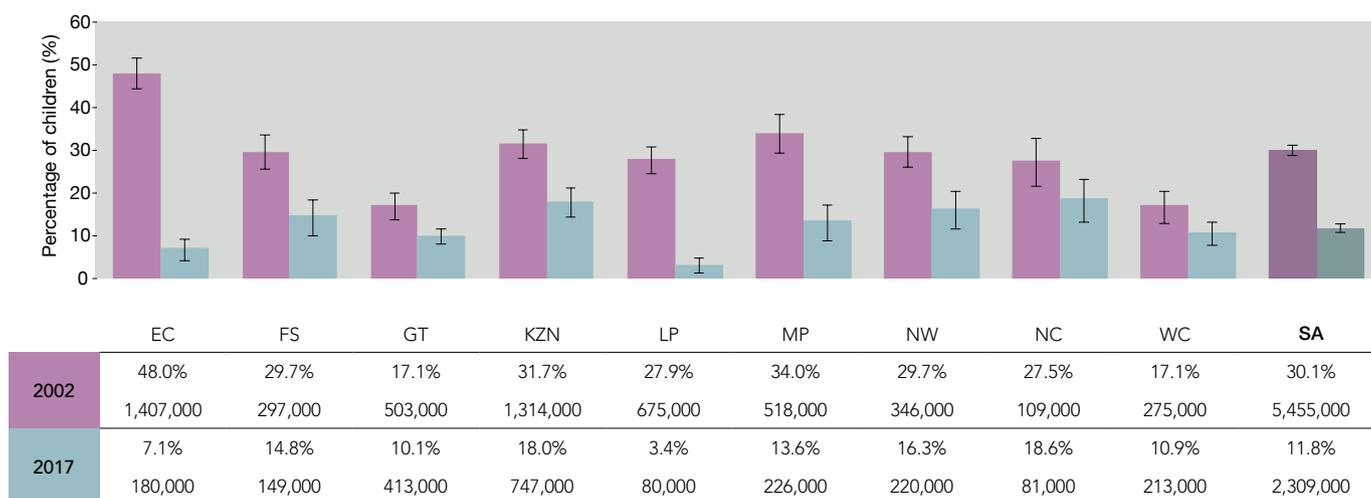
Hunger, like income poverty and household unemployment, is most likely to be found among African children. In 2017, some 2.2 million African children lived in households that reported child hunger. This equates to 13% of the total African child population. Eight percent of Coloured children were reported to live in households where there was child hunger, while the hunger rates for Indian children was 4% and White children below 1%.

Although social grants are targeted to the poorest households and are associated with improved nutritional outcomes, child hunger is still most prevalent in the poorest households: 19% of children in the poorest quintile go hungry sometimes, compared with less than 1% in the wealthiest quintile. The differences in child hunger rates across income quintiles are statistically significant.

There are no significant differences in reported child hunger across age groups. However, more than 820,000 children younger than five years old are reported to have experienced child hunger, signalling a risk of under-nutrition. Young children are particularly vulnerable to prolonged lack of food, which increases their risk of stunting. Inadequate food intake compromises children's growth, health and development; increases their risk of infection; and contributes to malnutrition.

It should be remembered that this is a household-level variable, and so reflects children living in households where children are reported to go hungry often or sometimes; it does not reflect the allocation of food within households. The indicator also doesn't reflect the quality of food, including dietary diversity, which has been found to affect the nutritional status of children under five years.

Figure 3b: Children living in households where there is reported child hunger, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

Teenage pregnancy

This indicator shows the number and proportion of young women aged 15 – 24 who are reported to have given birth to a live child in the past year.

Teenage pregnancy rates are difficult to calculate directly because it is hard to determine how many pregnancies end in miscarriage, stillbirth or abortion: these are not necessarily known to the respondent, or accurately reported. In the absence of reliable data on pregnancy, researchers tend to rely on childbearing data (i.e. the percentage of women in an age group who have given birth to a live child).

Despite widespread assumptions that teen pregnancy in South Africa is an escalating problem, the available data suggest that the percentage of teenage mothers is not increasing. A number of studies have suggested a levelling off and even a decrease in fertility rates among teenagers in South Africa.¹¹ Teenage fertility rates declined after the 1996 Census, and Department of Health data between 2004 and 2013 showed no increase in the share of teenagers aged 15 – 19 who attended antenatal clinics.¹² The report on the 2015 national antenatal HIV prevalence survey states that the proportion of participants (i.e. pregnant women presenting at antenatal clinics for testing) “seems to be shifting towards the older age groups.... There has been a marked decline in participants under the age of 25 years and an increase in participants over 25 years”.¹³

Fertility rates are, of course, an indicator of possible exposure to HIV. HIV prevalence rates are higher among women in their late twenties and thirties, and lower among teenagers, and the prevalence rate in the 15 – 24 age group has decreased over the past 10 years. However, prevalence rates are still worryingly high: of the young pregnant women surveyed in antenatal clinics in 2015, 11.8% in the 15 – 19 age group and 23.2% of those aged 20 – 24 were HIV positive.¹⁴ There is a strong association between early childbearing and maternal mortality, and the majority of deaths in young mothers are caused by HIV.¹⁵ It is important that safe sexual behaviour is encouraged and practised.

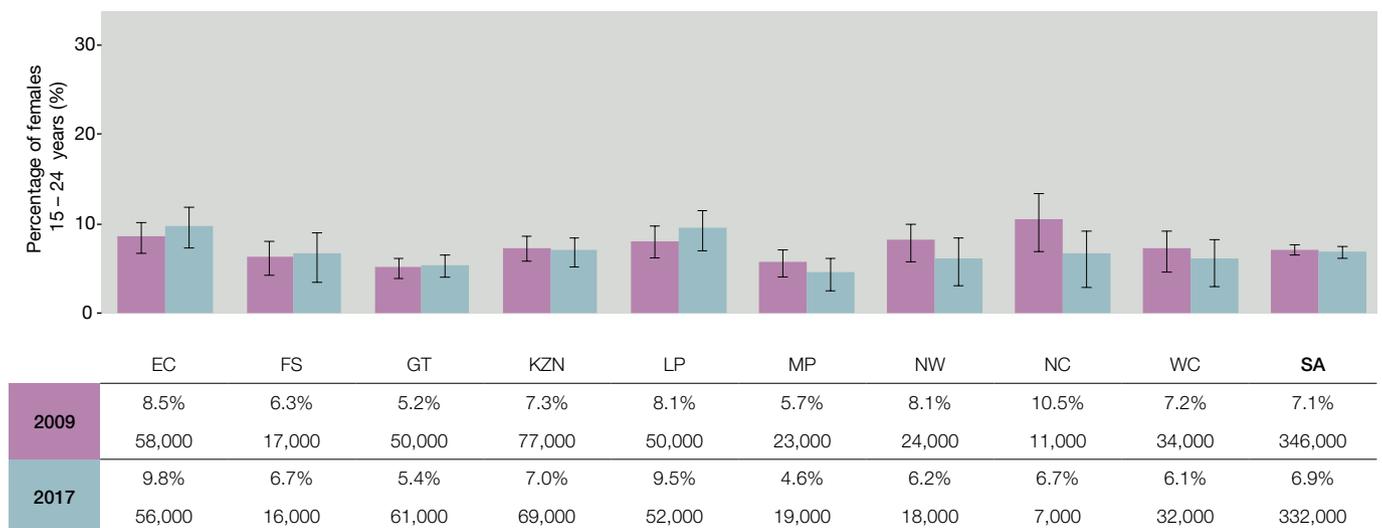
Studies have found that early childbearing – particularly by teenagers and young women who have not completed school – has a significant impact on the education outcomes of both the mother and child, and is also associated with poorer child health and nutritional outcomes.¹⁶ For this reason it is important to delay childbearing, and to ensure that teenagers who do fall pregnant are appropriately supported. This includes ensuring that young mothers can complete their education, and that they have access to parenting support programmes and health services. Although pregnancy is a major cause of school drop-out, some research has also suggested that teenage girls who are already falling behind at school are more likely to become pregnant than those who are progressing through school at the expected rate.¹⁷ So efforts to provide educational support for girls who are not coping at school may also help to reduce teenage pregnancies.

Poverty alleviation is important for both the mother and child, but take-up of the Child Support Grant among teenage mothers is low compared with older mothers.¹⁸ This suggests that greater effort should be made to assist young mothers to obtain birth certificates to apply for the CSGs. Ideally, home affairs and social security services should form part of a comprehensive maternal support service at clinics and maternity hospitals.

Since 2009 the nationally representative General Household Survey (GHS) conducted by Statistics South Africa has included a question on pregnancy. The question asks the household respondent: “Has any female household member [between 12 – 50 years] been pregnant during the past 12 months?” For those reported to have been pregnant, a follow-up question asks about the current status of the pregnancy. This indicator calculates the number and proportion of young women who have given birth in the past year.

According to the GHS the national childbearing rate for young women aged 15 – 24 was 6.9% in 2017. There has been no significant change in this rate since 2009 when the question was first asked, and the estimated number of young women giving

Figure 3c: Annual childbearing rates among young women aged 15 – 24 years, by province, 2009 & 2017



Source: Statistics South Africa (2010; 2018) *General Household Survey 2009; General Household Survey 2017*. Pretoria: Stats SA.
Analysis by Katharine Hall, Children’s Institute, UCT.

birth in a year has remained fairly stable. As would be expected, childbearing rates increase with age. Less than 3% of girls aged 15 – 17 were reported to have given birth in the previous 12 months (representing 36,000 teenagers in this age group).

Childbearing rates rose to 7% among 18 – 20-year-olds (94,000 when weighted), and 10% in the 21 – 24 age group (199,000). These rates have also been stable over the past decade.

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Children’s access to education

Katharine Hall

Section 29(1)(a) of the South African Constitution states that “everyone has the right to a basic education”, and section 29(1)(b) says that “everyone has the right to further education”, and that the state must make such education “progressively available and accessible”.¹

Article 11(3)(a) of the African Charter on the Rights and Welfare of the Child says “States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular ... provide free and compulsory basic education”.²

Article 28 of the UN Convention on the Rights of the Child recognises “the right of the child to education” and also obliges the state to “make primary education compulsory and available free to all”.³

Children attending an educational institution

This indicator shows the number and percentage of children aged 7 – 17 years who are reported to be attending a school or educational facility. It is different from “enrolment rate”, which reflects the number of children enrolled in educational institutions, as reported by schools to the national Department of Basic Education (DBE) early in the school year.

