



Alliance for Children's Entitlement to Social Security

# Submission on the Social Assistance Bill

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For:  
**Public Hearings**  
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**Written by:**  
Ms Solange Rosa, Paula Proudlock and Isobel Frye  
Children's Institute, University of Cape Town  
Tel: 021 – 685 7441/ 084 408 2956  
Fax: 021 – 685 1496      [solange@rmh.uct.ac.za](mailto:solange@rmh.uct.ac.za)

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## 1. INTRODUCTION

The new Social Assistance Act will have a critical role to play in giving effect to the constitutional right to have access to social assistance in terms of section 27 of the Constitution. The Social Assistance Act provides for old age pensions, the child support grant, disability grants and emergency cash relief for people in desperate need. It is therefore very important that the affected stakeholders are given the opportunity to provide input into the legislative process. We would therefore like to express our views in relation to the Social Assistance Bill [B57B-2003], as passed by the National Assembly.

In particular, given the high rates of child poverty, illness, abuse and death in South Africa; it is very important that children's rights to social assistance (grants) are adequately provided for in the new Act. The Alliance for Children's Entitlement to Social Security (ACCESS), an alliance of over 500 children's organisations from across South Africa, would like to submit their views and recommendations on the Bill based on the widespread experience and understanding of children's issues held by the membership of ACCESS.

The key issues which ACCESS would like to address are:

- The extension of the Child Support Grant to all children under 18 years.
- A mechanism for child-headed households to have access to social assistance through a mentorship scheme
- Besides the mentorship scheme, children who are in fact primary care-givers of themselves and other children, should be able to access the Child Support Grant directly.
- Redefining the eligibility criteria for the care dependency grant which will allow for children with moderate disabilities and chronic illness to qualify, including children with HIV/AIDS.
- Delay the consideration of the structure of a Social Security Agency to deliver social assistance and/ or social insurance until final decisions have been taken on a comprehensive social security system.

ACCESS is also part of broad coalition of civil society organizations who made a joint submission to the Portfolio Committee on Social Development on the Social Assistance Bill and the South African Social Security Agency Bill, including COSATU, NEHAWU, TAC, Black Sash, the South African Council of Churches and others. This coalition of organizations also made substantive recommendations for reform in January 2003 to the Department of Social Development, but these recommendations were not taken into account by the Department when they drafted the Bills.

Please see our comments below on the Social Assistance Bill - version approved by the National Assembly. Deletions are indicated with ~~strikethrough~~ and additions are underlined. Where possible (time allowing) we have given motivations for our suggested re-drafts.

## 2. SOCIO-ECONOMIC BACKGROUND

The Report of the Committee of Inquiry into a Comprehensive Social Security System (Taylor Committee Report) stated that South Africa's social safety net has its roots in a set of apartheid labour and welfare policies that were racially biased and based on an assumption

that everyone is employed or would soon be employed. Furthermore, between 45% and 55% of the population live in poverty. This translates into 20 to 28 million people living in poverty<sup>1</sup>.

In 2002, it was estimated that 11 million children (between the ages of 0-18) are living in dire poverty in South Africa on less than R 200 per capita per month (R245 in 2002 real terms), and therefore living on less than half the minimal R400 per capita per month required to meet their basic needs<sup>2</sup>, and 14.3 million children are living in poverty on less than R400 per capita per month (R490 in 2002 terms).

And child poverty appears to be increasing. The analysis of the October Household Survey data (1995 & 1999) by Ingrid Woolard for IDASA shows that child poverty rates have increased. Between 1995 and 1999 the rate of child poverty in South Africa (on a poverty line of R400.00 / month per capita) increased from 64.7% to 75.8%, and the rate of children in *dire* poverty (calculated on a poverty line of R200.00 / month per capita) increased by 19.2%, from 38.9% to 58.1%.

In 1996, 33% of working age adults were unemployed. The rate by 2001 had risen to 37% and in 2002 to 41.8%.<sup>3</sup> Given the size of the unemployment problem in South Africa; full employment or significant improvements to the unemployment rate, and improvements to wage levels of the working poor, are not at all likely to happen in the short to medium term.

