

Child Protection and Social Security in the face of poverty and the AIDS pandemic:

Issues pertaining to the Children's Bill [B70-2003]

Fact sheet

Prepared by Helen Meintjes, Children's Institute, UCT and Joan van Niekerk, Childline SA
February 2005

FOSTER CARE IN SOUTH AFRICA: Protection vs. Poverty alleviation

Foster Care is one of the cornerstones of the child protection system, and is legislated for in the Child Care Act of 1983. Its original purpose was to:

- *facilitate the placement and support of children "in need of care"- in particular those who face abuse and neglect – in safe care within a family.* Sections 13–15 of the Child Care Act no. 74 of 1983 make provision for the courts, with the support of social workers, to place children considered to be 'in need of care' in the custody of a foster parent with the additional legal requirement that the foster parent be "under the supervision of a social worker".
- *provide some reparation for people who take special needs children (affected by abuse and neglect) into their homes, in order to ensure that their family needs are not compromised.* The Social Assistance Act of 1992 (and the amended 2004 Act) makes provision for foster parents to apply for a foster child grant (FCG), a cash transfer currently equal to R530 per month per fostered child, up to the maximum age of 18 years.

If the legal provisions are fully implemented, foster care placements are monitored by social workers in order to assess, track and provide remedial care needed for the child's adjustment. This indirectly includes monitoring of the use of the foster child grant.

Foster care is linked to a 'basket' of services including:

- Social services to children affected by abuse and neglect
- Social services to foster parents who require special assistance in supporting children with special needs
- Free medical care and education for these children as it is recognised that these children may require more extensive assistance in these respects than children not harmed by abusive life experiences.
- Where appropriate, treatment and reconciliation services to the biological parents of foster children, which are aimed at family re-unification.

Under current law – as well as that proposed in the Children's Bill currently before Parliament – children who have been orphaned or abandoned automatically qualify as children 'in need of care' and therefore for foster care placement¹. The Minister of Social Development and his officials actively promote the use of this provision to support the care of the increasing numbers of orphans as a result of the AIDS epidemic.

Severe poverty is not a sufficient criterion for a child to be categorised as a "child in need of care". Children must be resident with or placed in the care of adults other than their biological parents in order to qualify as "in need of care", and hence foster placement.

In the absence of suitable, adequate social security mechanisms to support poor children in South Africa, increasing numbers of poverty-stricken families are relying on foster care placement and foster grants as a means to access financial support. Uptake of Foster Child Grants has increased considerably in the past few years: analysis of Department of Social Development data reveals a 42% increase in the

¹ See section 14(4) of Child Care Act of 1983, and section 150(a) of Children's Bill B70-2003 (reintroduced).

number of children for whom foster child grants are being received between April 2003 and March 2004 alone².

These increases can be understood to be a result of increases in orphaning and abandonment, as well as increased public awareness of the availability of the FCG for people caring for children who are not biologically their own.

Under the regulations to the Social Assistance Act 59 of 1992, poor children under the age of eleven in South Africa are eligible to receive a Child Support Grant (CSG) of R170/month, whether they live with their biological parents or with other caregivers. The CSG is intended as a poverty alleviation grant and is available to any 'primary caregiver' of a child under the age of eleven who qualifies in terms of an income-based means test. Access to the Child Support Grant is through an administrative procedure managed by the Department of Social Development, and does not require a court order or the services of social workers. The age limit for the Child Support Grant was increased in 2003 from seven years to nine years, with provisions for the progressive extension of the grant to children up to 14 years old in 2005.

While access to the CSG has increased substantially over the last few years, the FCG remains a favourable option for those who can access it because it is more than three times the amount of the CSG and is accessible for children up to the age of 18.

The consequence is that, particularly with its application to orphans and their caregivers, the purpose of foster care placement has shifted from one of *child protection* to one focused on *poverty alleviation*. This will increasingly be the case as the AIDS pandemic progresses, unless alternative social security policy is instituted.

As a result, the child protection system in South Africa is under severe strain, and is failing to adequately respond to and protect many abused and neglected children who are in need of its services.

WHAT ARE THE PROBLEMS WITH THE CURRENT SYSTEM? ³

1. Issues of equity and perverse incentives in the face of widespread poverty

"I am worried about the children here. The husbands have died, and their mothers are not working, they can't afford ... There is no [equivalent to a] foster grant for *them*. There's *no* help from the government for them..."

Clerk of a children's court, KZN (May 2003)

It is inequitable for the State to provide greater financial support to poor relatives or other adults to care for children, without providing adequate and equal support to biological parents living in poverty (and in many cases sick due to HIV/AIDS) to care for their own children.

Due to the pervasiveness of poverty across South Africa's child population, directing cash grants on the basis of children's residence with adults other than their biological parents substantially mistargets resources aimed at reducing vulnerability related to poverty. It not only contradicts the principles enshrined in the South African Constitution and other government policy by failing to adequately support vulnerable families, but also introduces perverse incentives for impoverished parents to place their children in the care of others.

2. Foster care as poverty alleviation

"It is quite clear that these children are in need of money! They are *not* 'in need of care'"

Magistrate, KZN (May 2003)

As noted above, the legal requirements for foster care placements involve numerous personnel, multiple interventions on an ongoing basis, ongoing monitoring by social workers, and a renewal process that

² Leatt, 2004.

³ This section draws extensively from the following source document: Meintjes, Budlender, Giese & Johnson (2003) *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*. Joint working paper of the Children's Institute and the Centre for Actuarial Research, University of Cape Town.

must be repeated every two years in order to continue the placement and the foster grant (Child Care Act, s.16).