Education is a central socio-economic right that provides the foundation for lifelong learning and economic opportunities. Children have a right to basic education and are admitted into grade 1 in the year they turn seven. Basic education is compulsory in grades 1 – 9, or for children aged 7 – 15. Children who have completed basic education also have a right to further education (grades 10 – 12), which the government must take reasonable measures to make available.

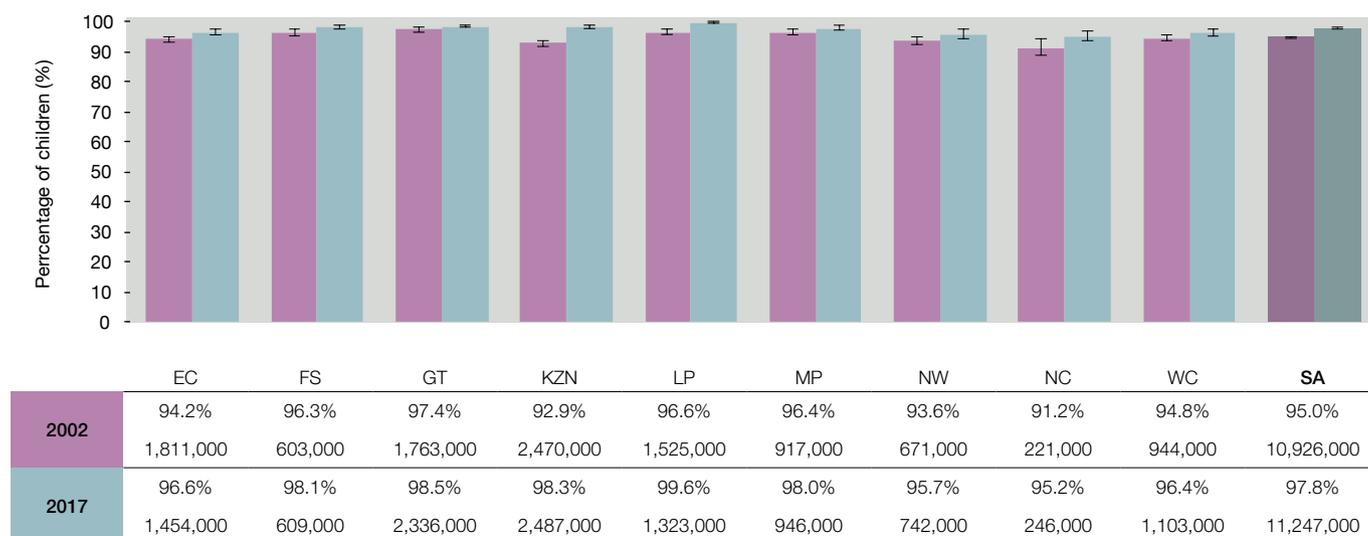
South Africa has high levels of school enrolment and attendance. Amongst children of school-going age (7 – 17 years), the vast majority (98%, or 11.2 million children) attended some form of educational facility in 2017. This is a small but significant increase from 2002, when the reported attendance rate was 95%.

The overall increase is mainly due to a small but real growth in reported attendance rates for African and Coloured children over the 16-year period. Out of a total of 11.5 million children aged 7 – 17 years, 254,000 were reported as not attending school in 2017. Attendance rates for Coloured children remained slightly below the national average in 2017, at 95%.

At a provincial level, the Northern Cape and KwaZulu-Natal have seen the most significant increases in attendance rates between 2002 and 2017. In the Northern Cape, attendance increased from 91% to 95% while in KwaZulu-Natal attendance increased from 93% to 98%.

Overall attendance rates tend to mask drop-out among older children. Analysis of attendance amongst discrete age groups shows a significant drop in attendance amongst children older than 15. This also coincides with the end of the compulsory schooling age. Whereas around 99% of children in each age year from seven to 14 are reported to be attending an educational institution, the attendance rate drops to 97% for 15-year-olds and 96% for 16-year-olds and 91% for 17-year-olds, and only

Figure 4a: School-age children (7 – 17-year-olds) attending an educational institution, by province, 2002 & 2017



Source: Statistics South Africa (2003, 2018) *General Household Survey 2002*; *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

82% of 18-year-olds are reported to be attending school (based on those who have not completed grade 12). Reported school attendance rates between boys and girls are not statistically significant.

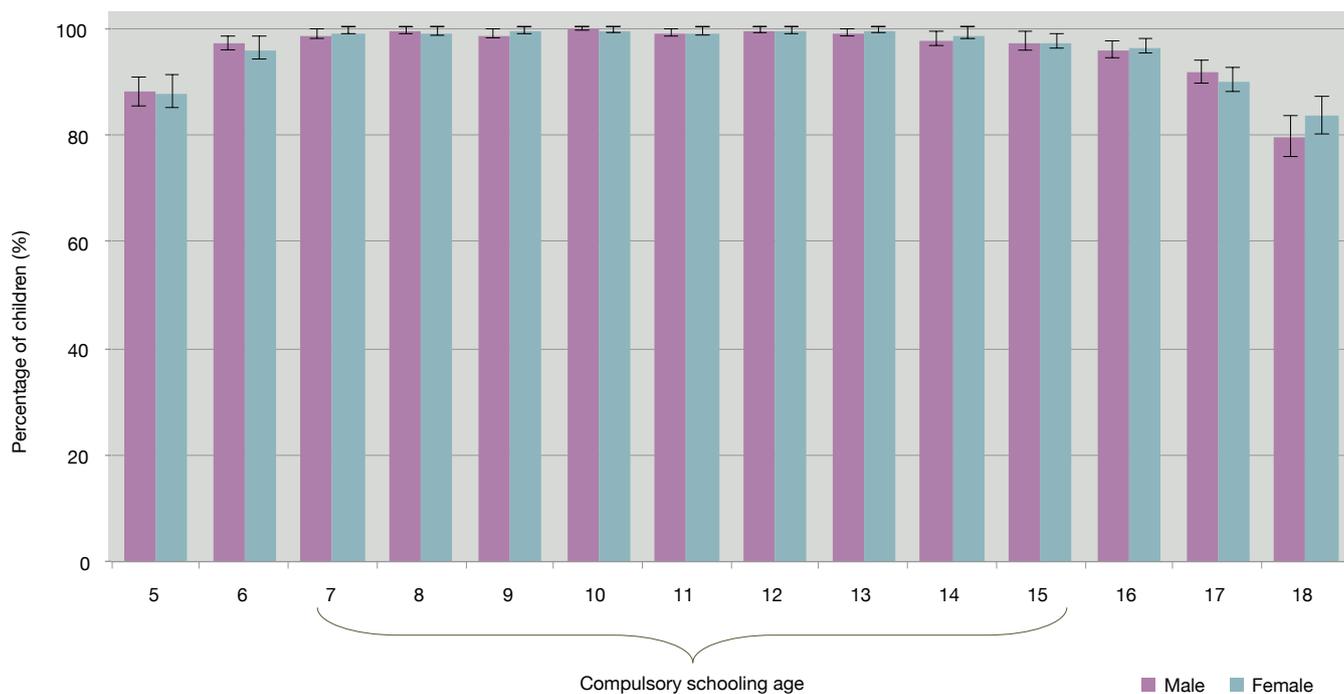
Amongst children of school-going age who are not attending school the main set of reasons for non-attendance relate to financial constraints. These include the cost of schooling (12%) – which would also include related costs such as uniform and transport – and the opportunity costs of education where children have family commitments such as childminding (7%) or are needed to work in a family business or elsewhere to support household income (4%). The second most common set of reasons is related to perceived learner or education system failures, such as a perception that “education is useless” (8%), feeling unable to perform at school (7%), or exam failure (5%). Other reasons for drop-out are disability (16%) and illness (4%). Pregnancy accounts for around 7% of drop-out amongst teenage girls not attending school (or 3% of all non-attendance).⁴ Another 3% were not in

school because they were not accepted for enrolment, signifying barriers to institutional access.

Although the costs of education are cited as a barrier for those who are not attending (and who tend to be older), the overall attendance rate for children in the lower income quintiles is not significantly lower than those in the wealthier quintiles.

Attendance rates alone do not capture the regularity of children’s school attendance or their progress through school. Research has shown that children from more disadvantaged backgrounds – with limited economic resources, lower levels of parental education, or who have lost their mother – are more prone to dropping out or progressing more slowly than their more advantaged peers. Racial inequalities in school advancement remain strong.⁵ Similarly, school attendance rates tell us nothing about the quality of teaching and learning.⁶ Inequalities in learning outcomes are explored through standardised tests such as those used in the international SAQMEC,⁷ TIMMS and PIRLS⁸ studies, and the DBE’s Annual National Assessments.⁹

Figure 4b: Reported attendance at an educational institution, by age and sex, 2017



Source: Statistics South Africa (2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: StatsSA.

Access to early childhood learning programmes

This indicator shows the number and percentage of children aged 5 – 6 years who are reported to be attending an early childhood development (ECD) programme or educational institution – in other words, those attending out-of-home care and learning centres including ECD centres, pre-grade R, grade R or grade 1 in ordinary schools. While all these facilities provide care and stimulation for early learning for young children, the emphasis on providing learning opportunities through structured learning programmes differs by facility type.

Educational inequalities are strongly associated with structural socio-economic (and therefore also racial) inequalities in South Africa.¹⁰ These inequalities are evident from the early years, even before entry into primary school. They are exacerbated by an unequal schooling system,¹¹ and are difficult to reverse. But early inequalities can be reduced through preschool exposure to developmentally appropriate activities and programmes that stimulate cognitive development.¹² Provided that they are of good quality, early learning programmes are an important mechanism to interrupt the cycle of inequality by reducing socio-economic differences in learning potential between children before they enter the foundation phase of schooling.