Another reality to bear in mind is the impact of HIV/AIDS, particularly on households already burdened by high poverty levels.

**The Taylor Committee Report also showed that 60% of the poor do not have access to any form of social security cash grants or benefits.**

The Taylor Committee's recommendations were based on an analysis of these and other socio-economic realities. Social Security policy and legislative reform must take cognizance of all the above realities.

### **3. A COMPREHENSIVE SOCIAL PROTECTION PACKAGE**

After looking at all the evidence, the Taylor Committee proposed that South Africa should create a comprehensive package of 'social protection'.

**"Comprehensive social protection** for South Africa seeks to provide the basic means for all people living in the country to effectively participate and advance in social and economic life, and in turn to contribute to social and economic development.

Comprehensive social protection is broader than the traditional concept of social security, and incorporates developmental strategies and programmes designed to ensure, collectively, at least a minimum acceptable living standard for all citizens. It embraces the traditional measures of social insurance, social assistance and social services, but goes beyond that to focus on causality through an integrated policy approach including many of the developmental initiatives undertaken by the state."

The COI talks about a **package** of social protection interventions and measures. The notion of a package is emphasised as it is not desirable for a person to have to choose between

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<sup>1</sup> Whether it is 20 or 28 million depends on the poverty measure that is used.

<sup>2</sup> IDASA did not attempt to estimate the minimum level of income needed to provide a decent standard of living for children to find the poverty line. The Committee of Inquiry recommended the amount of R400 per capita as a useful poverty line for South Africa (CoI 2002:62). The amount of R200/month per capita was chosen to indicate those children in dire poverty i.e. who are *ultra-poor*.

<sup>3</sup> Labour Force Survey, 2002.

basic needs. For example, a poor parent should not be expected to have to choose between feeding the family or sending their children to school. Both are basic needs that must be provided for by the package of comprehensive social protection.

The Taylor Committee Report looked at addressing income poverty - a situation where people have no income or insufficient income to meet their basic needs – and recommended three universal<sup>4</sup> cash grants:

- Basic Income Grant (BIG)
- Child Support Grant (CSG)
- State Old Age Pension (OAP)

The Report recommends that everyone must get at least a certain minimum income transfer to reduce or eradicate destitution and starvation. This would mean that all people would get an income transfer, whether it be through the vehicle of the CSG, BIG or OAP. The bottom line is that eventually (by 2015) everyone should get basic income support through one of the three grants.

In addition, people with special needs should also be provided for in the social security system. 'Special needs' refers to people with disabilities and children in compromised home environments. The Committee proposes that the adult disability grant, care dependency grant and the foster child grant should remain and be reformed in order to enable more children in need to benefit from them. All three grants should continue to be targeted grants which would mean that they would continue to have eligibility criteria.

The Committee proposes a phased in approach for the Comprehensive Social Protection package. It stresses that first priority must be to address income poverty by ensuring that poor people have access to a minimum level of income. The Committee proposed a timetable for a programme of phasing in universal social assistance:

- 1. 2002 - 2004: Children first through extending the CSG**
- 2. 2005 - 2015: Income Support Grant (solidarity grant/BIG) extended to all South Africans**

The Taylor Committee Report into a comprehensive social security system was considered in public hearings held by the Portfolio Committee on Social Development held in November 2002 and June 2003 and by Cabinet in July 2003. However, many of the overlapping policy decisions regarding social security broadly, and specifically in relation to children, have not yet been made or properly consulted upon. This is largely due to the fact there has been no clear and transparent policy reform process subsequent to the release of the Taylor Committee Report. The Social Assistance Bill therefore does not make any substantive moves towards the recommendations set out in the Taylor Committee Report.

We submit that the deliberations on the Social Assistance Bill must be seen in the light of the comprehensive approach as recommended by the Taylor Committee. The Taylor Committee Report took cognisance of the socio-economic realities in South Africa but the Social Assistance Bill does not flow from this research and consultation and makes no changes from its pre-new South Africa approach. The future stability and prosperity of our nation depends upon the formulation and implementation of a comprehensive social protection programme that can effectively eradicate extreme poverty, diminish economic inequality and lay the foundations for broad-based development.

