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Submission on the Child Care Act Discussion Paper

Submission to the South African Law Commission

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University of Cape Town

SUBMMISSION BY

THE CHILDREN'S INSTITUTE (UCT)

THE AIDS LAW PROJECT
(UNIVERSITY OF WITWATERSRAND)

THE ALLIANCE FOR CHILDREN'S ENTITLEMENT TO SOCIAL SECURITY
(ACESS)[1]

ON THE CHILD CARE ACT DISCUSSION PAPER

ENDORSED BY: AIDS CONSORTIUM[2], AIDS LEGAL NETWORK[3], CHILDRENS RIGHTS CENTRE[4]

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INTRODUCTION

We would like to commend the Commission on a very thorough Discussion Paper and research process. If accepted and implemented, the recommendations suggested in the Discussion Paper will greatly change the future for the better for all children in South Africa.

In this submission, we provide support for the majority of the Commission's recommendations and make suggestions to strengthen certain areas. We have also indicated where we recommend that further research and discussions be conducted to find appropriate solutions. We would like to offer our assistance to the Commission with regards to the further research and discussions, particularly around the proposed monitoring structure and mechanisms of inter-sectoral co-ordination, and the sections relating to child health.

We are concerned that the Discussion Paper does not give enough attention to problems facing the majority of children in South Africa. While the Commission has done excellent work on areas of secondary and tertiary services, we are the opinion that the area of primary prevention requires more research and more emphasis. We are also concerned that while considerable strides have been made towards a system that is more appropriate for South Africa, the Discussion Paper does not move sufficiently towards systems and solutions to cater for the reality of the family structures and problems that exist in South Africa and that are not being catered for by the current system. One example is "care by relatives" and structures and systems for such care givers and children to access services and benefits. While the Discussion Paper clearly recommends that this category of caregivers be supported, it does not provide sufficient detail on how this could be achieved.

This being said, we realise the enormous task facing the Commission and offer our support for the work that lies ahead in finalising the draft bill and the Report.

We provide comment on the following chapters:

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MOTIVATION FOR CHILDREN'S STATUTE TO PROVIDE LEGISLATIVE MECHANISMS TO ENSURE ADEQUATE FOCUS ON PRIMARY PREVENTION

The nature of the HIV/AIDS pandemic in South Africa, the growing number of orphaned children, the large gap between rich and poor, the disparity in services and infrastructure between urban and rural areas, and the nature of poverty and unemployment in South Africa, call for new ways of thinking and creative solutions, which include legislative mechanisms. The Discussion Paper, in chapter 9 especially, has made a substantial shift from a single focus on tertiary prevention to a more balanced focus on primary, secondary and tertiary prevention. We welcome this proposed shift.

However, we would like to motivate for the Children's Statute to go further in emphasising and ensuring a primary prevention approach. We therefore make the following comments to strengthen the primary prevention approach:

(1) Adequate resourcing

A primary preventative approach will fail if adequate resources are not allocated to the Department of Social Development and to Local Governments. We make suggestions in our comments on chapter 2 and 9 to help ensure that adequate resources are allocated to primary prevention. However, we have only scratched the surface and recommend that the Commission do further research into ways of legislating for adequate resource allocation to primary prevention.

(2) A comprehensive social security system

An essential ingredient of a primary preventative approach is a comprehensive social security system. While the Discussion Paper is very clear on its call for such a system, it is not clear on the linkages between the Children's Statute and the Social Assistance Act.

We understand the dilemma which the Commission faces due to the fact that social security reform is being tackled by another body - the Committee of Inquiry into a Comprehensive Social Security System - and therefore understand the inability to make final decisions on the issue of social security. However, the Committee of Inquiry has completed its investigation and in

November 2001, handed its report over to Cabinet. Cabinet has not indicated an intention to release the report and the President and Minister of Finance have not mentioned the report or social security reform in their 2002 opening of Parliament and Budgets speeches respectively.

The success of the new Child Care system depends very much on ensuring that children's basic needs are provided for. Without a comprehensive social security system, this is not possible. Without equipping social workers, child care organisations and the courts to give/offer or facilitate material assistance (food, shelter, money) to children and their families, a crisis intervention approach will continue to occupy the time, energy and resources of the entire child care system.

We therefore recommend that the Children's Statute should prescribe in legislative provisions that children are entitled to social security and set out the guiding principles for child social security. Our comments on chapters 5, 9, 13, 23 and 25 set out our suggestions in this regard.

(3)Co-ordination and Co-operation between government departments

Effective primary prevention requires co-ordination between and co-operation from other government departments and spheres of government involved in providing basic services to children and their families. In particular the Department's of Finance, Water, Health, Education, Agriculture, Land, Housing, Public Works, Safety and Security, Justice and Local Government.

A decision by the Department of Health to limit provisioning of Prevention of Mother to Child Transmission (of HIV)Programmes or not to provide treatment for parents with HIV, has a large and negative impact on the child care system. While the HIV/AIDS epidemic will obviously bring a substantial increase in the number of orphaned children and will also have a significant negative impact on families and other social support structures, the extent to which this will happen is by no means inevitable or out of the country’s control. In short, the effects of the HIV/AIDS epidemic can be mitigated by providing appropriate medical treatment, which includes the use of antiretroviral therapy where medically indicated. Such an intervention would allow parents and other caregivers living with HIV/AIDS to live longer and more productive lives, and continue to care for children in stable family and community environments. This would considerably lessen the burden on the child care system while at the same time ensuring that the child's best interests are catered for.

Similarly, a policy of the Department of Education that prevents poor children from accessing school, will also have a negative impact on the ability of the Child Care system to respond to the needs of poor children and to improve their well-being.

A further example where inter-departmental co-operation is needed, is between Home Affairs and Social Development with regards to the issuing of birth certificates for children and identity documents for care givers. The

Department of Social Development, while initiating a strategy to improve the take-up rate of child grants, has failed to effectively engage the Department of Home Affairs on the need to prioritise and allocate more resources to ensuring poor rural children and their caregivers can access their identity documents.

Home Affairs in turn, has failed to effectively engage the Department of Finances to provide it with more resources to ensure that it can prioritise children's needs.

The Department of Public Works in turn is busy with a programme to repair the offices of the Department of Home Affairs. While one would have thought that priority would be given to offices serving the needs of poor rural communities, the Public Works programme prioritises border control offices in phase 1 and will only address the needs of civic services offices in phase 2 (2004 and 2005). Again, an opportunity to ensure children's needs are prioritised has been lost due to an apparent lack of communication, co-ordination and co-operation between government departments.

Promoting the well-being of children and preventing the abuse and neglect of children is the responsibility of all spheres of government and all Departments. However, no effective mechanism currently exists to ensure co-ordination and co-operation between the various Departments and bodies

While the National Programme of Action has greatly facilitated such cooperation, it has very little power to ensure that co-ordination and co-operation actually occurs at a policy, legislative, budget and practical level.

The reporting process both to the NPA and to the UN Committee on the Rights of the Child is not effective as many Departments do not report or do not provide useful information in their reports because they are not required to use prescribed performance indicators.

However, it does appear to be clear that the Minister of Social Development is primarily responsible for co-ordinating the promotion and protection of children's well-being. While the Minister has this responsibility, he/she has not been sufficiently empowered and equipped to carry out this co-ordinating function.

Section 41 of the Constitution deals with principles of co-operative government and intergovernmental relations. Of particular interest is section 41(1)(h), which provides as follows:

> "All spheres of government and all organs of state within each sphere must … co-operate with one another in mutual trust and good faith by –
>
> i. fostering friendly relations;
> ii. assisting and supporting one another;

iii. informing one another of, and consulting one another on, matters of common interest;
iv. co-ordinating their actions and legislation with one another;
v. adhering to agreed procedures; and
vi. avoiding legal proceedings against one another."

These constitutional provisions provide some measure of guidance in dealing with the inevitable overlaps between different policy and legislative agendas. In the case of new child care legislation, the efficient operation of which to a large extent is dependant on supporting social assistance, health care, justice and safety and security policy and legislation, steps need to be taken to ensure intergovernmental co-operation and co-ordination.[10]

While we recognise that the policy and legislative framework required for the provision of services by other Departments, such as treatment for children with HIV or supplying water to poor families, lies beyond the scope of the Commission's work, we submit that new child care legislation needs to provide mechanisms for the Minister of Social Development to effectively engage the other relevant Ministers and Departments on this issue, in the manner contemplated by section 41(1)(h) of the Constitution.

In particular, section 41(1)(h)(iv) demands that "[a]ll spheres of government and all organs of state within each sphere … co-operate with one another in mutual trust and good faith by… co-ordinating their actions and legislation with one another". Given the positive constitutional obligations of the Ministry of Social Development in respect of the right of access to social security and the right of children to social services, it follows that in so far as other ministries fail to deal with matters that place an undue burden on the provision of social services and social security, the Ministry of Social Development is both permitted and mandated to require co-operation.

While, legislating for inter-governmental co-operation and prioritisation of children's needs within other government departments is a difficult and complex task involving a range of stakeholders, the new Children's Statute can provide mechanisms to encourage greater co-ordination with regards to children's well-being.

(1) It could incorporate a Children's Charter which lists and fleshes out children's rights in the various sectors and which is given legislative superiority over all other legislation (besides the Constitution). The Discussion Paper in Chapter 5 includes a list of children's rights for some sectors. We make suggestion in our comments on chapter 5 for the inclusion of more rights, especially health, social security, food and water. These rights will serve as minimum standards for Departments to follow when they draft legislation and policy or implement programmes. All national legislation, eg

[10] This also applies to other legislative frameworks, such as labour.

the National Health Act, the Aliens Control Act, the SA Schools Act, the Water Services Act should be required to be assessed against the principles and rights set out in the Children's Statute and amended accordingly to incorporate the principles and relevant sector specific rights.

(2) Each Department should be obliged to draw up annual plans showing how they intend to promote and protect children's well-being within their Department's policies, plans, programmes and actions. They should also be required to regularly report on the implementation of such plans. The plans and reports should have to be submitted to the Minister of Social Development (or other appropriate body) and tabled in Parliament to be considered by the Joint Monitoring Committee on Children, Youth and Persons with Disabilities[11]. We provide more detail on this suggestion in our comments on chapters 5. We further suggest that monitoring, reporting and inter-sectoral co-operation be informed by the use of prescribed performance indicators.

(3) The Minister of Social Development should be legislatively empowered to request regular opportunities for dialogue and communication with other government departments and bodies. We provide more detail on this suggestion in our comments on Chapter 9.

CHAPTER 2 - THE SCOPE OF THE INVESTIGATION

2.1 Introduction

The paper mentions that the twin principles of (a) enabling a child's growth and development within the family environment and (b) protecting children in vulnerable situations inform the Commission's vision of the new children's statute.

The existing Child Care Act is focused on tertiary interventions once a child has been abused, neglected or abandoned. This has resulted in little attention, resources, and staffing being focussed on primary or secondary prevention. The Commission's intention to ensure that the new children's statute focuses equally on primary prevention strategies that enable children to develop within their family environment, is welcomed and supported.

However, clear and innovative legislative mechanisms that enable a primary prevention approach need to be developed in the legislation to ensure that the necessary resources are allocated to primary prevention activities. For this reason we welcome the legislative provisions suggested in chapter 9 which place a duty on the Minister of Social Development to co-ordinate integrated and sustainable preventative services and approaches, and which stipulates clear obligations upon local government to ensure the general well-being of children falling under their jurisdiction.

However, we are concerned that these interventions will continue to be small in reach unless the Minister of Finance is somehow obliged to properly resource both the Department of Social Development and Local Governments to enable them to carry out this function effectively. We recommend that the Commission draft legislative provisions that ensure that the necessary resources are allocated to primary prevention. Please see our comments under chapter 9.

2.5 The scope of the new children's statute

We support the view expressed by the majority of respondents to the Issue Paper that the Children's Statute should **set the minimum standards** to which all laws affecting children must conform.

While the Children's Statute cannot be all-comprehensive, it can set minimum standards and create co-ordination and reporting mechanisms to ensure children's well-being is given appropriate attention in all government departments.

To enable such an approach, we recommend that the Children's Statute should contain a list of each sector's rights. The list should expand upon the bare rights listed in the Constitution, by providing basic interpretations, thereby giving more direction to decision makers and service providers on what they are obliged to provide. Department's should be required to amend National Legislation, eg the National Health Act, to incorporate the list of rights into their Legislation. (See comments on chapter 5)

Each Department should also be obliged to report to the Minister of Social Development and the Independent Children's Protector on their plans to promote and protect children's well-being and annual reports on progress in the implementation of these plans. (see our comments on chapter 9)

CHAPTER 3 - THE CONSTITUTIONAL IMPERATIVES RELATING TO CHILDREN

(1) Children's right to be informed, listened to, heard and respected

The Discussion Paper indicates in this chapter that children involved in the Law Commissions child participatory research were most concerned about their right to be consulted, listened to and respected by adults, especially when decisions are made in matters affecting them. This finding is confirmed by our experience and child participatory research. Our research has highlighted children's concerns regarding not being informed, respected, listened to or consulted, in particular by health care personnel in clinics and hospitals. Children infected with HIV, children with disabilities, and children lacking adult supervision were particularly indignant about the lack of respect, communication and consultation in health care settings.

This is particularly concerning in light of the need for clear channels of communication between children and health care personnel around issues relating to sexuality, reproduction, HIV, STDs and pregnancy.

We therefore support the various recommendations in the Discussion Paper which provide for children to be consulted. However, we are concerned that health care personnel, who do not fall under the Department of Social Development, also need to be obliged through legislation to respect the dignity of children, to communicate in a child friendly way, and to allow children an opportunity to express their views. The draft National Health Bill[12] does not take a special focus on children and does not contain any child specific rights. A specific gap in the draft National Health Bill is the omission of a patient's right to be treated with dignity and respect and the omission of an anti-discrimination provision.

The inclusion of the child's right to participate in the list of health rights in chapter 5 (see comments on chapter 5) would ensure that they are incorporated into the National Health Act and that the Department of Health is obliged to report to the Minister of Social Development and the Independent Child Protector, on what it is doing to promote this right in health care settings.

While our suggestions that the Children's Statute contain a list of childrens health rights (see comments on chapter 5), and that these be incorporated into the National Health Bill will assist, attention still needs to be paid to ensuring that health care personnel are aware of their obligations and are trained and equipped to promote and protect children's rights to participate and be heard.

Please see the Children's Institute's submission to the Department of Health on the National Health bill.

(2) Children's rights to participate in the reform of policy, law and programmes that affect their well-being

The Discussion Paper does not propose any legislative provisions in this regard. We recommend that further research be done to ascertain comparative practice with regard to legislating for child participation in policy, legislation and programmatic reform. The precedent set by the SALC in providing an opportunity for children to participate in the Child Care Act reform process needs to be followed in other policy and law reform processes such as the National Health Bill, the Social Assistance Act, the Aliens Control Act, the SA Schools Act etc. A provision in the new Children's Statute encouraging or obliging such participatory processes would assist in ensuring that policy and law reform is effective as it will be informed by the real needs of children. Chapter 5 could include a provision promoting the participation of children in policy and legislation reform.

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[12] Draft published in the Government Gazette November 2001

(3) The State's obligation to support families to provide for their children's basic needs
We support the interpretation of the Grootboom judgement to the effect that the state has an obligation to support families in need to provide for their children's basic needs. An interpretation that only children being cared for by the state are entitled to state assistance is non-sensical and is not cost effective. Nor does it support the principle that a child is best cared for in a family environment.