The Five-year Strategic Plan¹³ of the DBE includes a broad goal to improve the quality of ECD provisioning and specifically to improve access to grade R through the supply of learning materials and improving the quality of grade R educators. Evidence suggests that quality group learning programmes are beneficial for cognitive development from about three years of age¹⁴ and the National Development Plan (NDP) priorities, cited in the DBE's strategic plan, include universal access to two years of early childhood development programmes. The DBE funds and monitors thousands of community-based grade R centres in addition to the school-based grade R classes. The NDP proposes the introduction of a second year of preschool education, and

that both years be made universally accessible to children.¹⁵ It therefore makes sense to monitor enrolment in early learning programmes of children in the 5 – 6-year preschool age group.

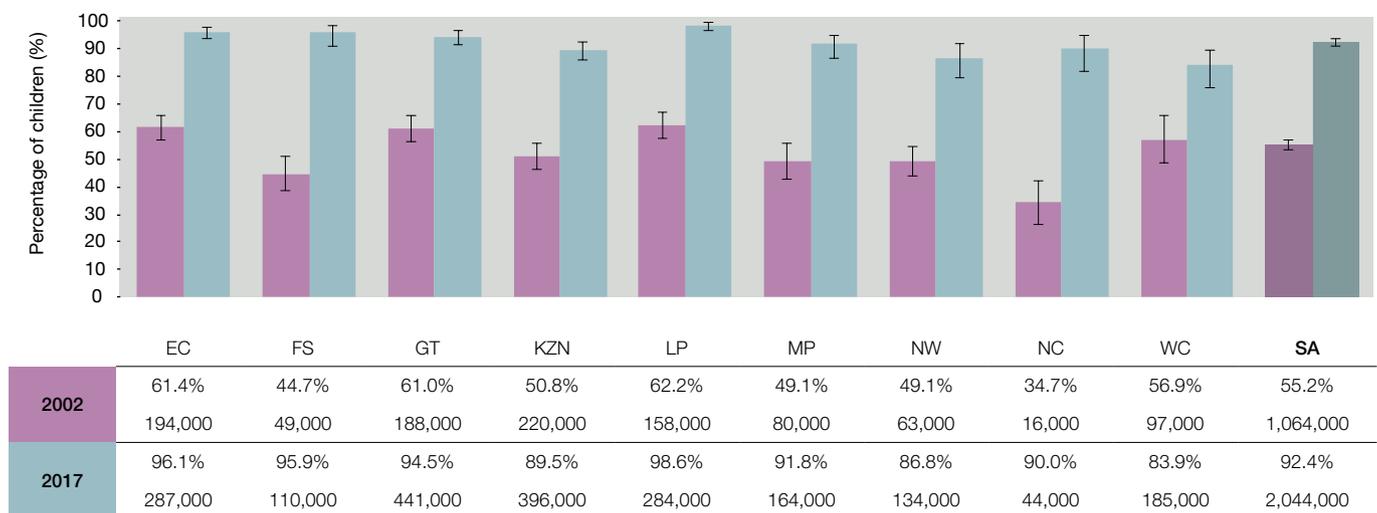
In 2015, there were 288,212 learners attending 4,058 ECD centres in South Africa, according to the DBE's administrative data.¹⁶ The number of learners in ECD centres rose by 7% between 2013 and 2014 and then declined slightly again. Preliminary results from DBE, based on data from the Learner Unit Record Information and Tracking System (LURITS) and other provincial data sources show that, in addition to children in ECD centres, 862,200 learners were attending grade R or pre-grade R at ordinary primary schools in 2017, of whom 95% were at public (government schools) while 5%, or 40,240 learners, were at independent schools.¹⁷

In 2017, 92% of children (2 million) in the preschool age group (5 – 6-year-olds) were reported to be attending some kind of educational institution, mostly in grade R or grade 1. This was almost double the 2002 level, when 1.1 million in the same age group were reported to be attending an educational institution.

Attendance rates are high across all provinces. The highest attendance rates in 2017 were in Limpopo (99%), Eastern Cape and Free State (both at 96%) and Gauteng (95%) while the lowest rates were in the North West province (87%) and Western Cape (84%). This pattern differs from many other indicators, where the Western Cape usually outperforms poorer and more rural provinces like the Eastern Cape and Limpopo. Similar patterns were found in analyses of the 2007 Community Survey and the 2008 National Income Dynamics Study.¹⁸

Given the inequities in South Africa, it is pleasing to see that there are no substantial racial differences in access to educational institutions by African and White children of preschool age, although levels of attendance among Coloured children remain below the national average, at 83%. It is also encouraging that,

Figure 4c: Children aged 5 – 6 years attending school or ECD facility, by province, 2002 & 2017



Source: Statistics South Africa (2002; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: StatsSA. Analysis by Katharine Hall and Winnie Sambu, Children's Institute, UCT.

Note: Prior to 2009, enrolment in crèches, playgroups and ECD centres would have been under-reported as the survey only asked about attendance at "educational institutions". More specific questions about ECD facilities were introduced in the 2009 survey and are likely to have resulted in higher response rates. (For a more detailed technical explanation, see www.childrencount.uct.ac.za).

as with formal school attendance, there are no strong differences in preschool enrolment across the income quintiles. There are also no significant gender differences in access to preschool.

As with the indicator that monitors school attendance, it should be remembered that this indicator tells us nothing about

the quality of care and education that young children receive at educational facilities. High rates of attendance provide a unique opportunity because almost all children in an age cohort can be reached at a particularly important developmental stage; but this is a lost opportunity if the service is of poor quality.

Children living far from school

This indicator reflects the distance from a child's household to the school s/he attends. Distance is measured as the length of time travelled to reach school. The school the child attends is defined as "far" if a child has to travel more than 30 minutes to reach it, irrespective of mode of transport. Children aged 7 – 13 are defined as primary school age, and children aged 14 – 17 are defined as secondary school age.

Access to schools and other educational facilities is a necessary condition for achieving the right to education. A school's location and distance from home can pose a barrier to education. Access to schools is also hampered by poor roads, transport that is unavailable or unaffordable, and danger along the way. Risks may be different for young children, for girls and boys, and are likely to be greater when children travel alone.

For children who live far from schools, the cost, risk and effort of getting to school can influence decisions about regular attendance, as well as participation in extramural activities and after-school events. Those who travel long distances to reach school may wake very early and risk arriving late or physically exhausted, which may affect their ability to learn. Walking long distances to school may also lead to learners being excluded from class or make it difficult to attend school regularly.

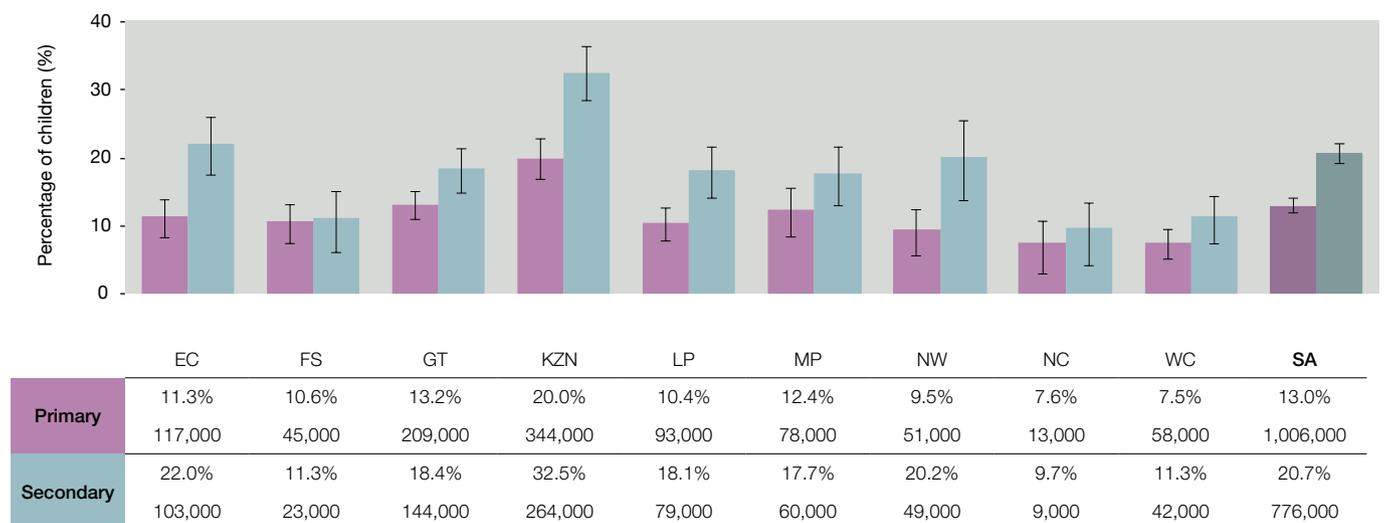
Two-thirds (66%) of South Africa's learners walk to school, while 12% travel in vehicles hired by a group of parents, 9% travel in private cars and 8% use public transport. Only 3% report using school buses or transport provided by schools or the government. The majority (79%) of White children are driven to school in private cars, compared with only 16% of African children.¹⁹ These figures illustrate pronounced disparity in child mobility and means of access to school.

Assuming that schools primarily serve the children living in communities around them, the ideal indicator to measure physical access to school would be the distance from the child's household to the nearest school. This analysis is no longer possible due to question changes in the General Household Survey. Instead, the indicator shows the number and percentage of children who travel far (more than 30 minutes) to reach the actual school that they attend, even if it is not the closest school. Eighty-three percent of school-going children attend their nearest school. School-age children not attending school are therefore excluded from the analysis.

Overall, the vast majority (85%) of the 11 million children who attend school travel less than 30 minutes to reach school. Children of secondary school age are more likely than primary school learners to travel far to reach school. In 2017 there were nearly 7.8 million children of primary school age (7 – 13 years) in South Africa. More than a million of these children (13%) travel more than 30 minutes to and from school every day. In KwaZulu-Natal this percentage is significantly higher than the national average, at 20%. Of the 3.7 million children of secondary school age (14 – 17 years), 21% travel more than 30 minutes to reach school, and again it is children in KwaZulu-Natal who are most likely to travel far (33%). The majority of these children live in rural areas: 28% of secondary school age children in the former homelands travel far to school, compared to 15% of children living in the urban areas.