Such a package should not be cobbled together in a piecemeal fashion. It requires a systematic approach, beginning with the articulation of a visionary social protection policy

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<sup>4</sup> Universal means that everyone gets the grants, services or benefits.

that can guide and lend coherence to subsequent legislation. The state has a constitutional obligation to formulate a comprehensive, workable plan that is capable of facilitating the realisation of the right to social security, as required by the Constitutional Court decision in the *Grootboom*<sup>5</sup> and *TAC* cases.

#### 4. LEGISLATIVE REFORM OF THE SOCIAL SECURITY SYSTEM FOR CHILDREN

The current social security system for children in South Africa is clearly inadequate in its capacity to address the socio-economic realities highlighted above. It is governed piecemeal in various acts, including the Social Assistance Act 59 of 1992, the Schools Act, the Child Care Act 74 of 1983 and various other acts and is by no means comprehensive.

A noble attempt was made in the SALRC<sup>6</sup> Draft Children's Bill to present a variety of provisions to create a basic social security scheme for children, which took cognizance of the dire poverty in South Africa and the needs of the most vulnerable children. The current Children's Bill, however, has had most of these provisions removed from it. The Department has reported that these provisions are better placed within the Social Assistance Act<sup>7</sup>, but the Social Assistance Bill does not incorporate the provisions left out of the Draft Children's Bill.

There are many shortcomings of the social assistance scheme for children in the Social Assistance Bill. The result of these shortcomings is that the following groups of vulnerable children have no access to social assistance despite clearly being vulnerable and in dire need of support:

- Poor children between the ages of 14 and 18 years, who are cared for by their biological or by other care-givers;
- Many poor children between the ages of 0 and 18 years whose caregivers do not pass the means test. The means test does not take account of the number of people living off the income nor has the means test thresh-hold increased since 1998 despite increases in inflation and the cost of living;
- Children without adult caregivers (children living in child headed households);<sup>8</sup>
- Children with moderate disabilities and chronic illnesses who need assistance;
- Children living with HIV and AIDS.

These shortcomings need to be addressed through legislative amendments so as to ensure that the government fulfills its obligations to children under the Constitution.

The Department of Social Development, in a briefing to the Portfolio Committee on Social Development, has indicated that the Social Assistance Bill will not be making any policy shifts but is merely being tabled in order to remove the assignment to the provinces, however, this is an opportune time to improve upon the social security provisions within the current existing system and to take cognizance of and repair some of the shortfalls. ACCESS, as a representative of hundreds of children's sector organizations, therefore makes recommendations in this submission to improve the current Social Assistance Act.

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<sup>5</sup> *Government of the Republic of South Africa v Grootboom and others* 2000 (11) BCLR 1169 (CC) ('Grootboom'); and *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC) ('TAC').

<sup>6</sup> South African Law Reform Commission.

<sup>7</sup> Social Assistance Act No. 59 of 1992.

<sup>8</sup> See B. Goldblatt And S. Liebenberg, *Giving Money to Children: The Constitutional Obligations to provide Child Support Grants to Child-headed Households* 2003, (unpublished paper); and S. Rosa, *Access to Social Assistance for Children without Adult Primary Caregivers*, August 2003 (unpublished paper), presented at workshop hosted by the Children's Institute and ACCESS on 'Access to social assistance for children living without adult primary care-givers', held in Cape Town from 20-21 August 2003.

## **5. SUGGESTED AMENDMENTS TO THE SOCIAL ASSISTANCE BILL**

### **5.1 Extension of the Child Support Grant to all children under 18 years**

The Minister of Social Development, Dr Zola Skweyiya announced on 18 July 2003, that 3,4 million children are now registered to receive the Child Support Grant (CSG). According to Skweyiya “this is one of the most significant achievements in the history of the country.”