CHAPTER 4 - CHILDHOOD: ITS BEGINNING AND END

The Commission suggests that a child be defined for the purposes of the new children’s statute as any person under the age of 18 years of age, and that the age of majority be reduced to 18 years (current 21 years in terms of the Age of Majority Act 57 of 1972).

We support the suggestion that:
1) A child be defined as any person under the age of 18 years of age.
2) The age of majority be reduced to 18 years.
3) The Age of Majority Act 57 of 1972 be repealed.

CHAPTER 5 - THE PRINCIPLES UNDERPINNING THE NEW CHILDREN'S STATUTE, THE BEST INTERESTS OF CHILDREN-STANDARD, AND THE RIGHTS AND RESPONSIBILITIES OF CHILDREN

5.2 The principles underpinning the new children's statute

We support the Commission's recommendation that the new Children's Statute must include a list of principles based upon the vision behind the law reform.

This chapter stresses the need to ensure that the racially skewed provisioning of welfare services and a bias in favour of service provision in urban centres, is addressed.

While the Discussion Paper takes the current Child Care Act significant steps forward with regards to equalising the imbalances and promoting a primary preventative approach, it is still overly focussed on secondary interventions. While we recognize that secondary interventions are easier to legislate for and that the promotion of substantive equality and primary prevention is difficult to legislate and requires considerable resources, South Africa's Children's Statute could pave the way by legislating clearly and unambiguously for the promotion of substantive equality and primary prevention.

We therefore recommend that the promotion of substantive equality and a clear focus on primary prevention needs to come through stronger as a primary principle of the legislation. An important ingredient for such an approach would be to include the promotion of equality and the principle of

primary prevention as core objects and principles at the beginning of the Statute.

Suggestions for draft bill:

Objects

1) The objects of this Act are -
   a. To make provision for structures, services and means for promoting the **survival[13]** and sound physical, mental, emotional and social development of **all[14]** children **in South Africa;**
   b. To assist families to care for and protect their children[15]
   c. To utilize, strengthen and develop[16] community structures which provide care and protection for children;
   d. To prevent, ~~as far as possible~~, any ill-treatment, abuse, neglect, deprivation and exploitation of children;
   e. To provide care, protection and **treatment[17]** for children who are suffering ill-treatment, abuse, neglect, deprivation or exploitation or who are otherwise in need of care and protection; and
   f. Generally, to promote the well-being of **all** children.

General principles and guidelines

2) (1) (a) Any court or any person making any decision or taking any action under this Act in respect of any child must always ensure that such decision or action is in the best interests of the child.

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

[14] We recommend the insertion of the word "all" to again make it expressly clear that the legislation is aimed at providing services and structures to promote the survival and development of all children and not only to provide services for children who are able to access the system. A pro-active - "affirmative action" - promotion of substantive equality - flavour needs to come through clearly in the Legislation..

[15] The Discussion Paper refers in many places to the need to support families to look after their children so as to prevent abuse and neglect from occurring. We recommend that this should be a core object of the bill. Chapter 9 does include this provision, however, to give it prominence, we suggest that it be included as a core principle we well.

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

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

(b) The best interest of a child must be determined having regard to all relevant factors and circumstances affecting the child and having regard to the objects, principles and guidelines set out in this Act **and the regulations promulgated or directives issued in terms of this Act,**[18] **and** in the Constitution ~~and in any other law.~~[19]

(2) Children should, whenever possible, be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a family environment.

(3) A Child's family must, whenever appropriate, be involved in any decision-making affecting the child.

(4) Whenever a child is in a position to participate meaningfully in any decision-making effecting him or her, he or she must be given the opportunity so to participate and proper consideration must be given to the child's opinion, views, and preferences, bearing in mind the child's age and maturity.

(5) A child's physical and emotional security and his or her mental, emotional, social and cultural development are important factors which must be given proper consideration whenever any decision is taken in respect of the child.

(6) It is the duty of everyone who performs any function in respect of a child or takes any decisions affecting a child -

1) to respect the child's inherent dignity
2) to treat the child fairly and equally;
3) **to provide the child with an opportunity to express his or her opinion, and to listen to and give proper consideration to the child's opinion, views and preferences**[20]
4) to protect the child's fundamental human rights set out in the Constitution and in Chapter X
5) to protect the child from unfair discrimination on any ground, in particular from unfair discrimination on the grounds of the child's age; **nationality**[21]**;** his or her **socio-economic status**[22]**,** health or HIV-status or that of his or her

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[18] See recommendations under concept of "best interests of the child" standard.

[19] The reference to "any other law" may be confusing and impractical. A nurse of social worker who is required to make a decision as to the best interests of a child cannot be expected to know of the principles and guidelines pertaining to the best interests of children set out in other laws. The Children's Statute should be the principles legislation that sets out the concept of the best interests of the child. All other legislation should refer to the test and guidelines set out in the Children's Statute.

[20] We recommend that this principle be included here as a duty for person's administering the Children's Statute. In our various child participation projects (ACESS 's child participation project and the National Children's Forum on HIV/AIDS), the children stressed the problem of not being listened to and of decisions being made without them being consulted and involved. They often felt as if they were not considered to be present when decisions were taken and did not feel empowered to demand an opportunity to be heard. Social workers, nurses and officials need to be sensitised to the need to hear children's views and trained to take pro-active steps to allow children to participate. A first step would be to create a clear duty to listen to children and give proper consideration to their views.

[21] Legislation needs to be pro-active in prohibiting discrimination against children who are not South African. Some service providers are of the view that non-South African children are not entitled to social services and protection.

[22] Our various child participation processes have highlighted the discrimination and harrassment that poor children suffer from state officials if their parents cannot pay for services (health, education,

parents; **family status**, ~~child's status with regard to his or her birth within or out of wedlock~~[23]; or any disability from which the child may be suffering.

(7)In any proceedings relating to a child or any action taken in respect of a child, delay must as far as possible be avoided.

(8)Primary prevention and early intervention services **must be provided**[24] and should seek to -

(a)enable and strengthen children and their families to function optimally;

(b)prevent the removal of children from their families; **unless removal is in the best interests of the child**

(c)prevent the recurrence of problems in the child's family and reduce the negative consequences of risk factors;

(d)divert children away from either the child and youth care or the criminal justice system.

(9) Whenever any major decision or action which may significantly affect a child or a child's life-circumstances is contemplated in respect of that child, every person who is a parent or guardian or care-giver of the child, and where the child is capable of appreciating the significance of such decision or action, the child himself or herself, must be informed.

(10) In any proceedings or in any action taken in respect of any child under this Act an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided.

5.3 The 'best interests of the child' standard

We support the suggestion that the "best interests of the child" standard should be enshrined as the primary consideration in all matters concerning children.

Due to its indeterminate nature and the inevitable subjective interpretation by different decision makers and service providers, we recommend that the standard be further defined to promote its use and to promote equity in its application.

In practice, many service providers will struggle to apply the standard in the various settings and decision making opportunities that arise. A general list may not prove helpful for all the situations where the test will have to be applied. **Furthermore, the general list recommended by the Commission appears to be based very much on case law surrounding judicial proceedings on custody, adoption, access and children's court proceedings. It is not user friendly for service providers making out-of-court decisions.**

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transport). Being poor carries a stigma that needs to be eradicated. Social workers will need to intervene to protect poor children from discrimination in the various settings, such as schools.

[23] We suggest that this ground be broadened to cater for other instances of family status, other than in or out of wedlock, such as same sex relationships, care by grandmothers, care with relatives.

[24] The insertion of an obligation to provide primary prevention services would assist in ensuring that resources are allocated to the function

The majority of decisions and actions concerning children's well-being are taken by service providers outside of the court system. We therefore recommend the inclusion of a general list that is **applicable to all decision making situations** and the **development of specialised guidelines for applying the test in each situation.** These guidelines/criteria must be reviewed on a bi-annual basis. The review process should be informed by current research and should involve consultation with civil society. To ensure flexibility, the guidelines would need to take the form of regulations, schedules or directives.

Situations that would require specialised guidelines and training include:

- deciding whether or not to test a child for HIV
- deciding whether or not to appoint a care giver as a foster parent
- deciding whether or not to place a child in an institution
- custody/care decisions
- adoption decisions
- deciding whether or not to disclose a child's HIV status to their parents
- deciding whether or not to provide a child with a certain medical treatment
- administering a child's property
- deciding whether a parenting agreement between a mother and an unmarried father is in the best interests of a child, before registering such agreement (decision by Child Protector - see comments on chapter 8)
- deciding whether to grant an unmarried father parenting rights (Child and Family Court applications - see comments on chapter 8)

Lastly, we recommend that all personnel required to administer the Act, be continually sensitised and trained on the use of the general list and the specialised situation guidelines.

5.3 The rights and responsibilities of children

We support the inclusion of a list of children's rights in the Children's Statute. We agree with all the rights included, but would like to recommend the inclusion of additional rights to make the list comprehensive, in particular; health rights, social security rights, rights to food and water, environmental rights and the right to be heard and participate in decisions that affect them. It is not clear as to why the specific rights listed in the Discussion Paper have been included while health, social security, environment, food and water have been excluded.

We also suggest that this section contains a provision that obliges all National Departments to review their legislation, policies and programmes to ensure that the rights are incorporated and adhered to. The Children's Charter, within the Children's Statute, should be given legislative superiority over all other legislation, except for the Constitution.

We support the rights and the legislative formulations proposed for the following:

2. Unfair discrimination prohibited (especially the inclusion of health status, HIV status and socio-economic status)
3. Best interest of children
4. Right to name, nationality and identity
11.Refugee children
13. Leisure and recreation
14. Representation of children in civil proceedings

We support the inclusion of the following rights but would like to make suggestions for the legislative formulations:

5.Family Relationship

The wording used restricts the right of a child not to be separated from his or her family to **"parents".** In the light of the fact that many children in South Africa, are in the de facto care of other family members, such as grandmothers, this provision needs to protect children's right not to be arbitrarily removed from their primary care-givers and not just from their parents. While the Discussion Paper envisages that relatives caring for children may apply for parental rights and responsibilities and will then be considered as "parents", many such relatives, especially those living in rural areas may not be able to access the system which confers them with parenting rights. Such care-givers and the children living with them will therefore not be protected against arbitrary removals if the "Family Relationship" clause restricts its protection to parents.

6. Property

Children who have been orphaned, often struggle to hold onto property and financial policies (pensions, retirement annuities, funeral policies) that they are legally entitled to inherit. The property is also often tied up for years in the administration process or has time-release clauses (especially financial policies) with the result that the child's basic needs are not provided for.

We recommend the insertion of the following provision:

6(<u>2) Property to which a child is legally entitled to inherit, must be administered promptly and without delay and the administration system must ensure that children have access to financial means to provide for their basic needs.</u>
<u>6(3) The property concerned must be administered for the benefit of the child in both the present and the future.</u>

7. Protection of children from maltreatment, abuse, neglect, exploitation, and other harmful practices

We are concerned by the wording used in 7(2) (i): "Every child has the right to be protected, through administrative, social, educational, punitive or other suitable measures and procedures, from (2) …..encouragement to engage in - (i)….any form of sexual activity.

This provision could be misinterpreted to imply that some LoveLife publications should be prohibited. Some LoveLife publications are aimed at encouraging youth to live "sex positive" lives which can have the effect of encouraging forms of sexual activity, in an effort to remove the silence and taboo surrounding sex that fuels the HIV/AIDS pandemic.

We therefore recommend that an appropriate adjective be inserted before the phrase "sexual activity" to confine the prohibition to circumstances that are illegal or otherwise not in the interests of the child.

We recommend that 7(2) be improved by including the right to have access to counselling and not just "medical treatment". Medical treatment can be interpreted narrowly to mean treatment aimed at addressing the physical trauma suffered by the child and not the psychological trauma as well.

8. Protection of children from harmful social and cultural practices

We recommend that virginity testing of girl children be prohibited in 8(3).

While cultural practices are important and can play an important part in a child's development, cultural practices which harm a child cannot be allowed to continue, even if the harm is unintentional and inadvertent.

Virginity testing is a cultural practice which harms the girl child. In the context of the HIV/AIDS pandemic and the high rates of sexual violence towards children and women, we are concerned that virginity testing, while intended to encourage certain values, does expose the child to further abuse:

- it discriminates against the girl child
- it publicly shames and isolates young people who do have sex making them feel that they have done something wrong
- it infringes the child's privacy and dignity
- it publicly identifies virgins thereby potentially exposing them open to
- further abuse due to the myths surrounding HIV and having sex with a
- virgin
- the public exposure of a girl's "lack of virginity" shames young people who may also have been sexually abused or raped, thereby adding secondary trauma to their abuse.

9. Protection of children from exploitative labour practices

This provision should incorporate the rights of children who are working in jobs that do not qualify as "exploitative", to be supported by the state to enable them to continue their schooling. In South Africa, many children are working to survive or to support their siblings. They struggle to concentrate in school, and to do their homework, yet cannot be expected to stop working as they would have no means of survival. Such children should have the right to receive support and assistance from the state to enable them to continue with their schooling, despite having to work after school. Such support could include assistance from the school in negotiating with their employer so as to allow some time off to do homework.

While child labour cannot be eradicated, it can be regulated so that children do not work long hours or do tasks that are inappropriate for their well-being.

10. Education

Our child participatory research as shown that many children are being refused admission to school or discriminated against at school due to being poor. The denial of admission and discrimination is based on their inability to pay school fees, buy a school uniform, or afford shoes or stationary.

The teachers shout at you. They say that we cannot sit on the seats at school because we don't pay school fees. People who sit on the chairs are those who pay school fees. The teachers like to swear at us. They don't have a good way of approaching children. They keep on teasing us about the school fees. It is not nice because we also like to pay we just don't have money.
(Girl, 11, NP)

You are reminded always to bring school fees. If the year ends and you haven't paid, your report is withheld. ***(Girl, 13, Western Cape)***

I don't have shoes to go to school and uniform. If I don't have uniform they send me back. I am going now because I use the clothes of my brother. ***(Boy, 10, NP)***

In winter it is so cold. I wear these short pants and have no shoes. Some mornings it is too cold to walk to school so I stay at home. ***(Boy, 8, NP)***

I will be happy if I can have money for transport because I am far away from school. I walk a long distance to school and I pass next to the dangerous place and I walk a long distance to school without having anything to eat.
(Girl, 11, NP)

Last year I was kicked out of school because I did not have school clothes.
(Girl, 10, KZN)[25]

[25] Voices from the ACESS Child Participation Project

While this is clearly contrary to the Department's stated policy and legislative[26] directives to governing bodies and schools, in practice, poor children are being denied their right to education. Our child participatory research has also shown that one of the common reasons sited by street children as to how they ended up on the streets, was being refused admission to school due to not being able to pay school fees.

We recommend that the right to attend school and the right not to be discriminated against, despite inability to pay school fees, must be included in the list of Education rights. Any child rights training of Educators would clearly then incorporate this most basic principle.

Suggested draft:

<u>All children have the right to receive an education, without discrimination, regardless of their inability to pay school fees or to afford a school uniform, shoes or stationary.</u>

12. Children with disabilities

The wording used in 12 (2) in relation to a disabled child's right to financial assistance, does not improve the current disadvantaged position of children with disabilities. The inclusion of the phrase; "for which he or she may qualify", does not set a principle but allows another body to decide when a child with a disability should qualify for financial assistance. The rights chapter should set the minimum to which further policy decisions must conform. We therefore propose the use of the following wording:

<u>Every child with a physical or mental disability has the right to receive special care and such financial assistance as is necessary to ensure a standard of living adequate for his or her development and equal enjoyment of his or her constitutional rights.</u>

We do not support the inclusion of responsibilities of the child, as formulated in clause 15.