Physical access to school remains a problem for many children in South Africa, particularly those living in more remote areas where public transport to schools is lacking or inadequate and where households are unable to afford private transport to get

Figure 4d: School-aged children living far from school, by province, 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

children to school.²⁰ There are nearly 26,000 schools in South Africa, of which 24,000 are public and 2,000 are independent.²¹ A number of rural schools have closed since 2002, meaning that children in these areas may find it more difficult to access school. Nationally, the number of public schools has dropped

by 10% (2,693 schools) between 2002 and 2017, with the largest decreases in the North West, Free State, Gauteng and Limpopo. Over the same period, the number of independent schools in the country has increased by 808.²²

Children's progress through school

Systemic evaluations by the Department of Education have recorded very low pass rates in numeracy and literacy among both grade 3 and grade 6 learners.²³ Despite measures to address the inherited inequities in the education system through revisions to the legislative and policy frameworks and the school funding norms, continued disparities in the quality of education offered by schools reinforce existing socio-economic inequalities, limiting the future work opportunities and life chances of children who are born into poor households.²⁴

We have already seen that school attendance rates are very high during the compulsory schooling phase (grade 1 – 9). However, attendance tells us little about the quality of education that children receive, or their progress through the education system.

South Africa has poor educational outcomes by African and international standards,²⁵ and high rates of grade repetition have been recorded in numerous studies. For example, a study of children's progress at school found that only about 44% of young adults (aged 21 – 29) had matriculated, and of these, less than half had matriculated "on time".²⁶ This was based on 2008 data from the National Income Dynamics Study. In 2016, only 51% of young people aged 20 – 24 had completed a matric or matric equivalent.²⁷ In South Africa, the labour market returns to education only start kicking in on successful completion of matric, not before. However it is important to monitor progress and grade repetition in the earlier grades as slow progress at school is a strong determinant of school drop-out.²⁸

Assuming that children are enrolled in primary school at the prescribed age (by the year in which they turn seven) and

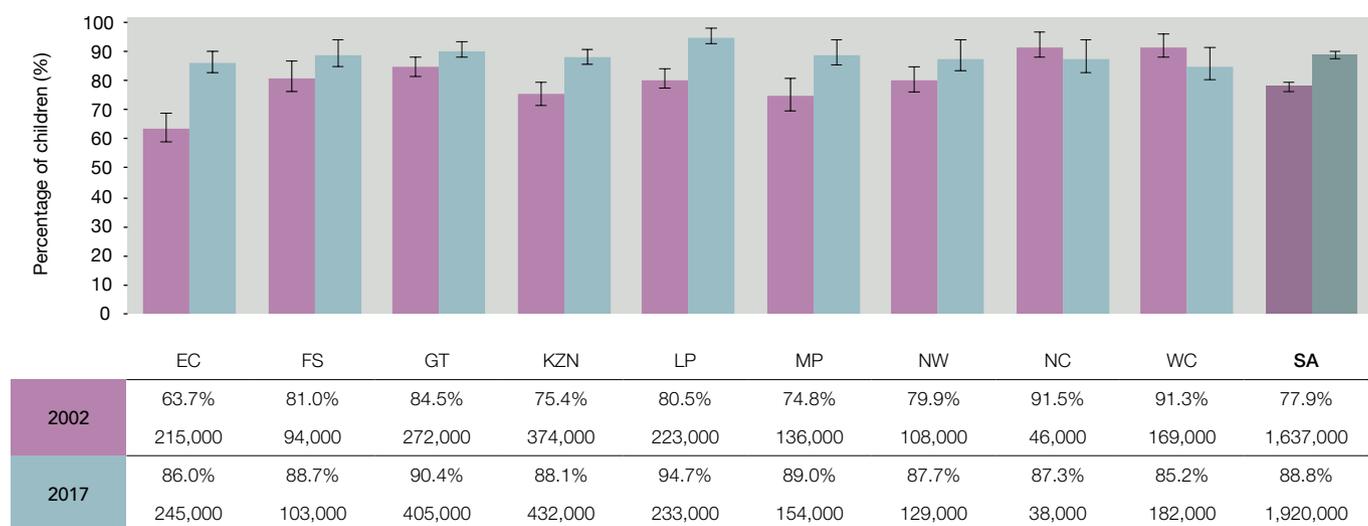
assuming that they do not repeat a grade or drop out of school, they would be expected to have completed the foundation phase (grade 3) by the year that they turn nine, and the general education phase (grade 9) by the year they turn 15.

This indicator allows a little more leeway: it measures the number and proportion of children aged 10 and 11 years who have completed a minimum of grade 3, and the proportion of those aged 16 and 17 years who have completed a minimum of grade 9. In other words, it allows for the older cohort in each group to have repeated one grade, or more if they started school in the year before they turned seven.

In 2017, 89% of all children aged 10 and 11 were reported to have completed grade 3. This was up from 78% in 2002. This improvement in progress through the foundation phase was evident across most of the provinces, with significant advances in the Eastern Cape (from 64% to 86%), Limpopo (80% to 95%), Mpumalanga (from 75% to 89%), and KwaZulu-Natal (from 75% to 88%). These improvements have narrowed the gap between provinces: most provinces record a progression rate of more than 89% and the lowest performing provinces are the Eastern Cape and Western Cape – at 86% and 85% respectively.

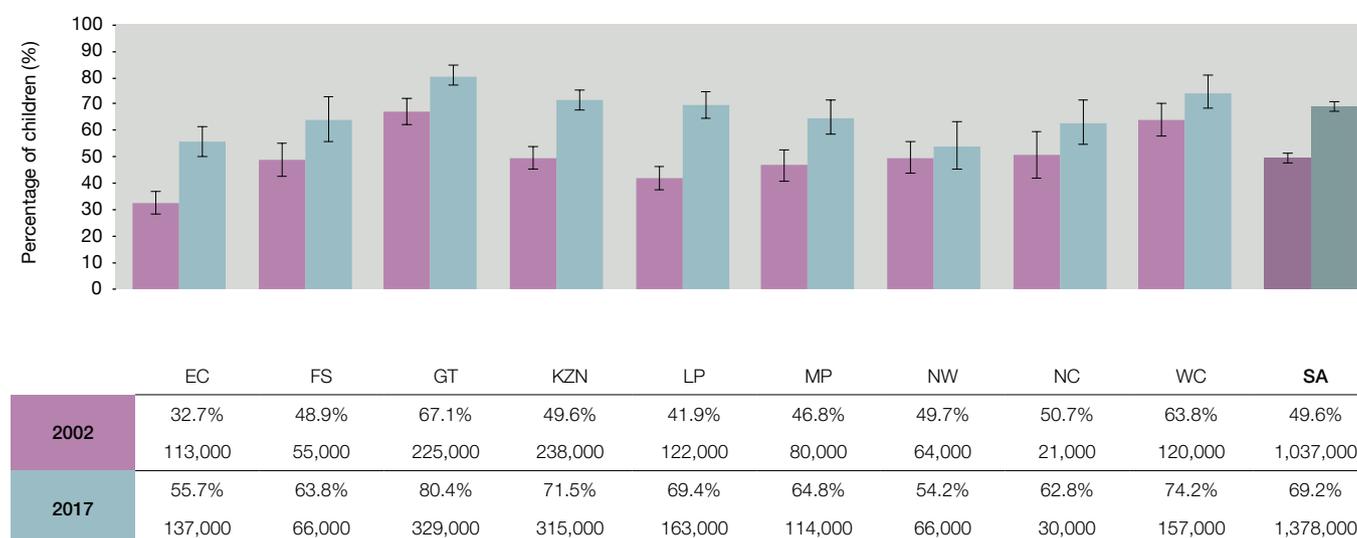
As would be expected, the rate of progression through the entire general education and training band (grades 1 – 9) is lower, as there is more time for children to have repeated or dropped out by grade 9. Nearly 70% of children aged 16 – 17 years had completed grade 9 in 2017. This represents an overall improvement of 20 percentage points over the 16-year period, from 50% in 2002. Provincial variation is slightly more pronounced than for progress through the foundation phase: Gauteng had

Figure 4e: Children aged 10 – 11 years who passed grade 3, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

Figure 4f: Children aged 16 – 17 years who passed grade 9, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA.
 Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

the highest rate of grade 9 progression (80%), followed by the Western Cape (74%). Progress was poorest in the Northern and Eastern Cape, where just over half (54% and 56% respectively) of children had completed grade 9 by the expected age.

As found in other analyses of transitions through school,²⁹ educational attainment (measured by progress through school) varies along economic and racial lines. These differences become more pronounced as children advance through the grades. Gender differences in school progression, on the other hand, have remained consistent and even widened over the years: girls are more likely than boys to progress through school at the expected rate and the difference becomes more pronounced in the higher grades. In 2017, 91% of girls aged 10 – 11 had completed grade 3, compared with 87% of boys; in the same year, 77% of 16 – 17-year-old girls had completed grade 9, compared only 61% of boys in the same age cohort. This finding is consistent with analyses elsewhere.³⁰

There are significant differences in grade completion across income quintiles, especially amongst children who have completed grade 9: in 2017, 64% of 16 – 17-year-olds in the

poorest 20% of households completed grade 9, compared to 88% in the richest 20% of households.

Of course, grade progression and grade repetition are not easy to interpret. Prior to grade 12, the promotion of a child to the next grade is based mainly on the assessment of teachers, so the measure may be confounded by the extent of the teacher’s competence to assess the performance of the child. Analyses of the determinants of school progress and drop-out point to a range of factors, many of which are interrelated: there is huge variation in the quality of education offered by schools. These differences largely reflect the historic organisation of schools into racially defined and inequitably resourced education departments. Household-level characteristics and family background also account for some of the variation in grade progression. For example, the level of education achieved by a child’s mother explains some of the difference in whether children are enrolled at an appropriate age and whether they go on to complete matric successfully.³¹ This in turn suggests that improved educational outcomes for children will have a cumulative positive effect for each subsequent generation.

Youth not in employment, education or training (NEETs)

“NEETs” is a term used to describe young people who are not in employment, education or training. The definition used here includes youth aged 15–24 who are not attending any educational institution and who are not employed or self-employed.³²

Widespread concerns about the large numbers of youth in this situation centre on two main issues: the perpetuation of poverty and inequality, including intergenerational poverty; and the possible implications of a large “idle” youth population for risk behaviour, social cohesion and the safety of communities.