Despite this positive progress, South Africa has an estimated 11 million children living in dire poverty on an income of less than R200 per capita per month, and 14.3 million children living on less than R400 per capita per month. This means that only 23% of poor children in South Africa are registered to receive the CSG.

The CSG was extended early in 2003 to all children under 14 years over the next 3 years, but this does not mean that children who are presently below 14 years will get the grant. In fact, all children who are now between 12 and 18 years old will never have access to the CSG under the current policy, no matter how poor or vulnerable they are. These children will fall through the cracks without social assistance from the government. This generation of children is likely to be doomed to lives of poverty through to their adult years.

The lives of poor children between the ages of 12 and 18 years can be changed for the better if the government were to immediately extend the CSG to all children under the age of 18. We believe that all our children deserve equal opportunities to grow and develop.

Minister Skweyiya referred to the registration of 3,4 million children as monumental - an achievement which calls for celebration. But we can only celebrate if all our children receive equal opportunities to survive poverty – as is their constitutional right. Section 9 (3) of the Constitution of the Republic of South Africa clearly states, “the state may not unfairly discriminate directly or indirectly on the basis of age”. The government’s policy on the CSG certainly does not cater for all but has rather unreasonably and unfairly only given preference to some of the needy children in our country.

Furthermore, as recommended by the Taylor Committee, and supported by the South African Law Reform Commission Report on the Children’s Bill, an important aspect of a comprehensive social protection package of cash grants and free and subsidized services, is the eradication of the means test for the CSG in order to overcome barriers for the poor in accessing this package, and in recognition of the fact that the majority of children are living in poverty.

Furthermore, in the face of the HIV pandemic, extended family structures and families are under extra financial strain and the extension of the CSG to all children under 18 would be an effective way of reaching these families and the children in their care.

We recommend the immediate and complete abolishment of the means-test for the CSG, due to the fact that the means-test excludes those persons most in need of assistance. Considering that between 60 and 70% of children live in poverty in South Africa, the expenses and administrative burden cannot be justified in targeting only a small percentage of those in need.

#### **Insert new sub-sections after section 6:**

#### **Child Support Grant**

6. (a) A person is, subject to section 5, eligible for a child support grant if he or she is the primary care giver of that child.

(b) Every child of 18 years or younger is entitled to a child support grant in order to ensure that his or her daily needs are met.

(c) The above grant is payable to the primary care-giver of the child concerned, whether a child or an adult, or to a mentor appointed in terms of section 15 of this Act

**In the alternative:**

(b) Every child of 18 years or younger is entitled to a child support grant if his or her caregiver cannot adequately provide for the child's daily needs.

## **5.2 Mentorship Scheme for child-headed households**

By December 2002, roughly 900 000 children under the age of 18 in South Africa were estimated to have lost a mother, the majority of these to HIV/AIDS, and that figure is expected to rise to roughly 3 million by the year 2015, in the absence of major health interventions<sup>9</sup>.

There is no comprehensive national data on the prevalence of child-headed households at this point in time.<sup>10</sup> On the basis of their national household survey on HIV/AIDS, the Human Sciences Research Council (HSRC) argues that:

‘Many community-based assistance programmes report an increase in households headed by children, or consisting only of children, i.e. orphans or children without resident adult guardians. However, no national data on child-headed households has yet been reported. In this survey, just 3% of households were reported as being headed by a person between the ages of 12 and 18 years of age, and could thus be called a child-headed household (Gow & Desmond 2002). The percentage observed was 3.1% in urban formal areas, 4.2% in informal urban areas, 2.8% in tribal areas and 1.9% in farms.’<sup>11</sup>

Other studies also provide anecdotal data of the existence of child headed households in South Africa.<sup>12</sup>

The lack of statistical evidence and probable low incidence of child-headed households<sup>13</sup> should not, however, detract from the fact that child-headed households exist. Furthermore, in the context of increasing numbers of orphans as the HIV/AIDS pandemic progresses, it is likely that South Africa will face increasing numbers of children living without adult caregivers. This recognition is important in order to guide equitable, appropriate and effective responses of support.