15. Responsibilities of the child

The formulation in 15 (1) is vague and generalised and thus has no effect. The inclusion of a responsibility on the child "to support family life" (clause 15(2)) with no comparative proposed insertion of a parent's duty to support family life or a duty of the state to support family life is not desirable. Furthermore, the Discussion Paper is not clear on the purpose of including responsibilities on the child or the impact (positive or negative) that the inclusion of such a clause will have on children.

[26] SA Schools Act

We recommend the inclusion of the following rights:

The right to health care

The Discussion Paper, in chapter 11, recommends that the National Health Act should include a list of children's health rights. We support such recommendation, but also suggest that the Children's Statute should include a list of health rights in chapter 5. These should then be required to be incorporated into the National Health Act.

The November 2001 draft of the National Health Bill[27] does not in any way single out children's health care needs as any different to the rest of the population and does not propose any specialised structures, services or resourcing. In fact the preamble, while mentioning section 27 of the Constitution, fails to refer to section 28 (1) (c). Ensuring a child appropriate right to health care in the Children's Statute would set a precedent for the National Health Bill to follow.

We would like to offer our services to develop the health right that needs to be included in Chapter 5. We have provided a provisional draft below but are of the opinion that this formulation requires additional discussion and research. The list we propose also needs to be compared to the list proposed by the Commission in chapter 11.

Provisional suggestion:

1) **Every child has the right to basic health care services. "Basic health care" is care that promotes the child's health, adequately treats acute and certain chronic health conditions[28], and prevents acute and chronic health conditions, and which as a minimum, includes:**

   (We suggest that a list of minimum/essential heath care services/programmes should be listed)

(2) **Every child has the right to have access to health care services[29].**

(3) **Every child has the right to have confidential access to contraceptives and health related information on sexuality, reproduction, STDs and HIV, regardless of age[30].**

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[27] Published in the Government Gazette for comment and expected to be tabled in Parliament this year.

[28] Some chronic health conditions, such as asthma can easily be treated and managed at primary level health care facilities, while others, such as cancer may require specialised care at a secondary and tertiary level.

[29] Section 28 (1) (c) of the Constitution provides that every child has a right to basic health care services. Section 27 provides that everyone (children and adults) have a right to have access to health care services. Children thus have a right to received a minimum standard of health care and also have the right of access to health care beyond the minimum.

(4) **Every child has the right to be treated equally and with dignity regardless of his or her health status, HIV/AIDS status or perceived HIV/AIDS status, age, disability, socio-economic status, sexual orientation, or nationality[31], or any other ground.**

(**5) Every child has the right to request and receive information on health promotion and the prevention of ill-health and disease.**

The right to social security

While the Discussion Paper clearly considers social security to be essential to the functioning of the new child care system, chapter 5 does not include a right to social security. We therefore recommend the following formulation:

(1) Parents are primarily responsible for ensuring that a child's basic needs are provided for. However, if parents are unable to provide for the child's basic needs, the State is obliged to provide support and material assistance to the child and his or her caregiver, with an emphasis on facilitating the child or caregiver's ability to provide the child with nutrition, shelter, clothing and health care.

(2)Every child has the right to have access to social security, including social assistance if their parents are unable to provide for their basic needs in order to ensure their survival and a standard of living adequate for their development.

(5) A child suffering from malnutrition, or living in a situation of crisis, has the right to emergency social assistance from the state without undue delay.

(4) A child with a disability or chronic illness that renders him or her in need of special care and medical treatment in order to ensure his or her survival or development, is entitled to social assistance.

The right to food

[30] In order to reduce teenage pregnancies, STDs, HIV and child abuse, it is essential that children feel comfortable to request information on contraceptives, STDs, HIV and pregnancy without the fear that their confidence will be broken. Our child participatory research, in particular the National Children's Forum on HIV has revealed that children do not feel that their questions and information will be kept confidential, this is particularly because some nurses consider the children too young to be asking such questions. A clear right that children have the right to ask for and the right to receive information would ensure that health care personnel know their obligations and give children more confidence to ask about these "taboo" subjects.

[31] We have suggested these 6 grounds based on our experience and research showing that of all the prohibited grounds, these are the grounds upon which many children suffer the most discrimination.

The Constitution provides in section 27 (1) (b) that everyone has the right to have access to sufficient food, and in section 28 (1) (c) that every child has the right to basic nutrition.

Our research has revealed that many children in South Africa suffer from malnutrition and many children go to bed hungry every night.

Sometimes at night we sleep without eating anything. ***(Boy, 10, NP)***

For my side the biggest problem is food. Sometime we end up not getting any food at home and don't know what to do. We feel sad because my grandmother don't have money to buy food. The other problem is to have school shoes. ***(Boy, 15, NP)***

When I go to school I don't eat breakfast, but I wake up at 6.00am. I am living with my grandmother and she does not get pension. Sometimes I go to school without carrying the lunch box but at least we get food at school. ***(Girl, 12, NP)***

Money is very scarce. Sometimes when I go to school I do not have anything to eat like bread. My parent is not working. ***(Boy, 15, WC)***

My father is working but he earns very little. The problem is he has to buy food, pay people who borrowed him money and pay our school fees. ***(Boy, 15, WC)***

The problem is waking up with nothing to eat. You go to school hungry. ***(Boy, 16, WC,)*** [32]

At home we do not eat when we wake up and when we come from school. We sometimes eat after school. ***(Girl, 11, E Cape)***

We don't always have the money for food. I think it is just because there is no one working at home. ***(Girl, 10, KZN)***

In South Africa, a country that has a very large food supply and production industry, children go hungry mainly because they and their care-givers lack the land and resources to produce food and the money necessary to purchase food. Providing for children's basic needs (food, clean water, clothing, shelter, health care and education) is the most important aspect of a primary prevention approach.

Currently, no single Ministry is responsible for ensuring the progressive realisation of the right of access to food. The Department's of Land, Agriculture, Social Development and Health all have various projects with

[32] Voices of children from the ACESS Child Participation Project

regards to food, however South Africa does not appear to have a co-ordinated plan and response to the malnutrition and hunger crisis facing the country.

Children's right to basic nutrition seems to have found a home within the Department of Health. It is realised primarily through the Primary School Nutrition Programme (PSNP)[33] and the Protein Energy Malnutrition Scheme (PEM). The Department of Social Development also has small scale nutrition interventions such as community garden projects.

However, much more co-ordination and work is needed before children's basic nutritional needs can be met. A first step would be the inclusion of a clear right to food for children in the Children's Statute.

The right to water and sanitation services

Access to clean water within a reasonable distance from home and sanitation services is a basic necessity to prevent many infections and diseases that plague infants and children in South Africa. Too many children die from diarrhoea in South Africa, primarily due to lack of adequate sanitation facilities and a lack of access to clean water.

HIV negative babies being breast and bottled fed from mothers who are HIV positive are placed more at risk of acquiring HIV if they contract diarrhoea.

Ensuring access to safe water and sanitation services is essential for promoting the health and well-being of all children. Chapter 9 clearly allocates this responsibility to Local Government. A clear right in Chapter 5 would strengthen the obligation on Local Government to prioritise the provision of basic water and sanitation services to poor communities. We therefore suggest the following right:

> **Every child has the right to have access to clean water, within a reasonable distance from his or her home.**
>
> **Every child has the right to have access to sanitation services aimed at promoting their health and preventing infections and diseases.**

The right to be heard and to participate in decisions that affect their interests

Chapter 3 of the Discussion Paper highlights that children are most concerned about their right to be consulted, listened to and heard on matters that affect them. Our research with children confirms this finding. We therefore recommend that the list of rights include a child's right to be consulted,

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[33] The PSNP provides children with a nutritious snack (note: not a meal) at primary schools which serve communities in need. While the PSNP has been critisized for not being as effective as it could, for being mismanaged or inadequate, our research ahs revealed that the snack provided at school is often the only meal that children get during the day. (ACESS quote). The PEM Scheme provides infants in hospital at risk of malnutrition with basic nutrition.

listened to and heard before decisions affecting his or her well-being are made.

The right to participate in policy and legislative drafting processes that affect children could also be incorporated under this provision (see our comments on this aspect in chapter 3)

The right to an environment that is not harmful to the child's safety or well-being

We recommend that environmental rights should also be included in the list. Many children are injured or die as a result of trauma and accidents due to the environment in which they live and play being hazardous. They also get sick due to rubbish dumps being located near to their homes or medical waste being dumped inappropriately. Pollution of the air, water and land impact on children's health. Air pollution is causing more children to develop asthma and water pollution leads to gastro infections.

CHAPTER 6 - THE CHILD CARE ACT 74 OF 1983

The right of children to self-expression

The Child Care Act 74 of 1983 does not provide a child with a clear right to express views and wishes if able to do so.

The Commission recommends that the new children’s statute should explicitly allow children to give evidence, if capable of doing so, in any proceedings under this Act.

We support the suggestion that:

The new children’s statute should explicitly allow children to give evidence, if capable of doing so, in any proceedings under this Act.

Recommendation

We suggests that structures and standards be established that prepare and protect the child in the process of giving evidence.

Due recognition must be given to the child’s point of view and this should be seriously considered in the judgement. It should not be merely ‘token‘ representivity and participation.

CHAPTER 8: THE PARENT CHILD RELATIONSHIP

8 .2 The diversity of family forms in South Africa

We support the recommendation under 8.2.4 to the effect that there is a need for the inclusion of a section expressly prohibiting unfair discrimination against

a child on the grounds listed, including family status. We also support the inclusion of a definition of “family member” and the definition proposed.

However, many children in SA cannot access services and benefits and are discriminated against because systems are not in place to recognise the diverse forms of families in South African society, particularly children living with extended family members and grandmothers. Thus, while it is important to have an anti-discrimination clause, it is equally important to pro-actively legislate to ensure that children living with grandmothers (as an example) can easily access basic services such as home affairs documents, social security, and education.

For this reason we strongly motivate for a clear and accessible mechanism for grandmothers and other care-givers who are not parents to be able to have parental responsibilities and rights conferred upon them and for them to access state benefits and services for the child.

8.3 The shift from “Parental Power” to “Parental Responsibility”

We support the recommendation made in 8.3.4 that the new Children’s Statute should replace the common-law concept of “parental power” with a new concept of “parental responsibility”.

8.5 The Acquisition of Parental Responsibility and Parental Rights

Unmarried Fathers

We support the Commissions recommendations in section 8.5.2.4 with regards to the way in which unmarried fathers may acquire parental rights and responsibilities. The Commission is recommending the following:

1. Certain unmarried fathers should be vested automatically with parental responsibility
2. Unmarried fathers who do not obtain automatic parental responsibility or fathers who do, but who wish to formalise such, may draw up an agreement with the child's mother. Such agreement must be in a prescribed form and registered with an appropriate forum.
3. If the father does not obtain responsibility automatically and the mother opposes the idea of a parenting agreement, then the unmarried father may approach an appropriate forum to decide on what would be in the best interests of the child.

With regards to (1), we recommend that category (a) - "the father who has acknowledged paternity of the child and who has supported the child within his financial means" - should not be sufficient on its own to vest the unmarried father with automatic parental rights and responsibilities. The father must also have either co-habited with the mother and the child (category b) or cared for the child on a regular basis, whether or not cohabitating with the mother (category c). Some unmarried fathers may wish not to be automatically

conferred with rights and responsibilities simply because they acknowledge paternity and pay maintenance.

Furthermore, parenting involves much more than simply acknowledging paternity and financially supporting the child. Therefore, we recommend that the father must have demonstrated a commitment to be a parent to the child by caring for the child in terms of categories (b) or (c) before being automatically vested with parental responsibilities.

Suggested re-draft: (2) and (3) combined

"(2)Where a child's father and mother were not married to each other at the time of the child's conception or birth or at any time between the child's conception or birth, but subsequent to the birth of the child:

- **a.** have cohabited for a period or periods that amount to no less than twelve months, **or**
- b. the father has cared for the child, with the informed consent of the child's mother, on a regular basis for a period or periods which amount to not less than twelve months, regardless of whether such father has cohabited with or is cohabitating with the mother of the child

and the father has acknowledged paternity of the child**,**
and has maintained the child to an extent that is reasonable, given his financial means,
and has established a paternal relationship with the child

such father shall have acquired parental responsibility for the child, notwithstanding that a parental responsibility agreement has not been made by the mother and father of the child."

With regards to (2), parenting agreements, we suggest that the Child Protector created in chapter 24 (located in the Child and Family Court) should be empowered to register agreements as to parental rights and responsibilities between mothers and unmarried fathers. The Child Protector should have a duty to ensure that the agreement would be in the best interests of the child by applying the criteria applicable to such decisions.

Such criteria would have to be developed to ensure equal treatment of all unmarried fathers and to ensure that the best interests of the child are safe-guarded. This is particularly important as the office of the Child Protector is the entry level post to the Child Care System which means that Child Protectors will tend to be young and inexperienced. Guidelines are therefore essential. The Child Protector should also be obliged to refer the matter to the Child and Family Court if in doubt as to the best interests of the child.

With regards to (3), we recommend that the Child and Family Court (level 1 and 2) should be the appropriate forum for applications by unmarried fathers for parenting rights and responsibilities. The Child and Family Court would be best placed to decide what is in the best interests of the child and would be more accessible then the current procedure of having to apply to the High

Court. The criteria developed by the High Court in deciding what is in the child's best interests should be codified into a guideline to guide the Child and Family Court adjudicators.

Persons other than Biological Parents (eg grandmothers, aunts and older siblings)

According parental responsibilities and rights to non-biological parents caring for children is particularly important. The number of such cases is increasing due to the impact of HIV. We believe that these persons should have the necessary rights and responsibilities, in order to be able to make application for social assistance provisioning, such as for the Child Support Grant or the Care Dependency Grant (when the child is HIV positive). They should also have rights to decide on the child's medical treatment.

Using a court process to access these rights may prove inaccessible for children and their care givers living in rural areas. Alternative approaches to acquiring these rights may have to be developed for interim use in rural areas until children' court structures are established. A first step would be to allow care-givers to approach the Child Protector based at the Child and Family Court to make application using an out of court process. If the Child Protector is concerned about the best interests of the child, or the parenting rights and responsibilities of the biological parent, he or she should make the necessary enquiries (eg. Contacting and discussing the matter with the biological parent) and then make a decision or refer the matter to the Child and Family Court.

However, care-givers in rural areas will still struggle to access this system. We therefore suggest the introduction of an alternative mechanism that enables care-givers to be conferred with basic parenting rights and responsibilities, especially the right to receive and administer social security grants for the child. A system of conferring certain limited automatic rights upon grandmothers who have the de facto care of a child and who satisfy the definition of primary care giver (without having to produce proof of express consent from the child's mother) should be considered.

The draft legislative provision for "Care of child by person without parental responsibilities or parental rights" proposed by the Commission, may be an appropriate solution and in effect gives de-facto care givers the necessary parental rights and responsibilities. However, we ask the following questions: How will a care-giver prove that they qualify in terms of the section (eg. When applying for social security)? How will a health care professional seeking consent for medical treatment (eg HIV test) be able to know for sure whether the adult person concerned has the necessary rights and responsibilities to give consent on behalf of the child?

In applications for child support grants by care-givers, other than biological parents, the care giver is required to prove that they are the child's primary care-giver. Different social development officers require different forms of proof. Some require an express letter of consent from the child's biological parent, others require the child and care-giver to have the same surname,

other's require the care-giver to produce the parent's death certificate if they claim that the child has been orphaned.