Little is known about what NEETs do with their time. Young people who are neither learning nor engaged in income-generating activities may nevertheless be “productive” within their households, for example by helping to maintain the home or looking after children in need of care. However, in the absence of income, NEETs remain dependent on the earnings of other household members, and on grants that are directed to children and the elderly. The Old Age Pension in particular has been found to support job-seeking activities for young people³³ and it has been argued that this unenvisioned expenditure of the grant could be addressed by extending social security to unemployed youth.³⁴

The large number of NEETs in South Africa is linked to underlying problems in the education system and the labour market. Young people in South Africa have very high participation rates in education, including at secondary level. Enrolment rates for grades 11 and 12 have increased in recent years and more young people attain grade 12 (and at an earlier age).³⁵ But there is still a sharp drop-off in enrolment numbers after grade 10 and only about half of young people in their early twenties have successfully completed grade 12.³⁶ This reduces their prospects for further study or employment.³⁷ Low quality and incomplete education represent what are termed the “supply-side” drivers of youth unemployment, where young people do not have the appropriate skills or work-related capabilities to be employable or to set up successful enterprises of their own, and so struggle to make the

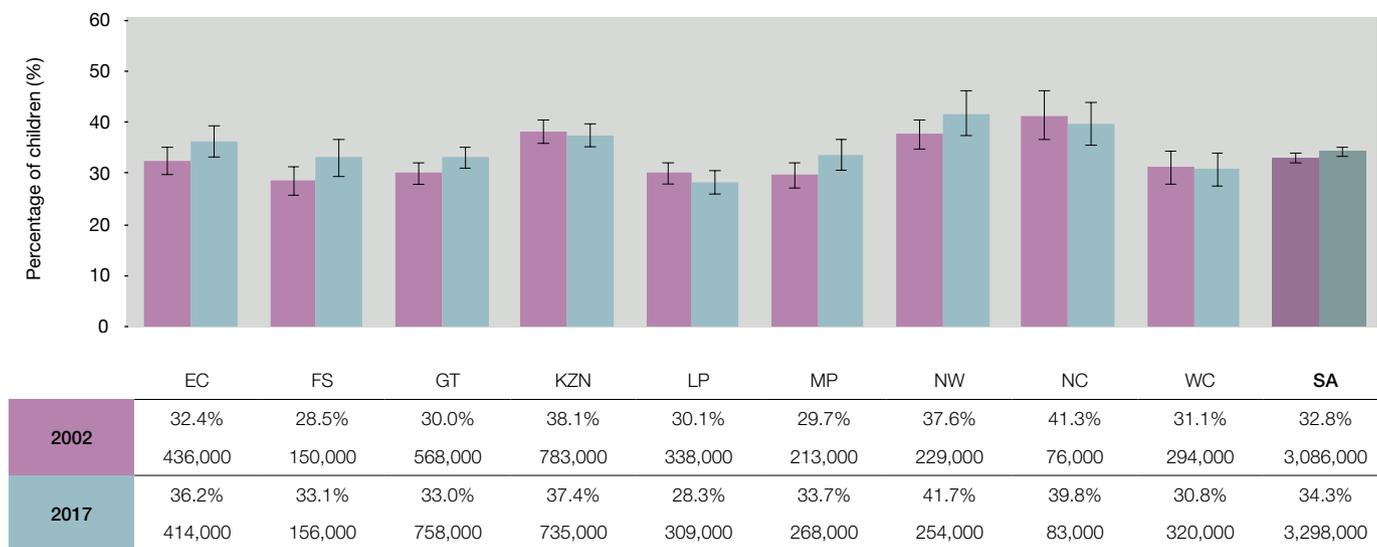
transition from education to work.³⁸ The “demand-side” drivers include a shortage of jobs or self-employment opportunities for those who are available to work.

In 2017 there were 9.6 million young people aged 15–24 in South Africa. Of these, 34% (3.3 million) were neither working nor attending an education institution such as a school, university or college. The number of young people who are not in education, training or employment has remained remarkably consistent over the last decade, but has increased since 1996 when only two million NEETs were recorded.³⁹ South Africa has made no progress towards the Sustainable Development Goal target to substantially reduce the proportion of youth not in employment, education or training by 2020.⁴⁰ If anything, the number of NEETs has increased marginally.

The NEET rates are fairly even across the provinces. This is hard to interpret without further analysis. Limpopo, for example, is a very poor and largely rural province. It is possible that the slightly lower-than-average proportion of NEETs in that province is partly the result of many young people migrating to cities in search of work and they are therefore counted among the NEETs in more urban provinces. It is possible that young people who are not employed in the labour market may nevertheless be employed in small-scale agriculture if their household has access to land, and this could also help to smooth the provincial inequalities that are characteristic of many other indicators.

There is enormous variation within the broad youth group of 15–24 years. Only 6% of children aged 15–17 are classified as NEETs because the majority are attending school. Within the 18–20 age band, 35% are NEETs, and more than half (54%) of those in the 21–24 age band are neither working nor in education or training. While education attendance rates are fairly even for males and females, the gender disparity among NEETs is more pronounced. Thirty-seven percent of young women are not in employment, education or training – compared with 31% of young men.

Figure 4g: Youth aged 15–24 years not in employment, education or training (NEETs), by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002*; *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

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Children’s access to housing

Katharine Hall

Section 26 of the Constitution of South Africa provides that “everyone has the right to have access to adequate housing”, and section 28(1)(c) gives children “the right to ... shelter”.¹

Article 27 of the UN Convention on the Rights of the Child states that “every child has the right to a standard of living adequate for his/her development” and obliges the state “in cases of need” to “provide material assistance and support programmes, particularly with regard to ... housing”.²

Children living in urban and rural areas

This indicator describes the number and proportion of children living in urban and rural areas in South Africa.

Location is one of the seven elements of adequate housing identified by the UN Committee on Economic, Social and Cultural Rights.³ Residential areas should ideally be situated close to work opportunities, clinics, police stations, schools and child-care facilities. In a country with a large rural population, this means that services and facilities need to be well distributed, even in areas that are not densely populated. In South Africa, service provision and resources in rural areas continued to lag far behind urban areas.

The General Household Survey captures information on all household members, making it possible to look at the distribution of children in urban and non-urban households and compare this to the adult distribution. Nearly half of South Africa’s children (43%) lived in rural households in 2017 – equivalent to 8.5 million children. Looking back over a decade, there is a clear shift in the distribution of children towards urban areas: in 2002, 48% of children were found in urban households, and this increased to 57% by 2017. Yet children are consistently less urbanised than adults: in 2017, 69% of the adult population was urban, compared with 57% of children.

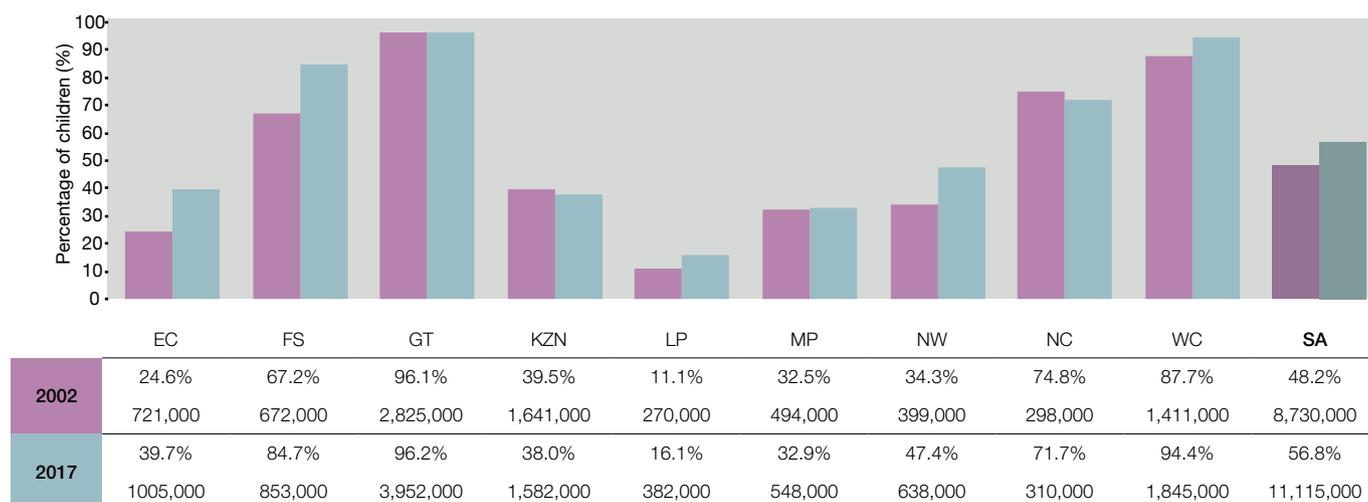
There are marked provincial differences in the rural and urban distribution of the child population. This is related to the

distribution of cities in South Africa, and the legacy of apartheid’s spatial arrangements where women, children and older people in particular were relegated to the former homelands. The Eastern Cape, KwaZulu-Natal and Limpopo provinces alone are home to about three-quarters (72%) of all rural children in South Africa. KwaZulu-Natal has the largest child population in numeric terms, with 2.6 million (62%) of its child population being classified as rural. The province with the highest proportion of rural children is Limpopo, where only 16% of children live in urban areas. Proportionately more children (39%) live in the former homelands, compared with adults (28%). More than 99% of children living in the former homeland areas are African.

In 2017, children living in the Gauteng and Western Cape are almost entirely urban (96% and 94% respectively). These provinces historically have large urban populations. The urban child population in Gauteng alone has grown by over 1.1 million since 2002 and the urban child population in the Western Cape has grown by 430,000. These increases would be partly the result of urban births, but also partly the result of movement within the province and migration from other provinces. Other provinces that have experienced a marked growth in the urban share of the child population are the Eastern Cape, Free State and North West.

Rural areas, and particularly the former homelands, have much poorer populations. Nearly two-thirds of children in

Figure 5a: Children living in urban areas, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002*; *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

the poorest income quintile live in rural areas compared with 10% in the richest quintile. In other words, within the poorest part of the population, it is mainly rural households that care for children – even though many of these children may have parents who live and work in urban areas.

The inequalities also remain strongly racialised. More than 90% of White, Coloured and Indian children are urban, compared with 51% of African children.

There are no statistically significant differences in child population in urban and rural areas across age groups.