Children living in child-headed households are particularly vulnerable without the care and support of parents or substitute parents, and require extra support to meet their various basic needs, including financial, emotional, psychological, health, education etc. We are

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<sup>9</sup> Dorrington, R., Bradshaw, D., & Budlender, D. *HIV/AIDS Profile in the Provinces of South Africa: Indicators for 2002*, Cape Town: Centre for Actuarial Research, University of Cape Town, 2002.

<sup>10</sup> Nelson Mandela's Children's Fund, *A Study into the Situation and Special Needs of Children in Child-headed households*, 2001. <http://www.mandela-children.com/english/worddoc/Report.doc>, p. 4. Gow, Jeff & Desmond, Chris, *The Current and Future Impact of the HIV/AIDS Epidemic on South Africa's Children*, in Cornia, Giovanni Andrea, *AIDS, Public Policy and Child-Well-Being*, 2002, at p.19 <http://www.unicef-icdc.org> also remark on the lack of statistical information available on child-headed households.

<sup>11</sup> *Human Sciences research council (HSRC) study on HIV/AIDS, Household Survey 2002*, p. 68.

<sup>12</sup> Giese, Meintjes et al, p. 43. The Report notes that this data should not be taken to provide statistically relevant information that could be extrapolated beyond the research.

<sup>13</sup> As Giese, Meintjes et al, p.44 point out “systematic investigation in several countries (including in some of those in which the HIV/AIDS pandemic is more advanced than in South Africa) have confirmed that ‘child headed households’ are rare (Ainsworth, Ghosh & Semali, 1995; Gilborn et al, 2001).

particularly concerned with support (financial and otherwise) to children within the context of living without adult care-givers.

Of particular concern is that children who live without adult caregivers – as so called ‘child-headed households’ - are currently **not** able to access financial support from the government, in the form of social grants because, in practice, only people over the age of 16 can apply for a Child Support Grant (CSG), as a ‘primary care-giver’.

Under the Constitution, the State is obliged to provide social security to everyone, including social assistance if they are unable to support themselves and their dependants. In addition, the State has a responsibility to children who are orphaned and have no parental care. The Government thus has an obligation to provide social assistance to these children, via a mechanism that is practical, reasonable and appropriate.

One of the ways, we recommend, is the mentorship scheme proposed in the SALRC draft of the Children’s Bill. This scheme should apply to children where it is not in their best interest to be living in a child-headed household without adult supervision, *and* where a potential adult mentor is available. Essentially, child-headed households could be assisted by mentors, as required and available, (individuals working in NGOs or CBOs and other responsible individuals) to provide the necessary adult supervision in the application and spending of the grant. However, it is important to stress that children who are in fact performing the function of primary care-giver should be able to claim and access the CSG on their own behalf and on behalf of children in their care. The mentorship scheme should only kick in when children are too young or immature to perform the functions of a primary care-giver, or where there are no adult mentors available in the community.

**Insert new section after section 15:**

**Application for social assistance for a child-headed household**

... (1) The provincial Department of Social Development, Child and Family Court or a non governmental organisation designated by the provincial department, may appoint mentors to apply, collect and administer social assistance on behalf of children living in child headed households.

(2) The procedure for appointment and ensuring accountability of mentors must be prescribed.

(3) The mentor referred to in subsection (1) –

(a) may apply, collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled; and

(b) is accountable to the child and family court, or the provincial department of social development, or to another organ of state or a non-governmental organisation designated by the provincial head of social development, for the administration of any money received on behalf of the household in the prescribed manner.

(c) may not take any decisions concerning such household and the children in the household or child without consulting –

i. the child at the head of the household; and

ii. given the age, maturity and stage of development of the other children, also those other children;

**Insert required definitions:**

**“child-headed household”** means a household where –

- (a) the parent or primary care-giver of the household is terminally ill or has died because of an AIDS related illness or another cause;
- (b) no adult family member lives with and provides care for the children in the household; and
- (c) a child has assumed the role of primary care-giver in respect of a child or children in the household.