The new Children's Statute could provide clarity on the criteria that have to be satisfied for a person to qualify for certain benefits or to make certain decisions on behalf of the child that can be applied universally in South Africa.

Termination of Parental Responsibility

With regards to orphaned children, we recommend that alternatives forms of proof of their parents death, other than death certificates, should be accepted. Many parents die at home and are then buried without being registered. A letter from a local religious organisation, a traditional leader or a traditional healer should suffice as proof of the parents death.

For parents who have left the area and have never returned and are presumed dead, the child and caregiver should be able to approach the local social development office or the Child Protector (located at the Child and Family Court) for a letter of presumption of death that should require certain proof to be shown, such as the length of time since the person was last seen.

CHAPTER 9 - PREVENTION AND EARLY INTERVENTION SERVICES FOR CHILDREN AND THEIR FAMILIES

We support all the recommendations in this chapter.

We would like to make the following comments and suggestions in order to strengthen the ability of the Children's Statute to ensure primary prevention is prioritised.

9.2 Existing legal position in South Africa

The Commission recommends that the new Children's Statute should indicate that preventative work should be given high priority, and that it should not be undertaken only when other duties permit as is the situation under the current Child Care Act and the current financing policies.

We welcome this recommendation. We realise that a shift in resource allocation to primary prevention, will take time and may require hard choices as resources normally allocated to secondary and tertiary resources may become scarcer. However, the skewed allocation of resources to secondary and tertiary prevention does not ensure that the majority of children in need are provided for. Resources need to shift to ensure equal access to the system for all.

For this reason we submit that the shift towards primary prevention should not merely be by means of guidelines and principles and soft legislative provisions but through clearly legislating for the necessary structures, systems, personnel and resources required to ensure that primary prevention can in fact occur.

In ACESS's recent child participatory process, children were most concerned with problems in accessing school due to inability to pay school fees or afford uniforms, and hunger. These were the two main concerns that emerged from all the groups of children involved in the child participatory workshops across the country. When asked what they would do with extra money, they mostly replied that they would use it to buy food, clothes, shoes and to pay school fees. Our research has shown that the majority of children want their basic needs provided for.

The new Children's Statute needs to ensure in the very least that children's basic needs are provided for. If the Children's Statute does not set the framework, principles and legislative mechanisms to ensure that children's basic needs are provided for, the struggle to improve the situation is likely to take a long time. Legislative mechanisms can put pressure on a Department to find the resources necessary to implement the measure. Without the legislative measure, a Department has very little bargaining power with the Cabinet and the Minister of Finance or similar financial decision making structures at both a provincial and local government level.

9.5 Going beyond prevention: promotion of the well-being of children

We support the legislative provision suggested in point 9.5.as well as the recommendation of the inclusion of a provision along the lines of section 55 of the draft Indian Children's Code Bill 2000.

We suggest that the South African formulation should be adapted to our particular circumstances and should include the following:

"For the purposes of increasing the rate of child survival and improving the health status of children, the state shall take adequate measures to ensure the following:

(1) **the supply of clean water and basic sanitation to children and their families**
(2) **the availability of land and resources for food production and the direct provision of financial support or food to children suffering from malnutrition, hunger or lack of adequate nutrition**
(3) **the financial support of local organisations providing basic services to children and their families, with an emphasis on organisations providing food, shelter, clothing, skills development, child care and health promotion**
(4) **the availability of housing/shelter for children and their families**
(5) **the provision of comprehensive and adequate primary health care services to children and pregnant women**
(6) **a comprehensive social security system for children living in poverty and children with special needs"**

9.6 Promotion, Prevention and Early Intervention: An Inter-sectoral Responsibility

We agree that an inter-sectoral approach is needed in order to address the problems of abuse, neglect and maltreatment and that this necessarily entails that all government departments (and all levels of government) must be mandated to promote the welfare of children and to provide prevention and early intervention services. Furthermore, the child care system will not function effectively if the Departments of Water, Labour, Justice, Safety and Security and Health, etc, do not perform their respective functions to promote the well - being of children.

We therefore support both the legislative provisions recommended under 9.6. We recommend that provision 3 (c) should be re-drafted to include a reference to the capabilities of families and parents to "provide for their children's basic needs".

Suggested draft:

(3) Prevention and early intervention services must promote -

(c) the capabilities of families and parents **to provide for their children's basic needs and** to safeguard the wellbeing and the best interests of their children.

We also suggest that the provision relating to free services for children in alternative care be amended as follows:

Free and subsidised state services for children

" (1) Children in residential care, foster care or subsidised adoptions, and children who are unable to afford to pay for state services due to socio-economic status are entitled to:

a) free basic education
b) subsidised school uniforms, shoes and stationary
c) free basic health care
d) subsidised and free public transport
e) free minimum level of water, sanitation and electricity services
f) exemption from having to pay fees when making application for Home Affairs documents

(2) The Government Department's responsible for providing such services, must design exemption processes which are accessible to children and their families and shall take steps to make families aware of their right to apply for free or subsidised services and shall assist children and families to apply."

Our research has shown that the various exemptions systems used by local governments, schools and other bodes regulating basic services, are not accessible to poor families and definitely not accessible for children without adult supervision, eg child headed households and street children. Hence the necessity for the above provision on accessible exemption systems.

Inter-sectoral co-ordination

In order to ensure that the Minister of Social Development is empowered and equipped to perform this inter-sectoral co-ordinating function, we recommend that the Children's statute provide for monitoring and reporting functions for the various Departments and government bodies. This will ensure that Department's are aware of their responsibilities and will ensure that the draft a plan and implement their responsibilities.

Furthermore, the monitoring and reporting process must be informed by clear performance indicators and must be done in a prescribed format. Although the NPA does provide for a reporting mechanism, it is not legislated for, is not adhered to by all Departments and does not provide information weighed against clear performance indicators. In most instances, Departments just provide a list of policies, programmes, legislation and projects with no indication of the numbers of children being reached or the impact of the initiatives. The reporting by Departments to the JMC on Children, Youth and Persons with Disabilities in Parliament also shows that Departments are not clear on what they are required to report on and how to measure the extent and impact of their own performance.

Suggested draft:

Inter-sectoral planning, communication and reporting

(1) Each Government Department shall draft a plan detailing how they intend to fulfil their mandate of promoting the rights and wellbeing of children and providing for prevention and early intervention services.

(a) the plan must be submitted to the Minister of Social Development the Joint Monitoring Committee on Children, Youth and Persons with Disability, and the Office of the Independent Child Protector

(b) the plan must be reviewed and submitted annually

(2) Each Government Department must draft a report detailing the steps that they have taken to implement their plan and their successes and failures.

(a) the report must be submitted to the Minister of Social Development, the Joint Monitoring Committee on Children, Youth and Persons with Disability, and the Office of the Independent Child Protector

(b) the report must be submitted annually

(4) Plans and Reports must follow a format prescribed by the Minister of Social Development and must be guided by the use of clear performance indicators.

(3) The Minister of Social Development may request opportunities to discuss plans and reports with the Departments concerned and may make recommendations that certain actions be taken in order to ensure that children's well-being is adequately promoted.

(4) Departments shall be required to give due consideration to the Minister's recommendations and to respond in writing if so requested

9.7 The role of local government

We support the Commission's recommendations that Local Government be obliged to provide prevention services and services to promote the well-being of children. Local governments are the bodies responsible for the delivery of many basic services such as water, sanitation, refuse removal, child care, electricity, primary health care. These services are essential for the well-being of children and it is thus imperative that Local government's obligation be clearly defined in national legislation. We therefore support the legislative provision proposed in this section.

- We suggest that the word "welfare" be replaced with "well-being" as well-being is a more encompassing term that includes health. Welfare may have a narrow meaning.

- We suggest that the phrase "child care facilities" be defined to make it clear what facilities this is referring to. This should include ECD centres, creches, and children's homes.

- We suggest that resources for these functions should be ring-fenced. Services for children not have to compete for scarce resources with the many other responsibilities of local governments.

- We suggest that the protection of children from accidental trauma injuries also be a clear function for which local governments are responsible. Many children die and are injured in motor vehicle accidents, drownings, burns and falls. Local Government can be made responsible for addressing some of the underlying problems causing these injuries (such as the location and availability of alcohol outlets, the need for speed bumps on busy roads and near schools etc).

We support the provision that local governments be enabled to develop "one stop centres" for child and family services. We recommend that these centres include service points that enable care-givers to register their children, obtain birth certificates and IDs and apply for social security.

Ensuring adequate resourcing for primary prevention

Without the necessary resources, primary prevention activities will continue to be small in reach. We need a system that firstly ensures that adequate resources are allocated to primary prevention and secondly that allows us to monitor the allocation and expenditure of such resources.

We cannot profess to be experts in this regard and thus would suggest that the Commission conduct further research on how best to ensure that the necessary budget is allocated. We make the following pre-liminary suggestions in this regard:

(1) A specific disaggregated budget should be allocated to the concept of primary prevention at the national , provincial and local government level. This could be done at the National Level through calling Primary Prevention a

"programme" which would ensure it would be possible to monitor the amount of money allocated to the function in the Department's income statements. At the moment, primary prevention activities fall within Programmes 2, 4 and 5 of the Department (Social Security, Social Welfare Service and Social Development). However, these programmes also focus on secondary and tertiary interventions, making it difficult to ascertain and monitor the expenditure and prioritisation on primary prevention. A specific programme on primary prevention would assist in ensuring sufficient budget is allocated and expended on primary prevention.

(2) As far as local government is concerned, we would recommend that resources dedicated to primary prevention activities that focus on children, especially clear functions such as keeping a register of children in the area, should be ring-fenced to ensure that children are prioritised. Many functions are being delegated to local governments by many departments. There will inevitably be a competition for resources between the various functions and local governments that struggle to generate their own resources due to being located in poorer areas, will struggle to implement all their mandates. History has taught us that children's needs, especially primary prevention, will be located at the bottom of the pile of priorities if resources are scarce. For this reason, we strongly recommend that any functions that are delegated to local government be followed by the necessary resources and that these resources be dedicated and ring-fenced for the specific function of child focussed interventions.

CHAPTER 11 – THE PROTECTION OF THE HEALTH RIGHTS OF CHILDREN

After reviewing the various provisions relating to child health in the Discussion Paper and in the draft National Health Bill, we would like to offer to convene a workshop on the topic within the next month and to draft suggestions for a health chapter for the final Child Care Act based on the work already done by the Commission and after further consultation with the child health care sector. Please see the Children's Institute's submission on the draft National Health Bill. There is a need for greater clarity on the health provisions relating to children in both of the bills and we feel that further discussion and work is needed to obtain this clarity.

11.1 Introduction

As mentioned previously in the submission, the draft National Health Bill does not provide a special focus on children's health rights. It is therefore our recommendation that the Children's statute should set the minimum standards that must be adhered to by the Health system. This can be done through including a list of health rights in chapter 5 and a promotion of child health and well-being clause in chapter 9 - similar to section 55 of the Indian Children's Code. The Department of Health in turn should be obliged to incorporate the list of health rights into their legislation and to plan and report annually on how it is promoting the health rights of children.

11.2 Accessing children's health rights

11.2.4 Evaluation and recommendation

We support the inclusion of all these rights. Please see our proposed list of rights for chapter 5 which is similar to this list, but contains some variations. Further discussion is needed on the final list.

The rights recommended in this section should be listed in chapter 5 of the Children's Statute with a provision that requires the National Health Department to incorporate the rights into its National Health Bill.

We also support the recommendations that:

- the Department of Health should develop a national policy that protects the rights of children who have to be hospitalised.
- The Department of Health should develop and adopt clinical guidelines on the appropriate treatment and care which children and youth with HI/AIDS can expect to receive through the public health system.

We would like to draw the Commission's attention to the fact that the Department of Health is in the process of drafting policy guidelines for the management of children with non-communicable chronic illnesses. This policy process will not be looking at HIV.

Specific comment on the rights listed under 11.2.4

- **The right not to be unfairly discriminated against based on HIV/AIDS status**
- **The right to the provision of HIV/AIDS prevention information/health promotion information**
- **The right to confidentiality regarding health status**
- **The right to be treated with dignity regardless of health status**
- **Confidential access to contraceptives regardless of age**

Children's experiences of health services and health care staff were discussed at the National Children's Forum on HIV/AIDS (August 2001). Many of the children complained about the attitude of nurses at clinics, about the fact that clinic staff were not prepared to discuss HIV with children and about the fact that their HIV status was not treated as confidential.

(boy, 13 years old): *"They shout at me, how do you know about HIV/AIDS, things like that, when I go to ask for more information. They shout at us like we shouldn't be talking such."*

(girl, 13 years old): *"I don't see any problems at the clinic because they must teach us, at my clinic they teach us. But sometimes they get a bit angry at us when we ask them too many questions about HIV and AIDS, and they don't want to give out medicines to people who have HIV."*

(11 year old girl)*: “Some nurses do not treat people well at all. You get to a place at five and they treat you at nine. You queue for a long time.”*

“Doctors must not tell our parents about our results until we, as their patients, are ready.”

(18 year old): *“Nurses, they jump you in the queue, they ignore you when they know your problems. They do not keep your file private. They just talk to you about what’s in your file even when there are people around. Sometimes there is no medication. This is a big problem. Sometime when you go to the clinic they say come tomorrow then you go home and die. Maybe if they had helped you, you wouldn’t have died.”*

There is also a need for the Department of Health and other Departments to address the barriers to service access and delivery such as transport, unavailability of pharmaceuticals, stigma etc. in very practical ways. One such example would be to ensure that clinic cards are identical and do not distinguish between clients with STDs and other clients.

- **The right to equal access to health care services**

We suggest that the right to “equal access to health care services" be expanded on and interpreted in the Children's Statute to ensure that health care facilities are structured in a child friendly manner i.e. services available after school hours, transport provided for children who cannot walk long distances, separate waiting areas for children so as to prevent subjecting children to secondary trauma.

- **The right to informed consent as a pre-requisite for HIV testing, and testing only when it is in the child's best interests.**

We suggest that the concept of the “best interests of the child” be explored in more depth in relation to HIV counselling and testing and that a checklist of criteria to determine the bests interests of the child in these situations should be developed. The Children's Statute could specify that such checklists should be developed by the Department and distributed to all social development and health service providers. Service providers would need to be trained on how to apply the criteria and the Department would need to review the criteria against practice and new developments on a bi-annual basis.

Staff at health facilities should receive training on how to provide children with information on HIV/AIDS in appropriate formats and on how to conduct pre and post test counselling with children. Counselling programmes that exist currently are not specialised to provide counselling appropriate for children.

11.3 Children rights to basic health care services

11.3.4 Evaluation and recommendation

The Children's Institute supports the Commission's recommendations that –

- Children's right to basic health care services be confirmed in both the new children's statute and the National Health Bill.
- The National Health Bill **(or Children's Statute)** must set out the core minimum requirements for the state in providing for the basic health care needs of all children and of children with additional health care needs.

We suggest that the Departments of Health, Social Development and Home Affairs collaborate on improving access to child support and other grants, through making application forms and information available at clinics and other primary level health care facilities. The right to basic health care includes the right to a holistic approach to the needs of the child. Children suffering from malnutrition need to be assisted to access their social security grants in order to ensure that they are not re-admitted to hospital a week later having relapsed.