Children living in formal, informal and traditional housing

This indicator shows the number and share of children living in formal, informal and traditional housing. For the purposes of the indicator, “formal” housing is considered a proxy for adequate housing and consists of: dwellings or brick structures on separate stands; flats or apartments; town/cluster/semi-detached houses; units in retirement villages; rooms or flatlets on larger properties provided they are built with sturdy materials. “Informal” housing consists of: informal dwellings or shacks in backyards or informal settlements; dwellings or houses/flats/rooms in backyards built of iron, wood or other non-durable materials; caravans or tents. “Traditional dwelling” is defined as a “traditional dwelling/hut/structure made of traditional materials” situated in a rural area.

Children’s right to adequate housing means that they should not have to live in informal dwellings. One of the seven elements of adequate housing identified by the UN Committee on Economic, Social and Cultural Rights is that it must be “habitable”.⁴ To be habitable, houses should have enough space to prevent overcrowding, and should be built in a way that ensures physical safety and protection from the weather.

Formal brick houses that meet the state’s standards for quality housing could be considered “habitable”, whereas informal dwellings such as shacks in informal settlements and backyards would not be considered habitable or adequate. Informal housing in backyards and informal settlements makes up the bulk of the housing backlog in South Africa. “Traditional” housing in rural areas cannot necessarily be assumed to be inadequate. Some traditional dwellings are more habitable than new subsidy houses – they can be more spacious and better insulated, for example.

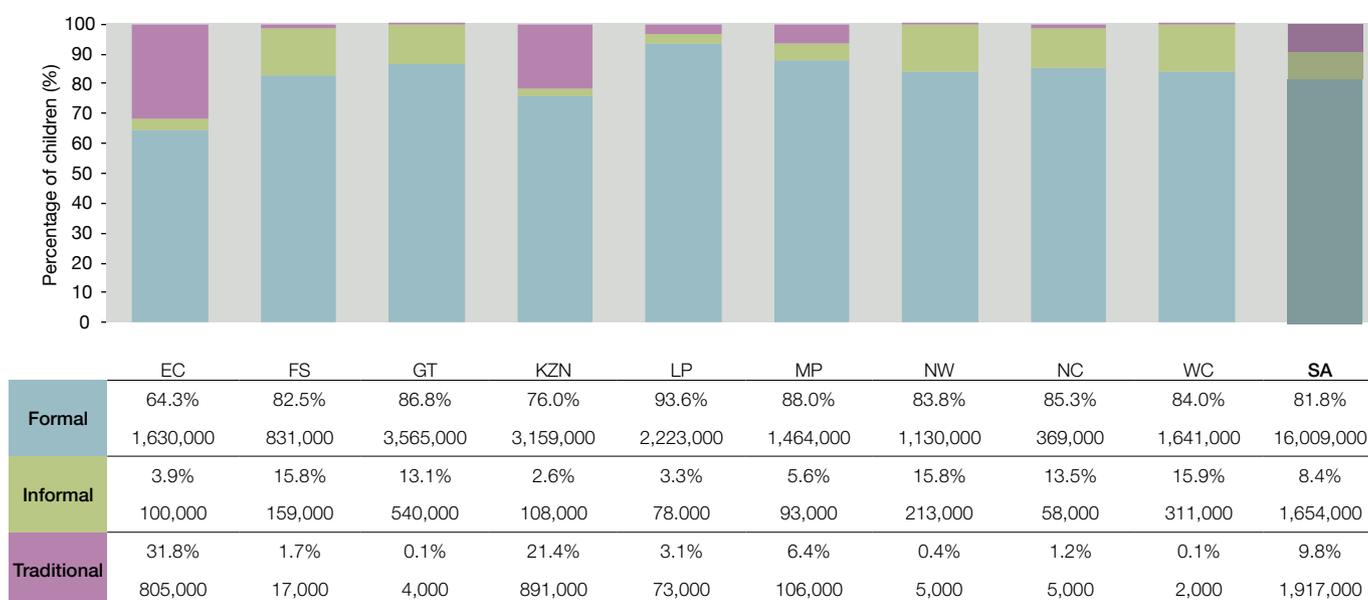
Access to services is another element of “adequate housing”. Children living in formal areas are more likely to have services on site than those living in informal or traditional dwellings. They are also more likely to live closer to facilities like schools, libraries, clinics and hospitals than those living in informal settlements or rural areas. Children living in informal settlements are more exposed to hazards such as shack fires and paraffin poisoning.

The environmental hazards associated with informal housing are exacerbated for very young children. The distribution of children in informal dwellings is slightly skewed towards younger children and babies: 43% of children in informal housing are in the 0 – 5-year age group.

In 2017, more than 1.6 million children (8%) in South Africa lived in backyard dwellings or shacks in informal settlements. The number of children in informal housing has declined slightly from 2.3 million (13%) in 2002. The provinces with the highest shares of informally-housed children are the Western Cape, North West and Free State (all with 16% of children living in informal housing). The Eastern Cape and KwaZulu-Natal have by far the largest shares of children living in traditional dwellings (32% and 21% respectively).

The distribution of children in formal, informal and traditional dwellings has remained fairly constant since 2002. But racial inequalities persist. Almost all White children (99.5%) live in formal housing, compared with only 80% of African children. Access to formal housing increases with income. Ninety-nine percent of children in the wealthiest 20% of households live in formal dwellings, compared with 75% of children in the poorest quintile.

Figure 5b: Children living in formal, informal and traditional housing, by province, 2017



Source: Statistics South Africa (2018) *General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

Children living in overcrowded households

Children are defined as living in overcrowded dwellings when there is a ratio of more than two people per room (excluding bathrooms but including kitchen and living room). Thus, a dwelling with two bedrooms, a kitchen and sitting-room would be counted as overcrowded if there were more than eight household members.

The UN Committee on Economic, Social and Cultural Rights defines “habitability” as one of the criteria for adequate housing.⁵ Overcrowding is a problem because it can undermine children’s needs and rights. For instance, it is difficult for school children to do homework if other household members want to sleep or watch television. Children’s right to privacy can be infringed if they do not have space to wash or change in private. The right to health can be infringed as communicable diseases spread more easily in overcrowded conditions, and young children are particularly susceptible to the spread of disease. Overcrowding also places children at greater risk of sexual abuse, especially where boys and girls have to share beds, or children have to share beds with adults.

Overcrowding makes it difficult to target services and programmes to households effectively – for instance, urban households are entitled to six kilolitres of free water, but this household-level allocation discriminates against overcrowded households because it does not take account of household size.

In 2017, 3.6 million children lived in overcrowded households. This represents 18% of the child population – much higher than

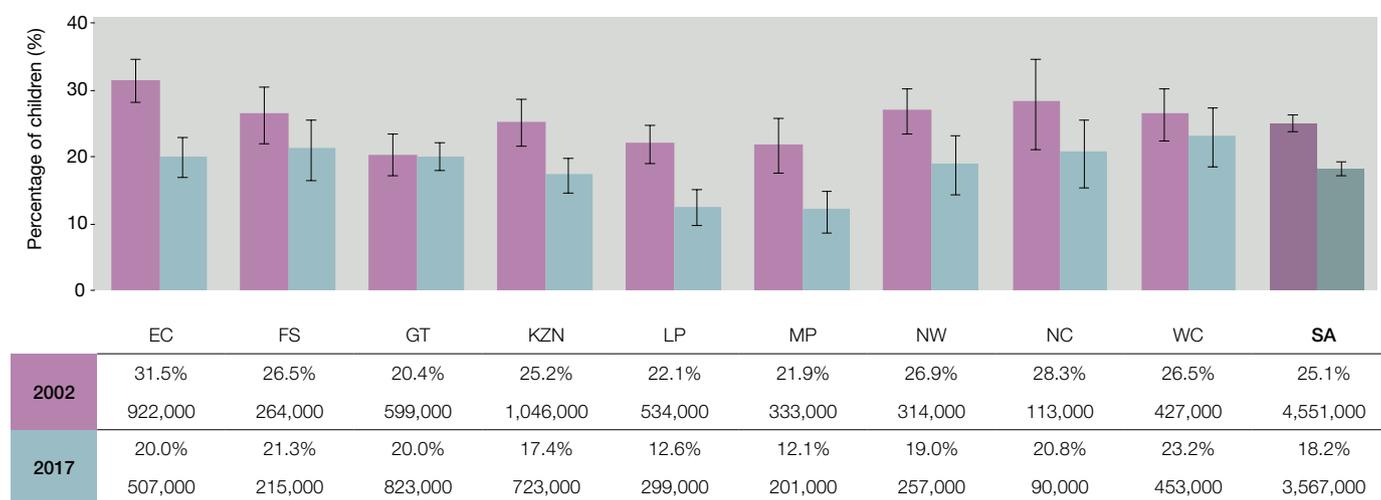
the proportion of adults living in crowded conditions (10%). Overcrowding is associated with housing type: 59% of children staying in informal dwellings live in overcrowded conditions, compared with 26% of children in traditional dwellings and 13% of children in formal housing.

Young children are more likely than older children to live in overcrowded conditions: 21% of children below six years live in crowded households, compared to 18% of children aged 6 – 11, and 15% of children over 12 years.

There is a strong racial bias: While 19% of African and 22% of Coloured children live in crowded conditions, 6% of Indian children and almost no White children live in overcrowded households. Children in the poorest 20% of households are more likely to live in overcrowded conditions (24%) than children in the richest 20% of households (1%).

Average household size has gradually decreased from 4.5 at the time of the 1996 population census, to around 3.3 in 2017, indicating a trend towards smaller households, which may in turn be linked to the provision of small subsidy houses and the splitting of households into smaller units, as well as a rapid growth in single-person households where adults live alone. Households in which children live are larger than the national average, although they have also declined in size over time. The mean household size for adult-only households is 2.2, while the mean household size for households with children is 4.7.⁶

Figure 5c: Children living in overcrowded households, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

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- 5 See no. 3 above.
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Children’s access to services

Katharine Hall and Winnie Sambu

Section 27(1)(b) of the Constitution of South Africa provides that “everyone has the right to have access to ... sufficient ... water” and section 24(a) states that “everyone has the right to an environment that is not harmful to their health or well-being”.¹

Article 14(2)(c) of the African Charter on the Rights and Welfare of the Child obliges the state to “ensure the provision of ... safe drinking water”.²

Article 24(1)(c) of the UN Convention on the Rights of the Child says that states parties should “recognise the right of the child to the enjoyment of the highest attainable standard of health” and to this end should “take appropriate measures to combat disease and malnutrition ..., including the provision of clean drinking-water”.³

Children’s access to basic water

This indicator shows the number and proportion of children who have access to piped drinking water at home – either inside the dwelling or on site. This is used as a proxy for access to adequate water. All other water sources, including public taps, water tankers, dams and rivers, are considered inadequate because of their distance from the dwelling or the possibility that the water is of poor quality. The indicator does not show whether the water supply is reliable or if households have broken facilities or are unable to pay for services.

