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**Submission by the Children's Institute, University of Cape Town and the
Centre for Child Law, University of Pretoria**

To the UN Committee on Economic, Social and Cultural Rights

30 August 2021

**Progress on the CSG Top-Up (larger valued child support grant)
for orphans in the care of relatives**

The Social Assistance Amendment Act has been signed into law

On 23 December 2020, President Cyril Ramaphosa assented to the Social Assistance Amendment Act 16 of 2020 (the Amendment Act).¹

The Amendment Act gives the Minister of Social Development the power to prescribe, with the concurrence of the Minister of Finance, that an additional payment is linked to a social grant. This will enable the Minister to introduce the CSG top-up for orphaned children living with relatives as opposed to this group of children having to go through the lengthy process of navigating the foster care system and obtaining a foster care order from the Children's Court in order to qualify for a bigger grant.

This will in turn contribute to drastically lessening the pressure on the foster care system that is causing a crisis in the child protection system, particularly the children's courts and social workers that deal with care and protection matters involving children who have been abused and/or neglected and are in need of care and protection.

The crisis in the foster care system has been ongoing since the early 2000s. The foster care system had for many decades functioned with the number of children in foster care placements remaining around 50,000 or below. However, when the number of orphans started to increase rapidly in the early 2000s due to the HIV pandemic, relatives (often elderly relatives) sought support to obtain foster care orders for orphaned children in their care, because the foster child grant was three times the value of the CSG. The Department of Social Development actively encouraged this practice, and the Children's Act could be interpreted to allow for orphaned children living with relatives to be found "in need of care and protection". By 2010 over 500 000 foster child grants were in payment – ten times the number that had previously been accommodated by the foster care system.

¹ Social Assistance Amendment Act, as assented to on 20 December 2020. Government Gazette No. 44035. Available: https://www.gov.za/sites/default/files/gcis_document/202012/44035gon1414.pdf

Despite increases in the number of social workers over these years, the high numbers of foster care cases soon overburdened the child protection system especially the social workers and children's courts which had to do the applications and two-yearly court order extension processes, resulting in large backlogs. In 2011, the foster care system collapsed with 120 000 children losing their grants due to social workers and courts not being able to extend their foster care court orders in time.

The Centre for Child Law has, since 2011, been involved in on-going court applications to keep the foster system afloat and at the same time hold the Department of Social Development to account in developing a comprehensive legal solution to the foster care crisis. The comprehensive legal solution must ensure that the foster care system is able to provide services to children in need of care and protection and at the same time ensure that orphaned children in the care of relatives receive adequate financial support through another source instead of the foster child grant. The latest court order was obtained in November 2020.

The Social Assistance Amendment Act is part of the comprehensive legal solution to the foster care crisis because it allows for the CSG top-up. Now more than ever it should be a priority of the SA government to ensure that the families caring for orphans have access to adequate income support and that social workers and children's courts are freed up from chasing foster care backlogs to enable them to respond to the social consequences of the COVID-19 pandemic; especially the high rate of violence against children and women and rising levels of desperation due to loss of livelihoods.

Draft regulations published for comment

Draft regulations outlining the eligibility criteria and application processes for the CSG Top Up were published for comment in early 2021. However, 6 months later and they have not yet been finalised. They are currently on hold because no budget has been allocated for the implementation of the top-up in the 2021 budget. It is not clear why the Minister of Social Development and National Treasury do not consider financing the CSG Top-Up as a priority.

No budget allocated for the CSG Top-Up in 2021, yet budget for the Foster Care Grant reduced

With the amendment bill having been signed into law by the President and the draft regulations outlining the CSG Top-Up published for comment in early 2021, we had anticipated that the CSG Top-Up would be allocated a budget in the February 2021 national budget. However, this did not occur and there is currently no budget allocated for its implementation in 2021. Furthermore, government decided to reduce the budget for the foster care grant in 2021, the grant that currently caters for orphans in the care of relatives. Effectively the SA government has reduced income support for orphans in the midst of the COVID-19 pandemic – a pandemic which has already increased poverty, hunger and unemployment levels and is likely to cause more orphans.

The 2021 budget has substantially reduced both the budget allocation and the projected number of beneficiaries of the foster child grant (FCG) for the 2021/22 year from R4.8 bn for 304,000 beneficiaries to 4.3 bn for 294,000 beneficiaries, as shown in table 1 below. Yet there is no budget for the CSG top-up for orphaned children living with relatives, despite this being a relatively small amount (estimated at R519m for 12 months in 2021/22) and necessary to comply with a series of High Court orders.

Table 1 shows the projected decline in beneficiaries and budget. For the 2021/22 financial year, there is a reduction of nearly R500m in the FCG budget because the foster care numbers are projected to decline faster than they did in the previous budget. In 2022/23 the decline is even more pronounced,

with 30,000 fewer FCGs than previously projected, and a “saving” of over R730 million. These ‘savings’ should have been allocated to the CSG line item to fund the introduction of the CSG Top-Up. Yet, the savings were shifted out of the social assistance budget and allocated elsewhere in the national budget.

Table 1: Budgeting declines in foster care numbers and foster child grants

Foster Care	2020 ENE		2021 ENE		
	2021/22	2022/23	2021/22	2022/23	2023/24
Budget (Rm)	4 829.4	4 795.3	4 338.1	4 057.1	3 574.6
Beneficiaries	304 375	284 844	283 718	254 611	229 440
Budget decline			- 491.3	- 738.2	
Beneficiary decline			- 20 657	- 30 233	

There is this a clear intention in practice and in the budget to reduce access to the FCG in the 2021/22 financial year, yet we do not see a commensurate intention to introduce the agreed replacement grant in the form of the CSG Top-Up in the CSG line item.

This represents regressive action as it effectively reduces the budget for the FCG for orphans in the care of relatives before providing an alternative grant to replace it as provided for in the Social Assistance Amendment Act that was signed by the President in December 2020.

In May 2021, we provided rough estimates to Parliament of the cost implications of allocating budget to the CSG Top-Up to enable it to be implemented from 1 October onwards. It would cost only R230million to reach 188 000 orphans in the 6 months left in 2021. For 2022 it would cost approximately R700million (R0.7bn) and increase to approximately R900 million (R0.9bn) in 2023.

Recommendations

We request the Committee to ask the SA government:

- (a) Why the numbers of children receiving the FCG have declined so rapidly and whether this decline is predicted to continue despite COVID-19 likely resulting in more children being orphaned.
- (b) How many children have been orphaned by the COVID-19 pandemic so far, and what is the state’s plan with regards to income support for the relatives caring for these orphans?
- (c) Whether it has budgeted for the CSG-Top-Up in 2021 and if not, when does it plan to budget for its implementation