11.4 Consent to medical treatment or surgical intervention

11.4.5 Evaluation and recommendation

We support the Commission's recommendations regarding consent to medical treatment or surgical intervention, in particular:

- **That the age at which children may consent to medical treatment be lowered to 12 years.**
- **However, any child, regardless of age should be able to obtain treatment for sexually transmitted diseases.**We suggest the inclusion of the right to be *tested* for a STD as well.
- **And a child of any age should be entitled to obtain information on and access to contraceptives.**We further suggest that any child, regardless of age, is entitled to access counselling (not only on contraceptives, STDs and HIV, but on anything that related to the child's mental or physical health) without his or her parent or gaurdian's consent.
- **That children cannot consent to an operation without the assistance of their parent(s) or guardian(s).**If the definition of "operation" includes an abortion, the provisions of the Termination of Pregnancy Act need to be referred to as an exception in this regard.
- **A caregiver who is not a parent or guardian of a child may consent to medical treatment for or an operation on that child if that child has been abandoned, or is or her parents are deceased.**Some provision needs to be made for de-facto caregivers who are caring for children whose parents are still alive to consent at least to medical treatment of a child.
- **A parent or guardian of a child may give written consent to a person caring for a child to give consent to medical treatment for or an operation on that child**

- **The National Health Bill should be amended to provide that children from the age of 12 should be consulted in matters relating to their health and children under the age of 12 should be consulted as appropriate to their capacity.**
  We suggest however that the Commission should recommend rather that *all* children should be consulted. All children should be informed as to what is wrong with them and how the health care provider intends to assist the child and to be given an opportunity to ask questions and to state their view on what should be done.
- **That the Child and Family Court should be approached to obtain consent for medical treatment or an operation if the parents or gaurdian's consent cannot be obtained or is refused unreasonably.**
  However, this procedure may prove cumbersome in relation to children living in child headed households and street children, especially for them to access routine, primary health care services and STD services. In such cases, the head of a health facility, should be allowed to consent to certain basic treatment.
- "**Medical treatment" and "operation" must be defined.** Medical treatment should include mental health care services such as psychology sessions and counselling. It should also include dental services.
- **"Informed consent"**
  The Commission requested clarity on the definition of “informed consent”. In the case of children, the notion of informed consent is problematic. Child friendly approaches to explaining medical procedures, their consequences and the notions of informed consent need to be adopted by health staff so as to ensure that children are truly afforded the opportunity to engage in this decision making process in a meaningful way. Service providers will need to be sensitised first to the need to adapt their mode of communication when talking to a child and secondly, they will need to be trained in how to communicate with children effectively. Such training should be a compulsory part of the curriculum for doctors, nurses and other health care professionals. Child psychologists would be best placed to guide the Commission in this regard.

11.5 HIV testing in relation to placement of children in need of care

11.5.5 Evaluation and recommendation

We support the Commission’s recommendation that no child may be tested for HIV without the informed consent of the child or his or her caregiver and HIV testing may only take place where this is in the best interests of the child.

We further support the recommendation that in determining the best interests of the child, cognisance is given to the availability of appropriate care and treatment. A list of criteria that must be considered when applying the best interests principle should be developed for HIV testing. Criteria should include consideration of whether the benefit in testing is outweighed by the stigma the child is likely to face when returning home, whether the child has received counselling, whether post-test counselling is available, and whether appropriate care and treatment is available.

We support the Commission’s recommendation that the PCR test be made available at state expense for babies requiring placement in terms of the Act for purposes of permanency planning and for the appropriate selection of placements. We caution however that a child’s HIV-positive status should not be used as an excuse to place the child in institutional care and that, as with children who are HIV-negative, placement in an institutional care facility should be seen as a last resort.

11.6 Confidentiality of information relating to the HIV/AIDS status of children

11.6.5 Evaluation and recommendation

The Children’s Institute supports the Commission’s recommendations regarding confidentiality and disclosure of a child’s HIV status. In particular:

- **A child aged 12 and older has the right to confidentiality and not to have the results of his or her HIV test disclosed without his or her consent.**
- **A child younger than 12, who is of sufficient maturity to understand the benefits, risks etc, should have the right not to have the results disclosed.**
- **The result of a test of a child younger than 12, who is not sufficiently mature, may be disclosed to other parties, but only on a need to know basis when it would be in the best interests of the child or if the child's HIV status would pose a real risk to third parties.**
- **All child care practitioners, including medical practitioners, should have a legal duty to consider the possible consequences of disclosure of information regarding the child's health status before providing this information to third parties.** We suggest that the words "parents and caregiver" be inserted before "third party". Health personnel must also take into account the likely harm that the child or the child's mother is likely to suffer if the results are disclosed to a certain person, for instance, the child's father. Many women are blamed for having HIV and suffer violence from their partners when their partners find out about their HIV status. Health personnel need to be aware of this factor when disclosing the results of a babies HIV status to the child's father. Pre-disclosure counselling of the father is vital in such cases.

Health facility staff are often not in a position to determine who the legitimate caregiver of the child is or whether the child is of sufficient maturity to understand the benefits and risks of disclosure. Systems need to be put in place to assist health care staff in making these decisions.

11.7 Access to contraceptives

We support the recommendation that children, regardless of age, should have confidential access to contraceptives.

CHAPTER 13 – CHILDREN IN NEED OF SPECIAL PROTECTION

13.1 Introduction

There is a need for clearly defined and broadly accepted terms to define children who are in need of special protection. A number of terms exist, such as Children in Distress (CINDI), Orphans and vulnerable children (OVC) and Children in especially difficult circumstances (CEDC). These terms are widely used and as widely defined, creating confusion in research, programme development and policy formulation. The drafting of a new Children's Statute provides us with the opportunity to define these terms clearly.

We support the Commission's statement that children in need of special protection not be dealt with as a distinct group apart from other children, but that the focus rather be on improving service access for *all* children.

We would like to suggest a further category of children in need of special care; **children with chronic illnesses.** These children are marginalized within the system and their needs are not being attended to. If you require further motivation in this regard, please contact the Children's Institute.

13.1.1 Overarching problems and strategies

We support the Commission's statement that two broad based interventions are required to address many of the problems faced by the vast majority of affected children i.e. poverty alleviation and improved access to basic services.

13.1.4 Recommendations

We support the Commission's recommended overarching measures to address the problems of children in need of special protection, in particular:

- A universal grant to provide protection against absolute poverty, accessible to every child, along with additional grants to address special needs.
- Provision for the court to order that a grant be paid to the child
- Genuinely free access for all impoverished children to primary and basic health care services in the public sector.
- Genuinely free education for all impoverished children of school going age and that specific financing be allocated to schools which accommodate learners who are unable to pay their school fees.

Education

The teachers shout at you. They say that we cannot sit on the seats at school because we don't pay school fees. People who sit on the chairs are those

who pay school fees. The teachers like to swear at us. They don't have a good way of approaching children. They keep on teasing us about the school fees. It is not nice because we also like to pay we just don't have money. (Girl, 11, NP)[34]

Access to School was one of the main concern of all the children who participated in the ACESS Child Participation workshops.

Despite the existing legislation[35] governing education facilities, children are still being denied access to school (or denied some of the benefits afforded other children, such as the school feeding scheme) because of HIV/AIDS related discrimination, non payment of school fees or not having the correct uniform.

16 year old: *"I come from Northern Province. Problems that I have at home are that my parents are not working and they have HIV together with my baby sibling. I have not paid school fees that year, last year and this year. When I was supposed to go to grade 3 they made me repeat grade 2 because I had not found school fees. When they want school fees I go home. They send me home."*

9 year old*: "I come from Winterveld. My mother has passed away. I have not paid school fees. At school they say that they are going to chase us away at the end of this month if we have not paid school fees. When we tell my grandmother she says that she does not have money."*

11 year old: *"My problem is that I haven't paid school fees and my mother has passed away. At home it is me, my little sibling, my mother's elder sister, her husband and Kagiso – my young brother. My aunt sells alcohol. Sometimes when the alcohol has not been bought we sleep with hunger. We do not take a lunch box when we go to school. Sometimes we do not eat in the morning. At school they don't give me food from the feeding scheme because I have not paid school fees."* [36]

We suggest that the Children's Statute, in chapter 5, clearly state that no child may be denied admission to school because he or she cannot pay school fees. We also suggest that chapter 9 should provide that children who cannot afford school fees, must be able to apply for exemptions and that the exemption system must be proactively advertised to parents and caregivers and must be accessible. The Department of Education should be clearly obliged to pro-actively advertise the exemption system and assist children and their care-givers to apply. The exemption system must not be tedious or in anyway degrading for the child and the parent.

We also suggest that structures be put in place, for children and their caregivers, which ensure that children have accessible recourse if their right

[34] Child's voice from the ACESS Child Participatory Project
[35] SA Schools Act
[36] Children's voices from the National Children's Forum on HIV/AIDS

to education is being denied. The children involved in our child participatory projects did not seem to feel empowered to turn for help to anyone to ensure that they could return to school. Without wanting to overburden the Child Protector stationed at the Child and Family Court, we recommend that children whose education rights are violated may approach the Child Protector for assistance. (or the Office of the Independent Child Protector?)

The pressure on schools to ensure that learners pay school fees would be substantially reduced if the department adequately reimbursed such schools for lost funds as suggested by the Commission.

We suggest that measures also be put in place to provide children in need with school uniforms. Such a system could be managed through the funding of NGOs linked to schools or through subsides being paid to schools to purchase uniforms for the children.

13.2 Children living in extreme poverty

We support the recommendation that a provision along the lines of section 55 of the Indian Children's Code, be included in the bill. Please see our detailed comments in chapter 9.

We also call for a universal child grant and access to free state services for all children living in poverty. Please see our comments in this regard in chapter 9 and 25.

13.3 Children infected with and affected by HIV/AIDS

13.3.1 Introduction

Children in HIV infected households:
Certain groups of HIV-affected children are particularly vulnerable and while the document alludes to them in this section, the Children's Institute suggests that particular reference be made to children who are caring for sick / dying caregivers. These children frequently carry the same responsibilities as children who have been orphaned (caring for younger siblings and supporting the household financially), while at the same time caring for a sick or dying parent.

***8 year old girl**: " I stay at Alexandra. I do not have a mother anymore. My mother died of AIDS. I stay with my grandmother, and my father and my sister. At home there is no food most of the time. My grandmother and father do not have money. They are not working. My father is sick. I clean the stoep first thing in the morning. Then I go and cook pap for my father and grandmother. I look after my father and grandmother. I then go to school. After school I pick my sister from the crèche. I play with her after school. I am helped by social workers. When I grow up I want to be a doctor."*

9 year old: *"My father is sick. I stay with him and my grandfather and my little sister. I wash my younger sister Refiloe in the morning. After washing I take her to the crèche before I go to school. After school I wash dishes, go to buy bread and fetch my little sister. I then go to play with friends next door. I make tea for him [father] when he comes back I cook for them. I sometimes go and buy live chickens that I prepare."*

13 year old girl: *"The picture is of my home. The ambulance is fetching my mother. The flower is me. I have to stand tall and protect my mother and my house... My mother had another baby, I looked after my mother till she died then I looked after the baby. It died of starvation."* [37]

Psychosocial support for children affected by HIV/AIDS, especially children caring for sick and dying parents, needs to be prioritised.

Children orphaned by AIDS:
We support the proposed definition of an "orphaned child" as "a child under the age of 18 who has no surviving parent caring for him or her after at least one of them has died".

Concerns / suggestions
It is important to note that many children are rendered extremely vulnerable after the death of their mother (primary caregiver), even though they are still officially in the care of their father. Some children's shared experiences of their lives after the loss of a mother:

9 year old*: "When the mother dies, the children struggle. They begin to suffer. When they grow up they don't become teachers, nurses, or doctors. They just become dead men walking on the streets."*

13 year old boy: *"My father stopped loving us shortly after our mother passed away. He used to make us sleep under the tree. He never used to buy us food. He only paid school fees when he wanted to. At school they want money for so many things, like raffles and funerals. We don't want to go back home again. My father fights us when he is drunk."*[38]

13.3.7 Evaluation and recommendations

We support the Commission's recommendation that wherever possible, families should be supported to enable them to care for their children. In particular, caregivers of children who are chronically and/or terminally ill, including those with AIDS, be eligible for specific social assistance to help them to meet the special needs of such children.

We suggest however that this be broadened to include children with **HIV** and not only children who have developed **AIDS**. By providing caregivers with the financial means to care for an HIV+ child, the child's quality of life and life

[37] Children's voices from the National Children's Forum on HIV/AIDS
[38] Children's voices from the National Children's Forum on HIV/AIDS

expectancy can be greatly enhanced. Providing a child with HIV with social security only when he or she develops AIDS will more often than not result in the grant starting to arrive after the child has already died. Once a young child develops AIDS, progression towards death is quicker than with adults. We suggest that the existing Care Dependency Grant be made available for care-givers caring for children with HIV. Whether this should be upon diagnosis or only when the disease becomes symptomatic, needs to be further discussed. However, providing the grant from the date of diagnosis would help ensure that the child does not progress to become symptomatic as fast as without the grant. The grant can help ensure that the child receives correct nutrition to boost its immune system which would prolong the child's health and well-being.

16 year old girl – "I live with two uncles and they are not working. It is hard because my grandmother is very ill. I need them to get employment because they pay my fees. I need money to buy my medication. To get money I need to tell everybody that I am HIV positive even if I don't want to tell them. If government can improve the process of finding the grant. Their process takes too long. To help us to get healthy food. We need clean water. If they can help the organization that helps us because it is our only hope to service the challenges of HIV/AIDS."

We support the Commission's recommendations to address discrimination against children who are HIV-affected in schools and places of care. We suggest that the recommendations be extended to include an obligation on the Department of Health to develop a policy on non-discrimination at health facilities.

"When you are with a nurse and you tell them you are HIV+ and you are young they will ask you to repeat yourself and tell you why did you engage in sex so young and go back to where you got it."

"At the clinics the nurses treat you like dirt because the nurses know that no-one else will treat you besides her"

"While she was passing she saw the nurse who tested her for HIV/AIDS now she was greeting this nurse and the nurses pointed her in front of the people saying she is the one."[39]

We support the recommendation that special funding be offered to care facilities that care for chronically ill children.

We support the Commission's recommendations that the Minister of Social Development make regulations to allow for in-home support of families affected by AIDS. Children caring for sick parents or younger siblings are denied access to education and other basic services, reducing their opportunities for growth and creating a cycle of dependency.

[39] Children's voices from the National Children's Forum on HIV/AIDS

13 year old girl: "It is hard to look after a sick parent and younger siblings and try to be at school."

13 year old: "When your mother has HIV but she's got a small baby and she dies and leaves that small baby also with HIV, then you have to go to school, but also to look after the baby."

"I had to come home and look after the children, wash, clean and I could not do my homework. When I go to school I used to get beaten because my homework was not done."

14 year old girl: "I want someone who will look after my grandmother when I am at school. You find that you don't have money to help her when she is ill. We are far away from the hospitals. I wish we can get help from government. The government can help children who are affected by HIV/AIDS by giving them opportunities like other children."[40]

We suggest that Community Home Based Care services and NGOs be financially supported by Government to enable them to provide day care services to young out of school children and to the sick.

We support the suggestion that legal recognition be given to the placement of orphaned children within extended family, through an expedited court process. However, this legal process should not be a prerequisite for access to financial support as many families taking in children who have been orphaned do not have access to a children's court or a social worker. These families should still be able to access the available financial support. One alternative would be to allow family care givers to apply for parental rights to be conferred upon them by simply approaching the Child Protector situated at the court. A further option would be for the conferring of parental rights in uncomplicated cases to be able to be done through a simple out of court application process.

We support the Commission's recommendation that the child be present at and heard in proceedings related to the placement of the child. It is essential that the views and experiences of children be heard in any matters regarding the care of the child. While for many children, their extended family play a very important and positive role in their lives, many other children complain of abuse, exploitation, discrimination and neglect at the hands of substitute "caregivers".