To tie children and their caregivers into a labour-intensive, surveillant, and costly child protection system simply in order to access poverty relief – as is presently the case in practice – is not only inappropriate but also a waste of valuable resources.

3. The dilution of child protection

“The idea of a social worker is that they do some case work, some group work, and some community work. But our social workers are bogged down in foster care case work and so for example, therapeutic interventions are very minimal unfortunately”

Supervisor, NGO providing statutory services, KZN.

Research clearly demonstrates that numbers of foster care applications in many parts of South Africa already far exceed social workers' capacity to process, monitor and support them. If one considers the predicted number of orphans that the country will face, it is clear that social welfare and court capacity and resources are utterly inadequate to support the application of foster care – or in terms of the draft Children's Bill, 'court-ordered kinship care' – to all orphans.

Calculations based on updated demographic projections estimated that the number of newly orphaned children who would have qualified for foster care placement and grants in 2004 was roughly 250 000. In the absence of any significant HIV/AIDS intervention programmes, this number is expected to almost double by 2010, reaching a level of 420 000 new orphans per annum.

However, recent Department of Social Development data indicates that the *total number* of children in foster care in September 2004 was 236 000. In other words, the *total number* of children receiving foster care grants in September 2004 was less than the *number of newly orphaned children who would have qualified in 2004* alone. And in 2005, we were still in the early stages of the anticipated increase in the numbers of orphans: the annual number of new 'eligible' orphans will only start to decline after 2010, in line with declines in AIDS mortality rates.

This raises two critical points: firstly, that implementing an approach to orphans' poverty alleviation which relies on these services stands to limit the numbers of those who will benefit, despite their eligibility. And secondly, that the use of foster care placements to alleviate the poverty of the increasing numbers of orphans in South Africa will *detract from the crucial child protection role* that the foster care system is intended to perform. The huge numbers of applications for fostering of orphans are already creating bottlenecks in a severely over-burdened system, making access more difficult for those – orphaned or not – who most need the protection that it is designed/intended to offer.

4. Incorrect assumptions about the situation of orphans

Some children who are orphaned may indeed require the intervention of the child protection system in order to secure adult care. But evidence from South Africa and from further afield indicates that the majority will not: Local and regional evidence indicates that the majority of children who have been orphaned are not without any adult care. The majority of orphans are living with relatives *without any intervention or incentives from the State*.

Furthermore, the legal requirements of foster care placements – which compel fostered children to remain consistently in the care of the designated foster parent – challenge normalised child care practice in South Africa where children tend to move between caregivers. This can enforce living arrangements that are not appropriate in all instances, potentially risking negative social repercussions for the children.

5. Putting children at risk of increased vulnerability

“people now are all rushing to these orphans because they heard that they will have something...”

Research reveals that the current application of FCGs to orphans can in instances put these children at increased risk. A number of cases have been documented in which orphans are wrenched from relatives who love and care for them by others who are more powerful and who are motivated by the potential of accessing a FCG.

The application of the FCG to orphans (or any other grant that is greater than the amount of the grant available to other poor children) can in instances increase the vulnerability of these children by directly linking them to a scarce resource in poor neighbourhoods – a significant regular income.

COSTING THE OPTIONS

Research which estimates the costs to the State of the current policy of providing the CSG to poor children up to the age of 14 in 2005, with all double orphans⁴ eligible for foster care placement and foster child grants, demonstrates that

- while the implementation of a universal CSG would be more costly, the relative costs would decrease substantially over time. At the peak of the number of orphans predicted for South Africa, the additional cost for the provision of a universal CSG over social security currently legislated would be a maximum of one-third (of which part would return to the fiscus in tax).
- While extending CSG to all children under 18 would cost more than using the foster child grant for orphans, a universal CSG would reach far more children in need faster and would alleviate the pressure on social workers and the courts.

Critical to note here is that the costing did not cost foster care at its optimum: Social workers time in the placement, monitoring and provision of foster care services is undercosted. The costs of using the foster care system are therefore an *underestimate*. They also do not take into account the costs that the state will have to incur in order to appoint more social workers to perform the other duties stipulated in the Children's Bill.

RECOMMENDATIONS

In order to adequately address the needs of those children in South Africa who are poor as well as those children who are in need of protection, we recommend that both the social security and child protection systems be reformed as follows:

1. Implement a universal Child Support Grant to address children's *poverty* in South Africa:
 - extend to 18 years
 - to every child
 - adjust the amount with inflation
 - tax the grant back from those who can afford to maintain their own children.
2. Strengthen the foster care system to address children needing *protection*, and discontinue its use for poverty alleviation. Critical to note however, this is *not* a feasible option unless the CSG is extended to all children up to 18.

The following adjustments to the Children's Bill are recommended in order to address aspects of the problems outlined above:

3. Retain the provisions for foster care as a placement option for children legally 'in need of care' in the Children's Bill.
4. Remove the provisions for court-ordered kinship care as a placement option for children found to be legally 'in need of care' on the basis that they
 - Are redundant if provisions for foster care are legislated to protect children
 - Are based in inappropriate assumptions about children's safety in the care of relatives as opposed to other adults
 - Will perpetuate the problems with the current foster care system as described above.

⁴ A double orphan is a child who has lost both parents

For further information contact:

Helen Meintjes, Senior Researcher, Children's Institute

Tel: 021-689 5404 or 082-9228524

helenm@rmh.uct.ac.za

Joan van Niekerk, National Director, Childline

Tel: 083 303 8322

joanvn@iafrica.com

Albert Dlwengu, Project Coordinator, ACESS

Tel: 021 – 761 0117

albert@access.org.za



**children's
institute**

child rights in focus
Research - Advocacy - Education