



Alliance for Children's Entitlement to Social Security

EXTENDING THE CHILD SUPPORT GRANT TO CHILDREN UNDER 18 YEARS

FACT SHEET - September 2004

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I. BACKGROUND ON THE CHILD SUPPORT GRANT

The law on social assistance is governed by the Social Assistance Act 59 of 1992. The Act and the Regulations give effect to the right of access to social assistance in terms of the Constitutionⁱ, and govern the delivery and administration of social assistance. The Act includes a number of cash grants for children, namely the Child Support Grant (CSG), the Foster Child Grant (FCG) and the Care Dependency Grant (CDG).

The CSG was introduced in 1997 by the government to alleviate the poverty experienced by many in South Africa. The grant is paid, via the primary care-giver of the child, to all children who qualify in terms of a test of the care-giver's means. The CSG (R170 per month as of 1 April 2004) is currently available for children under the age of 11 years who live in households with an income of below R800 per month, or R1 100 per month if the child and his or her so-called 'primary care-giver' either live in a rural area or in an informal dwelling.ⁱⁱ

In terms of amendments to the Regulations to the Social Assistance Act, the CSG was extended to children under the age of 14, to be phased in over the period 2003-2005. The CSG is extended to children under nine years from the 1st of April 2003, children under 11 years from the 1st of April 2004, and children under 14 years as of the 1st of April 2005.

The new phased-in increase in the age-limit for the CSG from seven years to under 14 years is welcomed by the children's sector and will make a difference to the lives of those children. However, the Constitution defines a child as a person below the age of 18 years, and therefore the age restriction on the CSG continues to exclude and discriminate against children between 14 to 18 years.

The current CSG is a cash transfer from the government to support poor families in providing for children's basic needs and has had a positive impact on many families. However, millions of poor children are unable to access this grant due to the age limit. In order for the government to fulfil its constitutional obligations to children, it needs to extend the CSG to *all* children under the age of 18 years and remove the means test, as the first phase of a Basic Income Grant (BIG).

As of 31 March 2004, over 4.3 million children were receiving the CSG. This means that approximately 56% of the total 9.7 million children under 18 years of age are living on less than R215 a day, and receive no form of social assistance from the government.

II. ARGUMENTS FOR EXTENDING THE CHILD SUPPORT GRANT TO CHILDREN UNDER 18

1. Reducing child poverty in South Africa

Using a poverty line of R430 a month, Woolard found that 74.9 % of children aged 0-17 in South Africa are poor. This amounts to more than 13 million children. However, poverty is not evenly distributed across the country. KwaZulu-Natal, the Eastern Cape and Limpopo Provinces jointly make up 60% of the 'income-poor' children. Using a R215 per month poverty line, Woolard found that 54.34% of children across South Africa are ultra-poor. This means that *9.7 million children from birth to age 17 are living in deep poverty*. Again the Eastern Cape (72%), Limpopo (69%) and KwaZulu-Natal (60%) experience the highest child poverty rates.ⁱⁱⁱ

If the Department of Social Development manages to reach all the poor children under the age of 14, there will still be:

- three million 15-18 year olds living in poverty without any assistance, of which 2.5 million are living in *dire* poverty, while
- 60% of the adult population living in poverty continue to receive no assistance.

International and local evidence show that increasing family incomes through cash transfers or subsidies reduces poverty levels in households, and enhances the child's development, educational achievement and health status. The CSG is currently spent in 75% of cases directly on the child, or it is pooled to benefit the entire household, including the child. Cash transfers are found to be effective for immediate relief of needs for poor children. However, other services and interventions are also essential for a comprehensive attack on poverty.

2. Constitutional obligations

The right to social assistance

Section 27(1)(c) of the Constitution enshrines the right of everyone to have access to social security, including, '*if they are unable to support themselves and their dependants, appropriate social assistance.*' Section 27(2) goes on to place an obligation on the State to 'take reasonable *legislative* and other measures, within its available resources, to achieve the progressive realisation of each of these rights.' The government is thus obliged to ensure that all those who require social assistance eventually receive it. In this regard, the government has taken the first steps by progressively extending the CSG to poor children under the age of 14, but it needs to formulate a plan to progressively roll out the CSG to poor children under 18 years, and then to adults through a BIG.