11 year old: "When the child goes out, the ones who belong to the house are given food. They leave you bones and makhokho [burnt part of pap]"

10 year old: "In some homes, when they have taken a child in, the child is unable to do homework, he is sent around all the time, to clean and fetch

[40] Children's voices from the National Children's Forum on HIV/AIDS

water. Others do not do anything. They do not treat you equally. My remaining relatives discriminate between me and their children. It's like I'm a slave."[41]

The Children's Statute should be cautious of romanticising the notion of "extended family" or "community" care and should set in place very real and practical measures to ensure that children are protected, regardless of which model of care they are in.

Discussion between a group of children as to who should look after children when they lose their parents:

Silindile: "Relatives must take the children!"
Leonard: "Relatives or neighbours…"
Senzo: "But neighbours can discriminate against them, and make them work harder than their children, or not give them enough food"
Slindile: "Hayi! It doesn't matter, relatives or neighbours can make them work hard. Some relatives can be good, some relatives can be bad"
Minenhle: "No, relatives ARE better than neighbours. I prefer Mamncane. Mamncane will treat them better because they are the children of her sister.
Silindile: "But some relatives are cruel. You may never know. Some have big beautiful houses, but bad hearts"…[42]

Please see our recommendations on monitoring "care with relatives" in chapter 17 (Foster Care).

Responsibility for identifying and assisting children in need of special protection in the existing CCA (74 of 1983) falls largely with "professionals", and in particular with social workers. The most vulnerable children are not visible to the majority of social workers and the responsibility for identifying and assisting children in need of special protection therefore needs to be rolled out to any and all agencies coming into contact with children. These would include, but not be limited to; teachers, staff at health care facilities, traditional leaders, community committees, NGOs, CBOs, churches, youth groups and women's groups.

We support the Commission's recommendation that legal recognition be given to child headed households. We suggest that "sibling headed households" also be acknowledged as a related and equally important placement option. In these households, the "caregiver" is a sibling over the age of 18 years, but may still be attending school. This type of household is also increasingly common and may be a preferred option for children who do not want to be moved away from their family home.

We support the recommendation that the Departments of Health, Education and Social Development be tasked to budget specifically for programmes to support child headed households. We suggest that this be expanded to

[41] Children's voices from the National Children's Forum on HIV/AIDS
[42] National Children's Forum on HIV/AIDS

include other relevant departments such as home affairs, housing, transport, agriculture, trade and industry, labour, water and local government.

The Commission invited comments on the minimum age of a child heading a household and the conditions under which a child headed household should be accepted as a placement option. This is an extremely difficult issue. While children of 12 years cannot be expected to care for younger siblings, this is a reality in parts of the country and if these young children are heading households, they need to be supported. The Children's Institute is currently engaged in a national research project, the findings of which will shed more light on the support structures currently utilised by children living in different models of care (including child headed households) as well as the barriers to accessing support. The project has already highlighted some of the problems experienced by children living in child headed households with "external adult supervision".

17 year old (lives in a sibling headed household with "external supervision"): *"We are not treated well. The people who guard us [uncle and aunt] monitor everything we do, how many times you wash, eat and this does not make us happy. They remind us that our parents died of AIDS and this worries me. The person that is not your biological parent treats you like a slave … Babomkhulu treats us badly because he did not give birth to us [abasizali]. He makes [my brothers] herd his cattle. He makes us go where there are snakes to fetch his goats. If we were his children he would never do such a thing. Babomhkulu takes the goats to the rocks, because he knows it is not his children who are going to have to fetch them … If only children did not have to have guardians that would be better. Babomkhulu is an unkind guardian. Living would be easier if we could be independent".*

This case study highlights the need for structures to be put in place within communities which ensure that children are not exploited by surrogate caregivers and that children are consulted with respect to their living arrangements. The research conducted by the Children's Institute has shown that in some instances children who have been orphaned are taken into the care of extended family / neighbours purely as a source of income or for an extra pair of hands to assist with household chores.

We support the Commissions recommendations that –

- Legal recognition be given to schemes in terms of which one or more appropriately selected and mandated adults are appointed as 'household mentors' over a cluster of child-headed households by the Department of Social Development, a recognised NGO or the court.
- The proposed 'household mentor' may not make decisions in respect of the siblings without giving due weight to their opinions as appropriate to their capacity and to the opinion of the child at the head of the household.
- The proposed 'household mentor' be accountable to the Department of Social Development or a recognised NGO or the court.

We are concerned about the Commission's recommendation that -

- The proposed 'household mentor' be able to access grants and other social benefits on behalf of the child headed households.

We suggest that consideration be given to the age and maturity of the child heading the household and that, if possible, the head of the household be able to access grants and other social benefits. If this is not possible, a preferred alternative may be for support for child headed households to be channelled through recognised NGOs or CBOs or be provided directly to the household in the form of food parcels, school fees or clothing.

13 year old boy: *"This is me and my little sister. My sister is 6 years old. I must look after her. And after school, I must go to fetch firewood at the veld. It is not that far. My sister must come with me on my back because there is no one to watch her when I go. Sometimes my friend also comes with to get wood for his house. I look after the chickens, and this is where I cook food outside, and I must sweep the house.*

If I fetch water from the tap I have to pay but I do not have any money, and so I have to walk a long distance. On weekends I wash clothes. My sister and I cook and clean. I don't have parents, it's just me and my sister. There are no grownups living with us. My aunty comes over but she stays far by her work, I only see her sometimes. Just the neighbours live near. People [in the community] don't say anything, but just gossip behind your back.

I need a television, and a bathroom tap and clothes and shoes. And water also, inside the house. But especially, someone to tuck me and my sister in at night-time.

It is Takalani [NGO] that helps me with everything I need. That's all I have is Takalani. They come and help the children after parents have died and take them on outings, and bring food sometimes, and clothes, and I just want the government to help those companies so that they can keep helping the children and help more of the children even. The companies even take children and look after them. They must be helped to grow to very big companies so all the children that need help are being looked after."[43]

We support the Commission's recommendation that schools be required to identify children who are perhaps repeatedly absent but questions the use of the phrase "children who are absentees due to AIDS". The school environment provides an ideal opportunity for all children who are in need of special protection, regardless if this is due to HIV, abuse or poverty to be identified and assisted / referred appropriately. We suggest that the Departments of Social Development, Health and Education draft a joint memorandum on the identification and referral of children in need of special protection. This should include guidelines for teachers on the types of behaviour in class that may indicate that a child is having problems. We strongly motivate that this not be directed only at children affected by AIDS as

[43] Voices from the National Children's Forum

many of the problems faced by HIV-affected children are the same as those faced by any child living in dire poverty.

13.4 Children with Disabilities

We support all the recommendations suggested in this section. In particular:

- That children with disabilities be provided with assistive devices free or charge or subsidised to make them affordable
- the recommendation regarding the Care Dependency Grant that the definition of a 'care-dependent child' should be amended to remove the reference to "permanent (24-hour) care". We also suggest that the definition be amended by removing the reference to "severe" disability.
- That the Care Dependency Grant should not be removed where the child is placed in a special home, as this may enable the parents of guardians to pay for the hostel fees.
- Social assistance to children with disabilities should be determined by a needs test, which considers the extra needs and cost incurred by the child due to his or her disability.
- The Department of Transport should budget for the transportation of children with disabilities to school, and, we suggest, to the clinic or hospital, as necessary.
- The introduction of sign language to all police and court processes, and of appropriate questioning techniques for children with intellectual disabilities.

Children with disabilities struggle to pay the high school fees charged by special schools and the transport costs and as a result, often end up in the local mainstream schools. While mainstreaming is encouraged, children with disabilities, especially deaf children are not able to participate in mainstream schools due to teachers not being equipped (in this case with the ability to communicate in sign language). The Department of Education needs to be obliged to provide disability support and learning devices in schools to ensure that mainstreaming works.

Regarding the definition of a 'Care Dependent Child', we support the call for the removal of 'permanent home care' for the definition. However, there are additional problems that the Commission does not address. For example, there is no suggestion for the definition of 'severe disability', nor are there clear eligibility criteria. The assessment tool is purely medical-based and does not consider the other socio-economic needs of the child due to the disability.

It is the belief of the Children's Institute and the Alliance for Children's Entitlement that the eligibility criteria should be extended to children with other disabilities and chronic illnesses, dependent not upon the disability type or severity, but on the need due to the chronic health condition. Thus, the term 'severe disability' should be removed and replaced by 'chronic health condition', which would include disabilities and chronic illnesses, such as HIV/AIDS.

13.6 Children living and working on the street

We support:

- The proposed definition of a street child.
- The call for effective prevention measures and services for street children, including the functions of local authorities, and access to health and educational facilities, including a suggestion for mobile clinics.
- Children who beg on the streets be listed as a child in need of care in terms of section 14(4) of the Child Care Act 1983.

We recommend that street children above a certain age, eg 12, should be entitled to receive and administer their universal child grant without adult assistance. In the alternative, street children shelters could receive it on their behalf.

We ***strongly oppose*** making it a criminal offence for any parent or guardian to cause or allow a child to beg. The situation of poverty and chronic unemployment in South Africa forces families and parents to take any measure to sustain themselves. Rather the emphasis should be on the government's obligation to improve this situation, to provide social assistance to poor families and to implement strategies to increase employment opportunities.

13.7 Commercial Sexual Exploitation of Children

We support all the recommendations concerning local government's responsibilities towards children involved in commercial sex work.

CHAPTER 17: FOSTER CARE

17.2 Conceptualising foster care

- We support the recommendation that provision needs to be made for various forms of substitute family care, which should include short-term and long-term care by relatives and non-relatives. This chapter should therefore rather be entitled "Substitute Care" and not "Foster Care" in order to provide clarity on terminology.
- We support the recommendation that a distinction be drawn between "foster care" by relatives or non-relatives that is court ordered and "care by relatives " that is undertaken on an informal and indefinite basis.
- However, we suggest that the categories of children who can be fostered by relatives through court placement be expanded from cases of abuse and severe neglect to include **abandonment and orphaning**.

  The chapter does not provide a remedy for a child who is found to be orphaned or abandoned and without a caregiver but a relative is subsequently found. While many orphaned children will already have substitute care givers, many will be living and surviving on their own. An orphaned child may be found by a social worker who then traces a

relative as the most appropriate foster parent. The law should allow such relative to be appointed a foster parent in order to encourage the relative to care for the child and to ensure that the "new" placement is monitored. The distinction should be drawn on the needs of the child and not whether the foster parent concerned is a relative or not. A placement option for an orphaned child may need to be "tested and supervised" to determine whether it is the most appropriate option. The potentially temporary nature of the placement needs to be recognized.

- We further support the recommendation that in children's court proceedings where a suitable foster parent is being selected, care by relatives should be the preferred option, unless there are indications to the contrary.
- We support the recommendation that the court must be required to specify (whether the foster parent is a relative or not) whether:
    - the placement of the child should be of a permanent nature,
    - or temporary, and whether reunification services should be rendered, and
    - whether supervision or monitoring is required.
- We support the suggestion that relatives who are already caring for children informally (not through a court ordered placement) should be able to access a simple procedure to have parenting rights and responsibilities conferred upon them to enable them to access financial assistance and to make parenting decisions for the child.

  The Discussion Paper poses the question as to whether this should be a court based or administrative procedure. The numbers of children involved necessitate that a simple, non-court based procedure be made available. We recommend that relatives or non-relatives caring for orphaned or abandoned children should be able to approach a social development office and make application for parenting rights and a **substitute care grant/universal child grant.** The child and the child's biological parents (if alive and available) must be consulted by the officer before a decision is made. The decision should be based on the best interests of the child and not on availability of budget. Follow up of the situation must be done by the social development office within one year of the decision to grant parenting rights and a grant. Further follow ups will not be necessary unless problems are identified. Any person, including the child, may challenge the administrative procedure through approaching the child and family court. Parenting rights and responsibilities must not be a pre-requisite for a universal child grant.

The Discussion Paper specifies that "the necessary provision must be made for appropriate financial and other forms of state support for foster care" and that the different forms may attract different regulation and amounts. We recommend that the provision be made in the Children's Statute and not in the Social Assistance Act. Eligibility criteria should also be set out in the Children's Statute. See discussion under 17.11.**We recommend that all forms** of substitute care should receive state financial support. This includes court ordered foster care placements, care by relatives and cluster fostering

schemes. The support offered must be sufficient to meet the child's basic needs (food, clothing, shelter, education).

17.3 Alternative models of foster care

17.3.1 Cluster foster care, or community foster care

We support all the recommendations under this section.

However, we recommend that financial support of cluster foster schemes should be provided for and regulated in the Children's Statute and not the Social Assistance Act.

17.3.2 Specialist or professional foster care

We support these recommendations.

However, it does not appear as if the recommendations are meant to apply to children in substitute care of relatives. While the first recommendation may not be relevant, the recommendations relating to additional financial support for care of children with special needs must also apply to children in informal care with relatives.

We recommend that provision of top-up grants for children with special needs be made in the Children's Statute. This can easily be facilitated using the existing Care Dependency Grant.

17.7 Termination of parental rights and responsibilities over certain children in foster care

Subsidised adoption

We support the recommendation that emphasis be placed on achieving permanency for the child and therefore support the recommendation that provision be made for financial assistance to the foster parent to be continued if the foster relationship is converted to adoption through the provision of ad adoption grant. In addition, providing adoptive parents with a CDG if they adopt a child with special needs would greatly encourage adoption of children with special needs.

In the alternative, if social security benefits remain means tested and are not made universal, we would recommend that foster parents and adoptive parents should be excluded from having to pass a means test when applying for the child grant, FCG or the CDG.

17.8 Statutory supervision

While we support the recommendations relating to statutory supervision, we are concerned by the recommendation that there will be no supervision or services given to children in care with relatives. While most cases will not

require supervision, we have come across cases where orphaned children in care of relatives are subjected to the "Cinderella syndrome" which means that they receive food or resources last, after the biological children and are expected to do more, if not all, the household chores.

While a monitoring and supervision system that covers all situations of care by relatives is not possible and is not desirable, we suggest that some method of providing such children with a forum or person to approach for assistance, should be provided for. NGOs, CBOs and other child care workers who come across such situations should also be equipped to respond and assist the children. When care workers find such situations, there is often very little that they feel they can do to improve the situation for the child. One option would be to allow for the case to be put under supervision if the best interests of the child are not being looked after. This would have to be on the basis of reports received by the local state social worker.

17.9 Duration and extension of foster care orders

While we support the recommendation that the court be empowered to make a foster care order for a period of more than 2 years, we would suggest that this should not become the norm in cases where a child has been abandoned or orphaned. Such placements should be of short duration and assessed for permanency planning after the expiry of a short period. They should not remain as foster placements indefinitely.

17.11 Social Security

We recommend that the new Children's statute should set the eligibility criteria for all forms of social security for children, including foster child grants, to ensure that the principles of the Children's Statute are not compromised by a lack of comparable prioritisation within the Social Security system. We therefore recommend that the criteria for the eligibility for social security for children be specified in the Children's Statute and not in the Social Assistance Act.

We support all the Commission's recommendations under this section, in particular:

- **Foster parents, who are relatives and who are appointed by the court must be regarded as eligible for the foster child grant to the same amount as non-relatives**
- **To ensure that the fostering of children with special needs is encouraged foster parents (court ordered) and relatives who care for children with special needs (children with HIV, children with chronic illnesses, and children with disabilities) should receive additional state financial support in the form of a top-up grant.** The current Care Dependency Grant could be utilised
- **Relatives and foster parents caring for children with special needs should also be provided with free health services and education for all their children**

- **Informal care by relatives should be facilitated through a non-means tested universal child grant.**

The Commission invites comment on whether foster parents should receive the FCG and the universal grant.