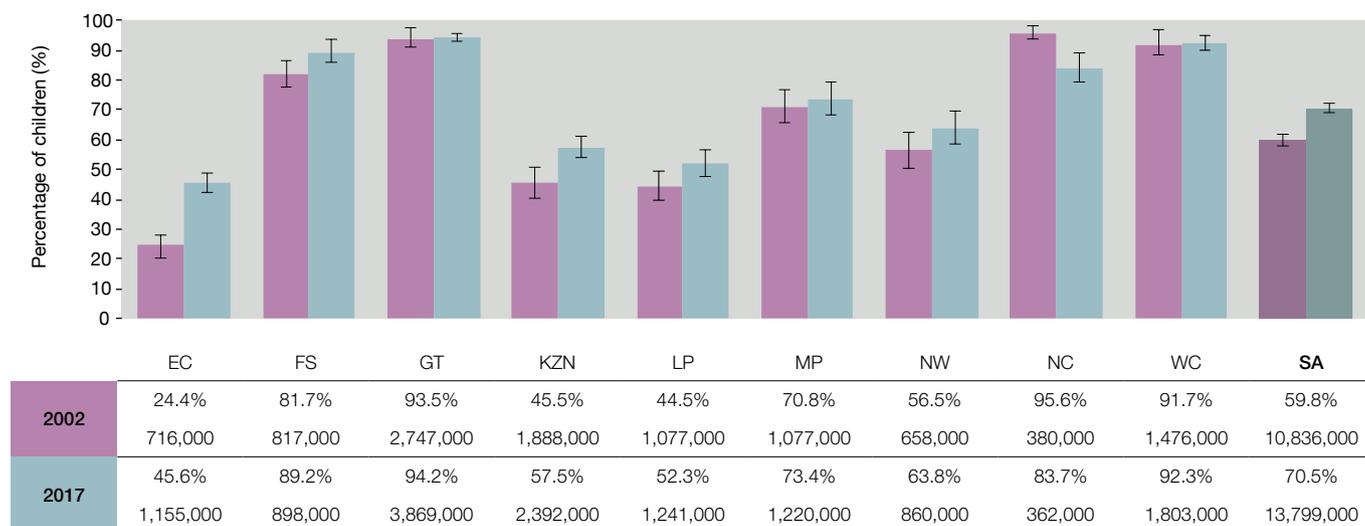
Clean water is essential for human survival. The World Health Organisation has defined “reasonable access” to water as being a minimum of 20 litres per person per day.⁴ The 20-litre minimum is linked to the estimated average consumption when people rely on communal facilities and need to carry their own water for drinking, cooking and the most basic personal hygiene. It does not allow for bathing, showering, washing clothes or any domestic cleaning.⁵ The water needs to be supplied close to the home, as households that travel long distances to collect

water often struggle to meet their basic daily quota. This can compromise children’s health and hygiene.

Young children are particularly vulnerable to diseases associated with poor water quality. Gastro-intestinal infections with associated diarrhoea and dehydration are a significant contributor to the high child mortality rate in South Africa,⁶ and intermittent outbreaks of cholera in some provinces pose a serious threat to children in those areas. Lack of access to adequate water is closely related to poor sanitation and hygiene. In addition, children may be responsible for fetching and carrying water to their homes from communal taps, or rivers and streams. Carrying water is a physical burden which can lead to back problems or injury from falls. It can also reduce time spent on education and other activities and can place children at personal risk.⁷ For purposes of the child-centred indicator, therefore, adequacy is limited to a safe water source on site.

There has been little improvement in children’s access to water over the past 15 years. Close to six million children live

Figure 6a: Children living in households with water on site, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children’s Institute, UCT.

in households that do not have access to clean drinking water on site. In 2017, more than three-quarters (78%) of adults lived in households with drinking water on site – compared with only 70% of children.

Provincial differences are striking. More than 90% of children in the Gauteng and the Western Cape provinces have an adequate water connection. However, access to water remains poor in KwaZulu-Natal (58%), Limpopo (52%) and the Eastern Cape (46%). The Eastern Cape appears to have experienced a striking improvement in water provisioning since 2002 (when only 24% of children had water on site). KwaZulu-Natal has also recorded significant improvements: the proportion of children who had water on site increased from 46% (2002) to 58% (2017). Other provinces that have also recorded improvements include Limpopo from 45% (2002) to 52% (2017), the Free State from 82% to 89% over the same period, and the North-West from 56% to 64%. The significant decline in access to water in the Northern Cape may represent a deterioration in water access, or may be the result of weighting a very small child population.

Children's access to basic sanitation

This indicator shows the number and proportion of children living in households with basic sanitation. Adequate toilet facilities are used as proxy for basic sanitation. This includes flush toilets and ventilated pit latrines that dispose of waste safely and that are within or near a house. Inadequate toilet facilities include pit latrines that are not ventilated, chemical toilets, bucket toilets, or no toilet facility at all.

A basic sanitation facility was defined in the government's Strategic Framework for Water Services as the infrastructure necessary to provide a sanitation facility that is "safe, reliable, private, protected from the weather and ventilated, keeps smells to a minimum, is easy to keep clean, minimises the risk of the spread of sanitation-related diseases by facilitating the appropriate control of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and wastewater in an environmentally sound manner".⁸

Adequate sanitation prevents the spread of disease and promotes health through safe and hygienic waste disposal. To do this, sanitation systems must break the cycle of disease. For example, the toilet lid and fly screen in a ventilated pit latrine stop flies reaching human faeces and spreading disease. Good sanitation is not simply about access to a particular type of toilet. It is equally dependent on the safe use and maintenance of that technology; otherwise toilets break down, smell bad, attract insects and spread germs.

Good sanitation is essential for safe and healthy childhoods. It is very difficult to maintain good hygiene without water and toilets. Poor sanitation is associated with diarrhoea, cholera, malaria, bilharzia, worm infestations, eye infections and skin disease. These illnesses compromise children's health and nutritional status. Using public toilets and the open *veld* (fields) can also put children in physical danger. The use of the open *veld* and bucket toilets is also likely to compromise water quality in the area and to contribute to the spread of disease. Poor sanitation undermines children's health, safety and dignity.

Children living in formal areas are more likely to have services on site than those living in informal settlements or in the rural former homelands. While the majority (77%) of children in formal dwellings have access, it decreases to 64% of children living in informal dwellings. Only 23% of children living in traditional housing have water available on the property.

The vast majority of children living in traditional dwellings are African, so there is also a pronounced racial inequality in access to water. In 2017, 66% of African children had water on site in 2017, while more than 96% of all other population groups had drinking water at home. There are no significant differences in access to water across age groups.

Inequality in access to safe water is also pronounced when the data are disaggregated by income category. Only 54% of children in the poorest 20% of households have access to water on site, while 97% of those in the richest 20% of households have this level of service. In this way, inequalities are reinforced: the poorest children are most at risk of diseases associated with poor water quality and the associated setbacks in their development.

The data show a gradual and significant improvement in children's access to sanitation since 2002, although the share of children without adequate toilet facilities remains worryingly high. In 2002, less than half of all children (46%) had access to adequate sanitation. By 2017, the share of children with adequate toilets had risen to 78%. But 3.2 million children still use unventilated pit latrines or buckets despite the state's reiterated goals to provide adequate sanitation to all and to eradicate the bucket system. Children (22%) are slightly more likely than adults (19%) to live in households without adequate sanitation facilities.

As with other indicators of living environments, there are great provincial disparities. In provinces with large metropolitan populations, like Gauteng and the Western Cape, around 90% of children have access to adequate sanitation, while provinces with large rural populations have the poorest sanitation, and in Limpopo only 57% of children have adequate sanitation at home. Those with the greatest improvements in sanitation services are the Eastern Cape (where the number of children with access to adequate sanitation more than tripled from 600,000 to 2.2 million, KwaZulu-Natal (an increase of 1.8 million children) and the Free State (where the share of children with sanitation improved from 53% in 2002 to 83% in 2017).

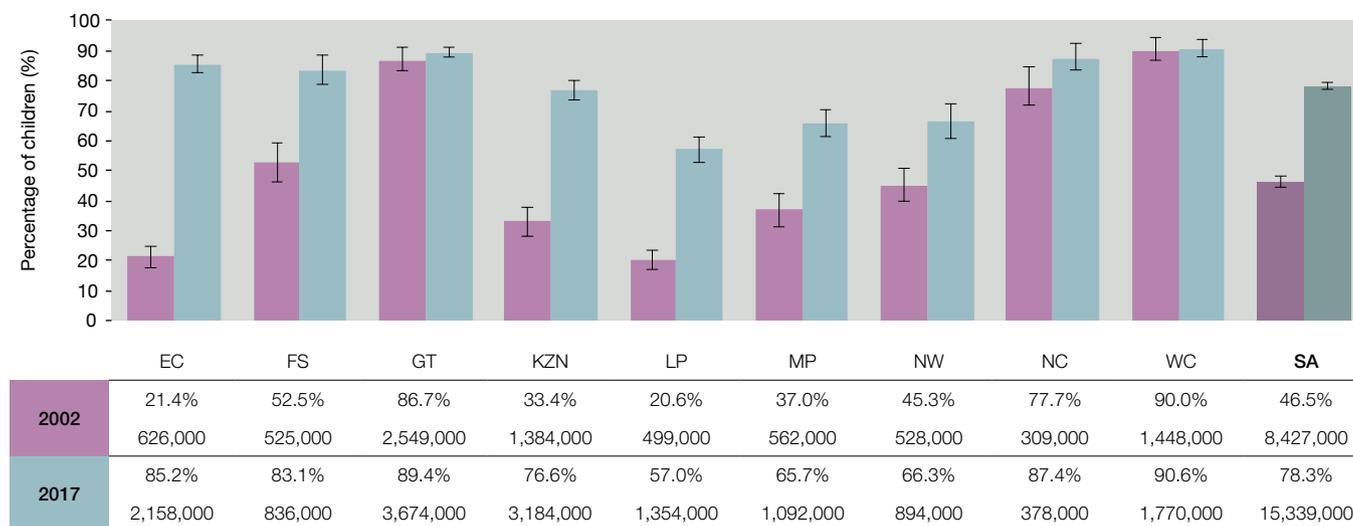
Although there have also been significant improvements in sanitation provision in Limpopo, this province still lags behind, with only 57% of children living in households with adequate sanitation in 2017. It is unclear why the vast majority of children in Limpopo are reported to live in formal houses, yet access to basic sanitation is the poorest of all the provinces. Definitions of adequate housing such as those in the UN-HABITAT and South Africa's National Housing Code include a minimum quality for basic services, including sanitation.