In *Grootboom*, the Constitutional Court elaborated upon the requirement on the State to institute a *reasonable programme* in order to 'progressively realise' the socio-economic rights enumerated in sections 26 and 27, including the right to social assistance. The Court laid out a number of criteria against which to measure the 'reasonableness' of a government programme.^{iv} The criteria include the assurance that the programme does not 'exclude those in desperate need and living in intolerable conditions.' According to this, the State is thus obliged to ensure that a programme realising the right to social assistance for children must consider the needs of the most vulnerable children, *including* those between the ages of 14 and 18 years and who are living in dire poverty.

In addition, the Constitutional Court iterated that 'a programme that excludes a *significant* segment of society cannot be said to be reasonable'^v. It could be argued that the word 'significant' could refer to quantitative or qualitative terms. In quantitative terms, the exclusion of 3 *million* poor children between the ages of 14 and 18 years is a *significant* proportion of the population of poor children. Thus, it could once more be argued that the State's grants programme for poor children, in so far as it excludes children between the ages of 14 and 18 years, is not reasonable in terms of section 27(2), and is therefore unconstitutional.

Children's rights to basic nutrition, shelter, basic health care services

The Constitution of South Africa also gives children 'the right to basic nutrition, shelter, basic health care services, and social services' [Section 28(1)(c)]. The socio-economic rights of children enumerated in section 28(1)(c) are not qualified by the same limitations of 'availability of resources' and 'progressive realisation' as those in sections 26 and 27. Yacoob J in *Grootboom* stated that, while the primary responsibility for supporting children lies on parents and families, the State bears the primary responsibility with respect to children who are abandoned, orphaned or removed from their families.^{vi} The Constitutional Court reaffirmed the position in the *TAC* case and went further by ruling that section 28(1)(c) can indeed create duties for the State and independent rights of children who lack parental care:^{vii}

The State therefore has an obligation to provide nutrition, shelter, health care and social services for children where their parents or care-givers cannot provide for them. Although section 28 does not specifically include children's rights to social security or social assistance, it is under this provision that the State is obliged to provide for the basic needs of children. The State must provide social assistance to poor children between the ages of 14 and 18 years as a way to ensure the rights to basic nutrition, shelter and basic health care.

The right to equality

The right to equality in section 9(1) states that 'everyone is equal before the law and has the right to equal protection and benefit of the law'. Section 9(3) prohibits unfair discrimination^{viii} by the State 'directly or indirectly' on the basis of a list of grounds^{ix} and possibly other unlisted grounds. Section 9(5) creates a presumption of unfairness if a claim of unfair discrimination is made on the basis of a listed ground. The State then has the responsibility to establish that the discrimination was not unfair (or that the discrimination was not in fact based on the listed ground alleged). Under section 9(3) the most relevant ground of unfair discrimination against the provision of social assistance to children aged 14-18, is 'age'. It is thus unfair discrimination to give a grant to a 13-year-old but deny it to a 16-year-old who is in a similar poverty-stricken situation.

3. Administrative capacity

The Children's Institute at the University of Cape Town and the Alliance for Children's Entitlement to Social Security (ACCESS) monitored the first phase of the roll-out of the CSG over the period 2003/2004. Despite some initial problems with accurate communication about the extension to both officials and beneficiaries, the roll-out proceeded smoothly. By registering over 4.3 million children for the CSG, the Department of Social Development has demonstrated that it is committed and that its administration system can cope with an increased volume of applications for the CSG. In addition, the setting-up of the recently legislated South African Social Security Agency is expected to provide an even more efficient and effective social security administration and management. It is thus increasingly possible for the government to commit to bringing on board a further potential 3 million children between the ages of 14 and 18 who live in poverty and who are in need of social grants.

4. Benefits of the CSG: Hearing from the children themselves

Two large child participation processes undertaken by the Children's Institute and ACCESS highlighted children's need for the CSG and children's suffering due to a lack of support from the government. The majority of the children who participated were not receiving the CSG.

Children Speak on Poverty^x

"Government can help us by paying school fees, we will be happy if we can get money to buy food, uniform."

"I don't have uniform for school. I will be happy if I can have money for transport because I am far away from school. I walk a long distance without having something to eat. I also need pen, glues, ruler etc. We need money to buy these things."