We recommend that a foster parent, appointed by the court, should receive only the FCG. Providing both grants would not help with efforts to move towards substantive equality in the child care system, specifically with reference to children in urban versus rural settings.

The Commission makes a final recommendation that as an interim measure, the relevant Ministers send directives to their offices pointing out that care with relatives should be facilitated as placements of first choice for destitute children, including children orphaned by AIDS.

Besides supporting this recommendation, we suggest that the CSG should be extended to all children under 18 and the means test scrapped. This would be a much more accessible and equitable means of reaching all children orphaned by AIDS and all children in poverty.

CHAPTER 23: A NEW COURT STRUCTURE FOR SERVING THE NEEDS OF CHILDREN

The recommendations and innovations suggested in this chapter are welcomed and supported. We would like to comment on the following recommendations:

23. 6 The child and Family Courts

We support the creation of a network of Child and Family Courts which will provide adjudicators in very magisterial district.

We support the recommendation that child and family adjudicators must have a basic understanding of child development, familial relationships and psychology. Besides this requirement, we recommend that adjudicators be specifically trained in how to communicate with children and listen to children. This is a particular skill which most adults need to be consciously reminded of.

Students training for the various positions in Child and Family Court, should be obliged to study and be conversant in at least three of the official languages spoken in the area in which they want to work. Existing court personnel should be required to attend courses to become conversant in the language spoken by the majority of children that appear in their courts.

23.7 Multiple Courts versus an integrated approach

We support the recommendation that the new court system be able to differentiate between complex and straightforward cases. We therefore also support the suggestion of a two tier process of level 1 and level 2 courts.

We support the creation of the position of Child and Family Protector at each court. We also support the recommendation that the Child and Family Protector operate as a reception and screening officer. We would like to add an additional recommendation that the Child and Family Protector also be able to deal with the most straightforward of cases that do not necessarily require a court hearing. For instance, the Child Protector could be empowered to register uncontested parenting agreements between the mother and unmarried father of a child and to confer parenting rights and responsibilities on a family member caring for a child.

23.8 Human Resource Aspects: Staffing, Training and Motivation

The Child and Family Protector

While welcoming the creation of the position of a Child and Family Protector, we are concerned by the workload being allocated to such persons. Without the necessary resources and administrative assistance, Child and Family Protectors will function mainly as reception and screening officers and will struggle to effectively perform other functions such as mediation, giving advice, assisting children and families to prepare for court.

We recommend that the Children's Statute create a legislative imperative to properly resource and staff Child and Family Protectors. The tasks allocated will carry a lot of administrative paper work, phone calls, appointments etc. Child and Family Court Protectors should therefore be provided with administrative assistance.

This could be achieved by creating a position called **"Assistant to a Child and Family Protector"** . This could be an intake and training position for persons wanting to work as Child and Family Protectors. This person would be concerned with administrative matters, dealing with less complicated matters and generally supporting the Child and Family Protector. This period of employment could serve as a training ground for new recruits to obtain the necessary experience before being vested with the tasks allocated to a Child and Family Protector.

Besides providing the Child and Family Protector with the necessary support and admin assistance, it would also serve as a training ground for young graduates from social work or law backgrounds who lack experience of the Child and Family Court system. Law graduates could also be able to serve the years of articles as an assistant to a Child and Family Protector. This would also serve to increase the pool of lawyers and social workers experienced in child and family matters who would later be available on the Family-Law Roster. It would also not be too costly to the state as the assistants could be paid as "articled clerks" or an apprenticeship salary. In lieu of the training aspect of the position and the fact that they will be concerned mostly with admin matters, a lower salary would be justified.

Legal Representation of parties

While we support the recommendation that lawyers not on the family law roster should be able to represent parties in Child and Family Court proceedings, we submit that they should be required to have qualified to appear in Child and Family Court in some way. They must have been trained on how to avoid traumatising a child in cross examination and they must be trained on the rules applied by the court in order to protect children. They must not be inexperienced in Child and Family matters.

23.10 Orders of the Child and Family Courts

Personal Accountability Orders and Service Injunctions

We strongly support this innovation.

Orders to pay emergency social assistance

We recommend that besides being able to give a grant to children out of court funds, the Courts should have the power to order that the Department of Social Development provide a child/care-giver with temporary social assistance (social relief of distress grant).

A care-giver who presents a court order to the Department of Social Development should be required to submit the information necessary for the Department's records but must be considered to automatically qualify for the grant concerned.

This suggestion is in keeping with the notion that the courts must be able to offer holistic solutions to children and their families, and the concept of avoiding the care-givers having to approach different forums and bodies for relief.Please see our comments on chapter 25 in this regard.

Damages/Compensation Order

Children suffer psychological trauma as a result of abuse. Without appropriate care and counselling, many of them will develop behaviour problems, fears, feelings of guilt and inadequacy. Care and counselling costs money. Enabling the court to order perpetrators of child abuse to pay compensation to the child would assist with ensuring that the child is given the necessary care and counselling. We therefore support this recommendation and motivate for its frequent use in child abuse cases.

CHAPTER 24: MONITORING THE IMPLEMENTATION OF THE NEW CHILD CARE LEGISLATION

We do not have time to comment on his chapter adequately. However, we are of the opinion that the revision of the Child Care Act presents an opportunity to establish structures and mechanisms to monitor the well-being of children and the various government departments obligations in this regard. We do not support the suggestion that the body created be restricted to monitoring

issues that fall under the Children's Statute. We intend to hold a workshop on this issue in June and will forward our recommendations to the Commission and Department.

Ensuring adequate resourcing

In order to ensure adequate resourcing of the monitoring structure, the exact composition, structure and staffing needs of the Independent Child Protector's office and an obligation to establish an office in each province, would help ensure that the necessary resources are allocated in the budget.

Location of personnel and avoiding duplication

The CGE and SAHRC currently perform a monitoring function and respond to complaints over cases involving children. This needs to continue. However, to ensure co-ordination, the CGE and SAHRC should work together with the Independent Child Protector Office. This could be achieved by the Child Protector being able to utilise the infrastructure and offices of the SAHRC and CGE.

CHAPTER 25: GRANTS AND SOCIAL SECURITY

Introduction

The Discussion Paper talks about social security as a vital component of the new Child Care system in various chapters. This chapter sets out the Commission's recommendations in this regard. We wish to comment that comparative examples of social security options in other countries would have been useful and should be incorporated into the Final Report in order to lend support to the Commission's recommendations. In particular, the Brazilian universal child care grant, the British and Australian Care Grants for Disabilities and chronic illnesses are suggested for comparison and evaluation.

We wish to stress that the rising poverty and chronic unemployment in South Africa are causing more and more children to live in dire situations and they are therefore forced into conditions that are detrimental, and destructive, to their development.

The underdevelopment and inequality in the country must be addressed seriously by the government. The first call should always be to children, not only as the most vulnerable, but also as those having direct rights to "basic health services, nutrition, housing and social services", without the progressive realisation clause. However, the current lack of provisioning to unemployed adults seriously undermines the current provisioning for children. Child grants are being used to feed entire families with the result that children's basic needs are not being met. Therefore it is crucial for children that a basic income grant be implemented for all persons in South Africa.

We therefore call for a Basic Income Grant for everyone living in South Africa from cradle to grave. Increasing household incomes in South Africa would greatly improve the standard of living for all children.

However, we are aware that the Children's Statute cannot legislate for social security for adults. It is imperative that children's needs be provided for as soon as possible. For this reason we recommend that the new Children's Statute should legislate for the children's universal grant. This would be in keeping with the realistic idea of phasing in a Basic Income Grant over a period. This could easily be achieved by simply extending the child support grant to all children under 18 years and removing the means test.

Proposed Legislative Framework

The Children's Statute should legislate for the provision of all social assistance for children. While the Social Assistance Act can continue to provide the regulation of the social assistance system, the state's obligations, principles and eligibility criteria should be clearly set out in the Children's Statute. Such an approach would help ensure that the primary considerations taken into account when deciding on children's social assistance, are the needs of children.

Support for SALC recommendations

We support all the Commission's recommendations with regard to social security for children, in particular:

- A basic income grant to all adults and children, which may be implemented initially to children, and which would greatly enhance the situation of households in poverty, where the current child grants support entire families.
- The extension of the CSG to all children, without means-testing. This may be the first phase of creating a basic income grant.
- The increase in the amount of the CSG, to an amount that reflects the real costs of caring for a child.
- The additional amount for children with special needs, including chronic health conditions, such as HIV/AIDS. This may be through broader eligibility criteria for the CDG.
- The identification of categories of children in need of special protection and the design of criteria for such children to benefit from this additional amount.
- Alternative systems of fostering and adoption, which would be eligible for financial assistance.
- Recipients of state social security such as the CDG, CSG and FCG, should be exempt from school fees for the child to whom the grant is targeted.
- A person should be able to apply for more than one grant, such as the CSG and FCG, or CDG and CSG, perhaps with a portion of a specific

grant being claimed, or a lower amount where the child is cared for by a relative.

- Measures to simplify the application and administration processes, and that the "barriers caused by the requirement of proving compliance with the means-test be removed altogether".

Suggestions for a comprehensive social security system

We present our view on the full range of social security that should be provided for children in South Africa and provide comment on the Commission's recommendations.

We suggest the following forms of social security for children:

(1) A universal child grant
(2) A care dependency grant
(3) Support for families caring for children that are not their own: the foster child grant and subsidised adoptions
(4) Emergency social assistance (cash and food) from the Department of Social Development
(5) Emergency social assistance (cash) from the Child and Family Court
(6) Indirect Social Security measures: Access to free and subsidized state services for children with special needs and children whose families cannot afford to pay for the services

1) Universal Child Grant

We support the Commission's call for a universal child grant.

Purpose of a Universal Grant

A universal grant for all children would be the most effective poverty alleviating measure, and its purpose would be to ensure that the basic needs of all children are met, and their rights upheld: to nutrition, health, shelter and access to other services. It would greatly increase household incomes, and thereby reduce the incidence of children living on the streets, children forced into commercial sex work, orphaned children requiring foster grants or subsidized adoptions, and would enhance the well-being of children with HIV/AIDS, disabilities or other chronic illnesses. It would therefore reduce the demand on the other social security and services, such as the health costs of hospitalising malnourished children.

Eligibility Criteria

All children, whether they are living with their biological parents, a family member, or relative, or an adoptive parent, children living without adult

supervision and refugee children should be entitled to a universal child grant The grant must follow the child, irrespective of who the carer is.

Children living on their own should be able to access the grant in their own name if they are of an age and capacity to mange the money directly. This issue requires more discussion within the children's sector. The reality is that as there are cases where children as young as nine years of age are earning incomes and managing households. While this is not the ideal, there must be mechanisms to assist such households. Organisations, mentors or other adults could be assigned to apply, receive and distribute (or manage) the funds.

The Universal Grant in relation to other grants

The existing Child Support Grant[44] can be converted to a Universal Grant. It would need to be extended to all children under 18 and the means test would have to be removed. The Universal Grant therefore would replace the existing CSG.

With regard to the FCG We suggest that every child should receive the universal child grant, and the amount be deducted from the FCG, as they serve similar purposes of providing for basic needs.

However, the CDG serves a different purpose, namely to provide for the *extra* needs of the child due to a disability, and therefore the child should still be eligible for both, as his/her right. However, whether the universal grant should be an 'add on' or 'top up' to existing grants is currently being debated within various sectors, and may be ultimately determined by available resources.

Amount of the Grant

We strongly support the Commission's recommendation that the amount of the grant should be enough to cover the child's basic needs, in particular, food, clothing, shelter and education. School fees, however, should be subsidised by the Dept of Education. This means that the CSG would need to be increased.

It is suggested that it be legislated that the amount be linked to inflation with annual increases.

2) Care Dependency Grant[45]

Purpose of the CDG

[44] The grant amount is now R130 as of May 2002
[45] The CDG amount has been changed to R620 as of May 2002

It is suggested that the purpose of the CDG should be to meet the special needs and extra care-needs of children with disabilities and chronic illnesses (including HIV/AIDS).

Eligibility Criteria

Children with disabilities and chronic illnesses (including HIV) which render them in need of special care and material assistance in order to survive and develop and to enjoy their constitutional rights, must be entitled to social assistance in the form of the existing care dependency grant.

By including a right to social security for such children in the new Children's Statute (see formulation in chapter 5), and by defining who is eligible, the Commission can ensure that the necessary law reform to enable such children to apply for the CDG does take place.

Further debate is required around the stage at which an HIV-positive child should be eligible for the CDG. Eligibility upon immediate diagnosis (by testing and/or clinical diagnosis) would ensure that the child has access to improved nutrition and therefore greater chance of fighting opportunistic infections (thereby reducing hospitalisation costs). On the other hand, it is argued that children who are asymptomatic, i.e before they reach Phase (c), do not require the grant for specific health needs. They would, however, greatly benefit from a Universal Grant.

Further debate is also required regarding which chronic illnesses should be automatically eligible for assistance.

Definitions

It is suggested that the Commission propose acceptable, universal definitions of disability and chronic illness.

It must be noted that there are no accurate national statistics on the prevalence of disabilities and other chronic illnesses. Therefore the commissioning of national prevalence studies would greatly enhance the planning and costing of the options suggested here.

Assessment Procedures

The Department is currently reviewing the assessment tool that is used by medical doctors and assessment panels to decide whether a child qualifies for the CDG. However, a legislative amendment to the Social Assistance Act and its regulations is required before children with HIV, chronic illness or disabilities that are not considered severe and in need of permanent home care, can apply for the grant.

The eligibility criteria and assessment should be according to need due to the chronic health condition, and not solely based on the type or severity of disability or chronic illness. We support the Commission's recommendation in this regard. The needs assessment may require a means test. If a means test is used, it must be set at a threshold that ensures that all children living in poverty can access it and it must be adjusted annually to keep pace with inflation.

3) Support for families caring for Children not their own / Foster Child Grant

Purpose of the FCG

The current FCG was established for a specific, narrow function for a relatively small percentage of the child population, when removed from parental care. Currently, however, many children require alternative care or are being cared for by extended families, and these need attention and support. While Chapter 17 does indicate other 'foster options', which could be eligible for the FCG, there will be many situations where parents caring for children cannot access the court system and FCG. These cases support our arguments for the Universal Grant and other support mechanisms (eg. free services).

Court Placements

The comments below refer mainly to the first narrow group of children who are placed in foster care through the Court system.

Persons who are appointed as foster parents by the Court, should be entitled to a foster grant for a limited duration of time (two years). After two years, the foster placement must be reviewed and subsidised adoption considered or full parental rights and responsibilities conferred on the person, or the foster placement be extended if necessary and if it is in the best interests of the child. This was the original intention of the FCG but it has not been administered in this manner, causing wastage of time and resources in reviewing every two years.

Subsidised adoptions would reduce these process and costs, act as an incentive to persons to adopt, and lead to greater security for the child.

Viewing foster grants as temporary would help ensure permanency planning and would justify the continuation of the current greater value of the foster child grant in comparison to the child support grant. (R450 versus R130). The greater value can also be justified by the need for the foster parent to initially give extra support to a child who has been removed from his or her parents to give the child a chance to adapt and recovery from psychological trauma, loss and grief. This kind of support may have to be provided beyond 2 years, but if emphasis is placed on reconstruction and rehabilitation services, most

placements should not have to be extended beyond 2 or 4 years. However, provision must be made for those cases which require further extensions.