**Motivation:** A definition of child headed households is needed for the procedures outline in the new section 15 aimed at enabling children in child headed households to benefit from social assistance grants. Please see new section 15 below.

**"mentor"** means an individual or organisation who has been appointed by the relevant provincial Department of Social Development, a designated non-governmental organisation, or the Child and Family Court, to apply for, collect and administer a grant on behalf of a child living in a child headed household

**Motivation:** We recommend a definition of mentor in order to comply with the new section 15.<sup>14</sup>

### **5.3 Direct access for children who are primary care-givers**

Currently, many children who are looking after other children in so-called child-headed households, as de facto primary care-givers, are not able to access social assistance due to Departmental policy that only people with ID documents can apply for social assistance on behalf of children in their care. Children can only get ID's from the age of 16, hence the effective exclusion of children under that age from accessing social grants on behalf of children over whom they are the primary care-giver.

This discriminatory practice is arguably unconstitutional and the Minister is thus obliged to provide a mechanism for these particularly vulnerable children (living in child-headed households) to be able to access social assistance for the siblings that they are looking after. One such mechanism, as recommended above, is an adult mentorship model whereby a responsible adult or organization is designated a 'mentor' over these children and is able to obtain the grants on behalf of children in a child-headed household. It is submitted that this scheme should apply where the child head of the household is too young or immature to look after other children without external adult support. An assessment of the situation should be made by a community or state social worker and recommendations made to appoint a mentor.

In circumstances where the child is old enough and sufficiently responsible to continue to play the role of primary care-giver, and where there is no adult mentor available, these child-heads should be able to access grants directly if they are *de facto* the primary care-givers of other children, irrespective of their age. Thus there should be no specified limitation on the age of a primary care-giver.

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<sup>14</sup> See South African Law Commission, Discussion Paper on the Review of the Child Care Act, 2001, p.565-566; South African Law Commission, Draft Children's Bill 2002; and South African Law Commission, Final report on the Review of the Child Care Act 2002, p.169.

We submit that both options should co-exist as many child-headed households may not have access to an adult, or organization, who can provide mentorship and the law must be flexible enough to ensure that these children can access assistance in these circumstances.<sup>15</sup> Children living in child-headed households are particularly vulnerable and need to be adequately supported with financial assistance from the state, irrespective of whether there is an adult to supervise them or not. The Constitutional Court has said in key decisions that a reasonable plan or programme designed to increase access to socio-economic services requires inbuilt flexibility to ensure responsiveness to differing and changing circumstances and contexts.<sup>16</sup> The Constitutional Court in *Grootboom* has also stated that a programme for the realization of socio-economic rights must:

“be balanced and flexible and make appropriate provision for attention to... crises and to short, medium and long-term needs. A programme that excludes a significant segment of society cannot be said to be reasonable.”<sup>17</sup>

In *Grootboom*, the court also held that:

“[t]o be reasonable, measures cannot leave out of account, the degree and extent of the denial of the right they endeavour to realize. Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realization of the right.”<sup>18</sup>

#### **Recommended amendment to definition:**

“**primary care giver**”, means a person ~~older than 16 years~~, whether or not related to a child, who takes primary responsibility for meeting the daily care needs of that child;

### **5.4 Redefining the Care Dependency Grant**

We recommend that the focus of the disability grants should be on the needs of disabled adults and children and not on how dependent they are on care, therefore we suggest a change to the name of the ‘care dependency grant’ to that of ‘special needs grant’ as recommended by the South African Law Reform Commission in their Draft Children’s Bill.

We recommend that the focus of the Special Needs Grant should be on the needs of disabled children and not on how dependent they are on care. With respect to the removal of the requirement that the child be receiving permanent care, it is submitted that this should not be a pre-condition as many children do not have access to permanent care.