The statistics on basic sanitation provide yet another example of persistent racial inequality: more than 95% of Indian, White and Coloured children had access to adequate toilets in 2017, while only 75% of African children had access to basic sanitation. This is a marked improvement from 37% of African children in

2002. Children in relatively well-off households have better levels of access to sanitation than poorer children. Among the richest 20% of households, 97% of children have adequate sanitation, while 71% of children in the poorest 20% of households have this level of service.

Due to the different distributions of children and adults across the country, adults are more likely than children to have access to sanitation. However, there are no significant age differences in access to adequate sanitation within the child population.

Figure 6b: Children living in households with basic sanitation, by province, 2002 & 2017



Source: Statistics South Africa (2003; 2018) *General Household Survey 2002; General Household Survey 2017*. Pretoria: Stats SA. Analysis by Katharine Hall & Winnie Sambu, Children's Institute, UCT.

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Leila Patel is Professor and the South African Research Chair in Welfare and Social Development and the Director of the Centre for Social Development in Africa at the University of Johannesburg. Her research interests are in social policy relating to children and youth; families and gender; and care. She is widely published locally and internationally. Her latest book with Marianne Ulriksen titled *Development, Social Policy and Community Action*, was published by the HSRC Press (2017).

Paula Proudlock is a Senior Legal Researcher at the Children's Institute, University of Cape Town, with an LLM in Constitutional and Administrative Law. She specialises in research, advocacy and education on human rights with a speciality in children's socio-economic rights. Paula has led several civil society law and budget reform campaigns in relation to improving social assistance and protection services for children, and is currently leading a project aimed at addressing the crisis in the foster care system that requires amendments to two national laws.

Marlize Rabe is a professor in the Department of Sociology at the University of South Africa. She mainly does qualitative research on family issues relating to gender and intergenerational relationships. Recently, she has published on how family policies can be more inclusive in South Africa, especially as it relates

to caregiving. She is currently involved in a multi-site research project focusing on the role of faith-based organisations in the lives of marginalised youth. She is a former vice-president of the South African Sociological Association and a former co-editor of the journals *South African Review of Sociology and Gender Questions*.

Vijay Reddy is a Distinguished Research Specialist at the Human Sciences Research Council. The three major thrusts of her research are large-scale achievement studies, skills planning and public understanding of science. She conducts both surveys and life history research. She is the National Research Co-ordinator for the Trends in Mathematics and Science Study. She was the lead author of the *Skills Supply and Demand Report* as well as the technical report to estimate occupations in high demand.

Linda Richter (PhD) is a Distinguished Professor and was the founding Director of the Department of Science and Technology (DST) – National Research Foundation (NRF) Centre of Excellence in Human Development at the University of the Witwatersrand. She led the development of South Africa's Integrated Early Childhood Development Policy and the *2016 Lancet Series on Advancing Early Childhood Development: From Science to Scale*. She is Principal Investigator of several large-scale, long term collaborative projects, including the Birth to Twenty Plus Cohort, and she is an advisor on early child development to the World Health Organization in Geneva.

Benjamin Roberts is a Chief Research Specialist in the Democracy, Governance & Service Delivery research programme at the Human Sciences Research Council, and has a PhD in Humanities. He has coordinated the South African Social Attitudes Survey series since its inception in 2003. His research interests include attitudinal measurement and social change, the quantitative analysis of poverty and inequality, as well as subjective well-being and quality of life. He recently completed a Presidency-EU Programme to Support Pro-Poor Development project on family values, cohesion and strengthening in South Africa, which is the subject of a forthcoming HSRC Press book.

Stefanie Röhrs holds a Doctorate in Law from the University of Würzburg (Germany) and a Masters in Public Health from the University of Cape Town (UCT). Born and raised in Germany, Stefanie first came to South Africa in 2006 to conduct research on violence against women and access to health and justice services. She returned to Germany in 2012, but came back to South Africa in 2015 and now works as a Senior Researcher at the Children's Institute, University of Cape Town. She is interested in women's and children's rights with a focus on violence, sexual offences, and sexual and reproductive rights.

Winnie Sambu is a researcher at the Children's Institute, University of Cape Town. She holds a Masters in Economics (Development Studies) from the University of the Western Cape and a Masters in Arts in Development Management from

Ruhr-Universität Bochum/University of the Western Cape. Winnie's research interests include food security and nutrition, poverty and household living conditions. At the Children's Institute, Winnie works on Children Count, a monitoring project that provides statistics on the situation of children in South Africa. She has also been involved in other projects that have focused on early childhood development and child protection.

Ann Skelton has been the Director of the Centre for Child Law for 10 years, where she initiated a strategic litigation project in 2004 which has led the development of child rights jurisprudence in South Africa. She leaves the centre in December 2018 but will remain at the University of Pretoria as Professor of Law and holder of the UNESCO Chair in Education Law. She played a leading role in South African child law reform and is an internationally recognised researcher in child law with many publications to under her name. She has received several international awards and is currently a member of the UN Committee on the Rights of the Child.

Nic Spaul is a Senior Researcher at Stellenbosch University and holds a PhD in Economics. His research focuses on education policy in South Africa and sub-Saharan Africa and has published numerous articles on early grade reading, assessment, education policy and inequality. He is currently the Director of the *Funda Wande: Reading for Meaning* project which aims to use high-quality open-access videos to teach teachers how to teach reading.

Alison Swartz holds a PhD in Public Health from the University of Cape Town (UCT). Her doctoral thesis investigated the ways in which youth coming of age in Khayelitsha use their gender identity and sexual partnerships in an attempt to access a more adult form of identity. She is an interdisciplinary social scientist with a background in Social Anthropology and Public Health. Her previous research and publications have focused on community health workers in Khayelitsha and the synthesis of qualitative data for qualitative systematic reviews. She is currently employed as a lecturer in the Division of Social and Behavioural Sciences in the School of Public Health and Family Medicine at UCT.

Linda Theron is an educational psychologist by training. She is also a full professor in the Department of Educational Psychology/Centre for the Study of Resilience, Faculty of Education, University of Pretoria. Her research and publications focus on the resilience processes of South African adolescents challenged by chronic adversity and account for how socio-cultural and contextual dynamics shape adolescent capacity to adapt successfully to hardship.

Zeni Thumbadoo is the Deputy Director of the National Association of Child Care Workers – South Africa and has dedicated her working life to the children's sector in South Africa. She completed her Masters degree in Child and Youth Care Work and is Vice Chair of the Steering Committee of the Global Social Service Workforce Alliance. She is currently championing the recognition of child and youth care work through the national scale-up of the Isibindi model which aims to develop 10,000 Child and Youth Care Workers serving 1.4 million children in a five-year period.

Notes

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About the South African Child Gauge

The *South African Child Gauge* is an annual publication of the Children's Institute, University of Cape Town, that monitors progress in the realisation of children's rights. Key features include a series of essays to inform national dialogue on a particular area which impacts on South Africa's children; a summary of new legislative and policy developments affecting children; and quantitative data which track demographic and socio-economic statistics on children.



Previous issues of the South African Child Gauge:

- 2017: Survive, Thrive, Transform
- 2016: Children and social assistance
- 2015: Youth and the intergenerational transmission of poverty
- 2014: Preventing violence against children
- 2013: Essential services for young children
- 2012: Children and inequality: Closing the gap
- 2010/2011: Children as citizens: Participating in social dialogue
- 2009/2010: Healthy children: From survival to optimal development
- 2008/2009: Meaningful access to basic education
- 2007/2008: Children's constitutional right to social services
- 2006: Children and poverty
- 2005: Children and HIV/AIDS

All issues of the *South African Child Gauge* are available for download at www.ci.uct.ac.za

The Children's Institute, University of Cape Town, has published the *South African Child Gauge*® every year since 2005 to track progress towards the realisation of children's rights.

The thirteenth issue of the *South African Child Gauge* focuses on children in relation to families and the state, both of which are central to providing for children and supporting their development. It demonstrates the diversity and fluidity of families as they strategize for their own survival, for the development and protection of their children and the realisation of their dreams. It also maps out the policies and services for families and considers ways to increase state support to families and the children in their care.

The Children's Institute aims to contribute to policies, laws and interventions that promote equality and improve the conditions of all children in South Africa, through research, advocacy, education and technical support.

The *Child Gauge* collates and interrogates the latest research evidence from a child-centred and policy perspective. In the process of seeking to make research relevant and accessible to policy-makers and practitioners, it helps to identify blind spots, knowledge gaps and areas for further enquiry.

Linda Richter, Director of the DST-NRF Centre of Excellence in Human Development, University of the Witwatersrand

The annual *South African Child Gauge* is without question the pre-eminent national publication on the subject of children, and society owes a debt of gratitude to the Children's Institute for this evidence-led investment in the future.

Jonathan Jansen, former Rector and Vice-Chancellor, University of the Free State

Within the South African context, the *Child Gauge* fulfils a three-fold purpose. First it mobilises the resources of the university to promote engaged scholarship that seeks to better understand and address the challenges faced by South Africa's children. Second, it makes this evidence accessible to those in government who are responsible for the design and delivery of services for children. Last, but not least, it supports the efforts of civil society and an informed citizenry who can then challenge rights violations and hold government accountable.

Benyam Mezmur, Chairperson of the African Committee of Experts on the Rights and Welfare of the Child

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