Currently the FCG is means-tested according to the **child’s** income. Thus the fostering parents do not have to prove income, and in the majority of cases, the children have no income themselves. This makes this requirement is obsolete, and it is therefore suggested that it be removed. Please refer to the comments on means-testing below.

Foster parents should also be able to obtain the CDG in addition to the FCG if they foster c child with special needs.

Other informal care structures requiring support

We strongly call for the universal grant as well as access to subsidised or free services to provide support to the many families caring for children that are not their own.

If a universal child grant is not introduced, the burden on the foster care system will increase and more resources will have to be expended both on the grant, the court process, social workers, supervision and rehabilitation services in order to make the system equally accessible to all who need it.

In the unfortunate event of the state taking a decision not to introduce a universal child grant, we would support recommendations to extend the present foster grant system to provide for "care with relative" situations, with subsidised adoptions, and efforts to make it more accessible to children in need, especially children affected by HIV.

4) Emergency social assistance from the Department of Social Development

The Discussion paper does not provide for emergency social relief for children in distress, other than emergency grants from the court. While the emergency relief from the courts will assist in cases which come to the court's attention, the majority of cases will not present to the court. A grant for such children needs to be legislated for in the new Children's Statute. We therefore recommend that a grant for emergency relief be created and that families in crisis be able to access such relief.

Motivation

In view of the fact that many children are suffering from starvation and that currently there are long delays in accessing the CSG, the state is failing in its constitutional obligation to provide for those most in need. (Grootboom judgement). The new system is likely to take some time to be put into operation, in the meantime, the state has an immediate obligation to support families in crisis.

We therefore suggest that a system be created so that immediate aid can be offered to these families. This could be in the form of food parcels, transport vouchers and/or a cash grant.

When government social workers, NGO, FBO and CBO workers are called to respond to a child in need, they often find the family living in conditions of extreme poverty. A child care worker working for a Faith Based Organisation in the Northern Province regularly arrives at remote homes in rural areas to find children caring for sick and dying parents or mothers struggling to feed their children. Often, due to lack of financial assistance and the fact that such situations are not isolated, all she can do to help, is provide emotional support and transport to and from the clinic.

The following is an extract from the Report on the National Children's Forum on HIV/AIDS which illustrates the above point:

Pumla[46], 13 year old girl, Tzaneen, Northern Province: "The picture is of my home. The ambulance is fetching my mother. The flower is me. I have to stand tall and protect my mother and my house... My mother had another baby, I looked after my mother till she died then I looked after the baby. It died of starvation."

Report of a care worker in Tzaneen: "Today I have witnessed the devastation of the HIV/AIDS pandemic at the home of a family I visited. They live in a village in the Northern Province of South Africa. It took us 1 hour and 20 minutes to reach their home – through mountains, on very rough roads. The mother died in December 2000, the father has AIDS. He has 5 children. He was retrenched 3 years ago from his work on the mines and all his savings have been spent on medicines for his wife and child. We wanted to take the baby, Pindi, to hospital but were told that we were wasting our time, that they would not keep her. Pumla is 13 years old. She is the eldest child. She nursed her mother during her long illness and now is caring for the baby. Before long, she will also be caring for her father. She cries all the time. She pleaded with me to take the baby so that she could go to school. The children are very small and undernourished for their ages. There is nothing for them to eat when they come home. They have a lot of sores. There is no running water or electricity. Pumla used to feed the baby milk from their goat. They were forced to kill the goat though and the baby has had no milk for days. When I found the family, Pumla was feeding the baby water from a teaspoon" [47]

Without assistance from the state, such organisations struggle to provide families with the necessary food and cash to enable them to survive. While they can assist the families to apply for the child support grant, care dependency grant or foster child grant, these processes take time. In the lives

[46] This is not her real name
[47] The baby died of starvation shortly after the family was found by the care worker

of starving children, especially babies, this time can mean the difference between life and death.

A further example to illustrate the need for temporary emergency social assistance is provided by the Mount Frere incident. Special Assignment highlighted the fact that babies were dying from malnutrition due to their care-givers having no money to buy food for them. While many of them were eligible to apply for the child support grant, various administrative barriers stood in their way.

The Minister visited the area in response to the Special Assignment programme on national TV and expressed an intention to ensure that all babies diagnosed with malnutrition must be given the CSG immediately and that the necessary admin and paperwork can be done later. This however, did not happen, and instead, the provincial Department of Social Development undertook a registration drive to help care-givers apply for the CSG.

While the Department's response is commendable, it is not an approach that they intend to sustain. Future babies in Mount Frere and babies across the country will face the same hurdles as those reported on in Special Assignment unless a country wide approach is taken to improve access to the CSG and to provide temporary relief, especially in rural areas. The Department of Home affairs does not have a plan in place to improve their civic services in order to address the problem of caregivers being unable to easily access their identity documents and the child's birth certificate. Thus this problem is continuing. Providing these caregivers with temporary social assistance would also assist them to pay the transport costs to and from the offices of Home Affairs and Social Development that they have to incur in the application process for permanent grants.

We therefore recommend that the Children's Statute clearly obligate the state to provide temporary and emergency social assistance, and clearly describe the circumstances in which it will be made available. We suggest that social workers and child care workers (NGOs, FBOs and CBOs included) should be entitled to fill in application forms for families in crisis and to submit the forms and receive and allocate the assistance to the families that they serve. There is a definite need for such an approach for child headed households in particular and families affected by HIV. Recipients of emergency aid (temporary grants) must be pro-actively assisted by the Department to apply for permanent grants such as the CSG, CDG or FCG.

The system must be flexible and must not require that applicants have to have bar-coded IDs or birth certificates to access emergency relief.

Social Assistance Act

A temporary grant does exist in the Social Assistance Act (social relief of distress grants) but is not being utilised to its full extent and applicants are having to go to court to assert their right to this grant.

The Social Assistance Act provides for social relief of distress grants to be provided for three months as a form of temporary material assistance. In terms of the regulations to the Social Assistance Act[48], care-givers awaiting permanent grant applications[49], can apply for and receive the social relief of distress grant in the interim. However, applicants are not aware of this right, officials do not inform applicants of this right, and it appears as if Departmental policy discourages the use of these grants. We have not been able to trace them in the national Department's budget statements but their existence is acknowledged in provincial budget statements.

Applications for permanent grants such as the CDG or CSG can take time, sometimes 6 to 12 months. If the caregiver or child do not have identity documents and have to apply for these as well, they may wait longer. During the first year of a baby's life, adequate nutrition is essential for his or her development. Care givers who are financially unable to feed their children should be entitled to a temporary grant while they await their identification documents and the finalisation of the grant application.

We believe that the processing time for the Universal grant would be far less than for the current CSG, enabling families to access the money quickly, which would greatly reduce the need for emergency interventions. Nevertheless, there would still be a need for the Department to provide immediate support to families and children in dire need.

Immediate Action needed

In chapter 17, The Commission makes a recommendation for immediate action with regards to the foster grant system to ensure that relatives can begin to access the FCG. The Commission recommends that a directive in this regard be immediately sent to the relevant service providers and Courts.

We recommend that the Commission follow a similar approach with regards to families in crisis and motivate for the immediate implementation of the following recommendation:

The provision of emergency social relief to families in crisis through using the existing mechanism of social relief of distress grants. This could be facilitated through issuing a directive to all provincial Departments of Social Development informing them of the need to utlise the existing social relief of distress grants to assist families in crisis.

While the new system is being created, many children are starving and many will die from malnutrition and preventable illnesses. Many children, especially children affected by HIV, do not have birth certificates and their care givers don't have identity documents. A system has to be put in place to ensure that the fact that they do not have numbers and therefore do not fit into the

[48] Regulations 26 to 29
[49] There are other categories of persons in need who can also apply for the grant

Department's computer system, does not result in them being denied their right to survive and develop.

5) Emergency Social Relief from the Child and Family Court

The Discussion Paper, in chapter 23 and chapter 9, recommends that the Child and Family Court have a fund and be empowered to give financial grants to children who appear before it in Child and Family Court matters and who are in crisis and in dire need of material assistance. The intention appears to be for this to be a small fund to be used in emergencies and in court processes that have not yet been finalised.

The Children's Court used to be able to give "retention monies" as bridging finance to families who were involved in a court process to have a child awarded into their care. The practice stopped about three years ago. The stoppage was apparently because the Department of Justice decided that the provision of financial assistance should be a Welfare function. The Children's Court now gives children a letter that they must take to the Department of Social Development. The Department of Social Development then pays out a lump sum 2 or 3 months later. The previous system whereby the court paid the money directly, worked better, because the child went home with financial assistance and received payment at fortnightly intervals, while the current system of having to apply to the Department of Social Development can take 2 to 3 months.

Enabling the court to give direct and immediate financial assistance is an essential function and we fully support this recommendation.

However, once off emergency payments need to be followed up with more permanent and sustainable medium term and long term solutions. We therefore suggest that the Commission consider the following scenarios and consider the most appropriate way of ensuring that children receive the necessary temporary financial assistance:

1) If during a Child and Family Court proceeding, a court considers a child to be in need and to require emergency financial assistance, the court should be able to make an order obliging the Department of Social Development to immediately start paying the child a temporary social relief of distress grant. The child's care giver should be able to simply take the order from the court to the Department of Social Development who must pay the first month of the grant **immediately.** The court order must suffice as proof that the child is eligible and qualifies for the short-term relief. Uniform measures of need (including financial) will have to be developed by the Department of Social Development, and used by the Court, together with the court's obligation to act in the best interests of the child, in determining need

for emergency relief. The Department may refuse to give the grant only by showing good cause.

2) If the situation requires immediate action, the court should be empowered to give the child and family financial assistance or vouchers from its own fund. This could be restricted to a grant for a month.
3) Both methods could be applied and available to the Court as options - eg. The court could supply a grant for first week/month to be followed up by a social relief of distress grant from the Department of Social Development in terms of an order of the court.
4) When a child is referred by the Court to the Department of Social Development to apply for temporary relief, the Department officials should be obliged to assist the applicant to apply for a permanent grant if they qualify for such.

6) Indirect Social Security Measures: Exemption from paying for services due to special needs or socio-economic status

Parents who are unable to pay for services for their child such as health care, water, education, home affairs and public transport, shelter and electricity due to being poor, should be entitled to free or subsidised services.

The same principles should apply to family members, foster parents or care-givers who are unable to afford to pay for services that the children in their care need. This would greatly assist caregivers caring for children orphaned by HIV and other causes, street children, children in child headed households and children living with relatives who are poor.

It is important that the State reimburse the schools and health services for these 'lost fees' so that the quality of the service provided is not affected. A system of direct re-imbursements should be developed.

Children with disabilities and chronic illnesses (including HIV) which render them in need of special care and material assistance in order to survive, and develop must be entitled to subsidised and free services (such as free assistive devices, free nappies, free or subsidised transport to and from school and health care facilities, exemptions from having to pay school fees). They should also be provided with access to day care facilities that are affordable or free.

The Departments of Education, Local Government, Home Affairs, Health, Water and Transport must develop accessible systems that allow people to apply to be exempted from paying for services. The current free basic water application system and the school fee exemption system are not working in the interests of poor children. Attention needs to be paid to how the Children's Statute can lay down guiding principles for such exemption systems to ensure that they are accessible to poor families. This could include an obligation on service providers to pro-actively approach poor communities and to assist them to apply for free services. Application procedures for free or subsidized

services should be flexible and based on the financial status of the applicants balanced against the needs that the family faces due to the extra burden of caring for another child.

Please refer to the comments on a sliding-scale of benefits and mechanisms for means-testing for these services.

Issues of Means-testing

There are many problems with the existing means-tests:

Currently each child grant has a different Unit of Assessment in the means-testing process. The CSG considers the Primary Care-giver's income, the CDG considers the family's income, and the FCG considers the income of the child.

More importantly, the means-test acts as an administrative barrier to those poorer applicants most in need of the assistance.

- While means-testing enables targeting of the poorest quintiles, in practice it is rarely used correctly, is administratively demanding and has been reported as demeaning.
- With the extreme levels of poverty in the country, it is likely that those children who are not in the poorest quintiles, but are in the third and fourth, also experience hunger and poverty and thus should also be eligible, based on an absolute poverty measure.
- The means-test acts as a perverse incentive and discourages applicants and recipients from seeking employment or other sources of income.
- Sometimes the extra expenses incurred by tighter targeting mechanisms cannot be justified and make the programmes unsustainable. The costs of administrating the means-test could be better channelled into providing a universal grant to more recipients. Many international studies have proven that the costs of administering the means-test outweigh the costs saved by targeting (or non-universal provisioning).

Therefore we recommend that:

1) A universal grant for all children be implemented that is not means-tested. This is on the basis that approximately 70% of children live in dire poverty and therefore the costs involved and the exclusion caused are unnecessary.
2) For all other child grants AND adult grants that there be ONE system of measuring family, household and individual income and assets, which would give the applicant the status of 'Welfare entitlement'. This could be indicated by a Card, which would automatically entitle the person to all the grants and other services, dependent on their need, such as free education, health, transport, and so on.
3) Such a card system could easily be incorporated into the new computerised system being developed under the Standard and Norms Programme of the Department of Social Development. It

could also indicate different levels of need and therefore access to different services (refer to comments below on a sliding scale of benefits).

4) The threshold income set for the means-test must be determined according to the levels of poverty experienced in the country. Targeting only the bottom two quintiles excludes persons in the third and fourth who are also suffering from hunger, according to the latest analyses of the October Household data by IDASA.
5) The threshold incomes must be inflation linked and increased each year, or effectively more people will be excluded each year.

Sliding Scale of Benefits

One of the purposes of having a **needs-based assessment,** as suggested by ourselves and the Commission, is to identify not only those in dire need, but also other levels of need.

However, this process becomes useless if there is not a corresponding range of assistance options to meet these differing needs.

In order to ensure not only appropriate responses to need, but also the most efficient use of resources, we suggest a SIMPLE sliding scale of benefits.

For example:

Category One (eg. applicant such as a poor child with severe disabilities requiring intensive therapy and special education):
Entitlement to Grant(s) and free services (eg. the universal grant, the CDG and free health, education, transport vouchers).

Category Two: (eg. applicant such as child with chronic illness requiring medication)
Entitlement to Grant(s) (eg. the universal grant and CDG (minus the amount of the universal grant).

Category Three: (eg. Child with manageable chronic illness requiring regular health assessment and treatment)
Entitlement to Free/Subsidised services (eg. Transport vouchers and free tertiary health care).

These suggestions require far more debate and development.

Obviously the assessment procedure must be uniform with a simple coding system that could indicate the appropriate option of benefits. It would also rely on the Assessing Officer’s (or Panel’s) interpretation of the applicant’s needs, which should be negotiated with the applicant.

Conclusion

We wish to commend the extensive efforts of the Commission in making suggestions for an improved and comprehensive social security system that meets the needs of all children and children in need of special protection.

We wish to express our support again for all the innovative and far-reaching recommendations, particularly with regard to the universal grant for children, and extending the current CDG and FCG. A universal grant would ensure children's rights to basic nutrition, health, shelter and services and would cover the vulnerable children that are currently receiving no assistance, while also reducing costs to other services.

However, a universal grant to children would be more effective in assisting children in poverty if there was a **Basic Income Grant for all adults**, which would increase household incomes and thus reduce the use of the child grants in supporting entire families. The chronic poverty and structural unemployment in the country must be addressed, or the situation will continue to undermine any interventions to improve the well-being of children.

We hope that these recommendations will be costed and that the government will honour its constitutional and legislative obligations in committing the necessary resources to their attainment.