Children share their experiences of being affected by HIV/AIDS^{xi}

"I do not have mother. I stay with my grandmother and my father. 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 ill. I need food". (8-year-old)

"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 get healthy food. We need clean water ..." (16-year-old)

5. The impact of HIV/AIDS

Research by the Children's Institute^{xiii} demonstrates that the extension of the CSG to all children can play a critical role in supporting children through the AIDS pandemic in South Africa. Current social security provisions for children in South Africa – and in particular the emphasis on the use of the Foster Child Grant to financially support orphans – are inappropriate and inadequate in the face of HIV/AIDS for a number of reasons:

- The number of foster care applications in many parts of South Africa already far exceeds social workers' and courts' capacity to process them. Vast numbers of orphans are already unable to access FCGs as a result.
- Continued use of the administratively complex foster care system to provide basic financial support to orphans will bring the child protection system further to its knees, rendering it even less able to provide protection to children who really need it.
- Children's poverty-related vulnerability is neither synonymous with, nor exclusive to, orphanhood. A social security system which provides grants to orphans under 18 years without providing adequate and equal support to the many other impoverished children whose parents are alive, is simply discriminatory. It fails to make provision for the multitudes of other children made vulnerable by growing up in the time of the AIDS pandemic. This is not to argue that orphaning does not increase the vulnerability of some children, but rather that to equate orphaning with material need in the context of widespread poverty is to mistarget poverty alleviation at a select few in a highly inequitable way and based on inappropriate assumptions.
- Costing research has revealed that targeted schemes that provide FCGs for orphans, while providing a CSG for poor children under 14, are not a cost-effective way of adequately supporting the largest possible number of poor children who require assistance.

The researchers point out that the urgency of an alternative social security mechanism that is adequate, equitable and accessible for all children is heightened by the repercussions of the AIDS pandemic for children. In this light, the most effective mechanism for addressing the needs of children in the context of HIV/AIDS – including children who have been orphaned by the death of their parent(s) – is through the full extension of the Child Support Grant to all children under 18 years, and the removal of the means test. In recognition that phased, progressive realisation would be necessary, the researchers recommend that the Child Support Grant be extended to children under 18 years, and that the current means test be simplified and adjusted to increase the income cut-off levels. It is only with the implementation of such social assistance that children in South Africa will be appropriately and equitably supported through the AIDS pandemic.

III. CONCLUSION

The effectiveness of the CSG in poverty alleviation is seriously hampered by the age eligibility. The extension of the grant from six years to 14 years has greatly increased its potential to assist poor children and their families to care for them. However, the CSG would have maximum impact if all children under 18 years could receive the grant. The government is constitutionally obliged to provide social assistance to everyone who is unable to support themselves, and it should continue to progressively realise this right for all, beginning with children.

ⁱ Constitution of the Republic of South Africa Act 108 of 1996.

ⁱⁱ Sections 2(d) and 4 of the Social Assistance Act 59 of 1992 read with the regulations to the Act.

ⁱⁱⁱ E. Coetzee & J. Streak (eds), *Monitoring Child Socio-Economic Rights in South Africa: Achievements and Challenges*, 2004, 17-18.

^{iv} *Grootboom Government of the Republic of South Africa v Grootboom and others* 2000 (11) BCLR 1169 (CC) paras 40-44.

^v *Grootboom* para 43.

^{vi} *Grootboom* para 79.

^{vii} *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1033 paras 73-78.

^{viii} The test for unfair discrimination is set out in *Harksen v Lane NO and others* 1998 (1) SA 300 (CC) at para 38.

^{ix} The listed grounds are: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

^x ACCESS. *Children Speak Out on Poverty*. Report on the ACCESS Children's Participation Process, 2002.

^{xi} Quoted directly from: Giese S, Meintjes H, Proudlock P. 2002. National Children's Forum on HIV/AIDS: Workshop report. Children's Institute, UCT.

^{xii} H Meintjes, D Budlender, S Giese, L Johnson, *Children 'in need of care' or in need of cash? Questioning social security provisions for orphans in the context of the South African AIDS pandemic*, Children's Institute/Centre for Actuarial Research, 2003.