If the disability needs to be severe to create an entitlement to the grant, it is submitted that these requirements preclude children from getting the grant due to problems of definition and measurement of severity. This requirement also excludes children with moderate disabilities who may have high needs. 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 HSRC is currently developing a needs-based assessment tool for children and adults with disability for the Department of Social Development. It is therefore critical that the definitions for children and adults with disability should be amended to fit the framework of a needs-based assessment.

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<sup>15</sup> See Goldblatt and Liebenberg op cit note 9, and Rosa, op cit note 9.

<sup>16</sup> *Grootboom*, paragraph 41 and *Treatment Action Campaign*, at paragraph 68.

<sup>17</sup> *Treatment Action Campaign*, at paragraph 68 and *Grootboom* paragraph 43.

<sup>18</sup> *Treatment Action Campaign*, at paragraph 68 and *Grootboom* paragraph 44.

We also recommend that the disability or chronic illness need not be permanent in order to satisfy the eligibility criteria for the grant, but that in the context of treatment being available for certain conditions, children may only have special needs in respect of their disability or chronic illness for a limited period of time. Again, the assessment as to whether the grant is made temporary or permanent and the length of the time period for a temporary grant should depend on the *special needs* that the child has and may have with respect to that disability or chronic illness, as recommended by the Taylor Committee Report.

### **Suggested amendments:**

#### **Special Needs Grant ~~Care Dependency Grant~~**

7. (a) A person is, subject to section 5, eligible for a ~~care dependency grant~~ Special Needs Grant to ensure that their special needs are met if he or she is a parent, primary care giver or foster parent of a child who ~~requires and receives permanent care or support services due to his or her~~ has a physical or mental or intellectual or sensory disability or chronic illness.

(b) A person contemplated in paragraph (a) is not eligible for such a grant if the child is cared for on a 24 hour basis for a period exceeding six months in an institution that is fully funded by the State.

### **Suggested definitions:**

**“care dependent child child with a disability”** means a child who requires ~~and receives permanent care or support services~~ due to his or her ~~severe physical, or mental, intellectual or sensory disability or chronic illness, including HIV/AIDS;~~

**“chronic illness”** means a long term health condition which affects the person for at least one year or more, and produces one or more of the following sequelae:

- (i) limitation of function compared with peers.
- (ii) dependence on health care
- (iii) the need for medical or other services more than is normal, and/or
- (iv) requires long term health care

**Motivation:** If children with chronic illnesses are to be considered eligible for the care dependency grant, then the Social Assistance Bill would need to define chronic illness. Please see below for our motivation with regards to the extension of CDG to cover children with chronic illnesses. This definition has been developed by Dr Maylene Shung-King of the Children's Institute who is involved in the Department of Health's development of a National Policy on the Management of Chronic Diseases in Children, in consultation with a reference team.

## **5.5 Application of Act to refugees and permanent residents**

The Act must be applicable to refugees as well. In recent decisions the Courts have taken the view that, unless the relevant provision indicates that a constitutional right is available only to citizens, it is available to everyone (see *Tetty & Another v Minister of Home Affairs & Another* 1999 (3) SA 715 (D) @ 729 and *Patel & Another v Minister of Home Affairs & Another* 2000 (2) SA 343 (D) @ 349).

In addition, in terms of Article 2 of the Convention on the Rights of the Child (ratified by South Africa in 1995), a state party to the Convention may not discriminate against or deny any of the rights in the Convention (including social security) to a child due to the child's national origin.

## Suggested amendments:

2. (1) A person who is not a South African citizen has the same rights and obligations in terms of this Act as a South African citizen if an agreement, contemplated in section 231(2) of the Constitution, between the Republic and the country of which that person is a citizen makes provision for this Act to apply to a citizen of that country who resides in the Republic. Notwithstanding the provisions of any such agreements a person qualifies for social assistance in accordance with the provisions of this Act, if such person is a permanent resident, or has lived for a minimum of five years of his or her adult life as a temporary resident in the Republic of South Africa or if such person is the spouse or life partner or dependant on such qualifying permanent or temporary resident. The same rights shall be enjoyed by the child, spouse or life partner of such permanent or temporary resident.

## Suggested insertions:

Insert new section 2. (2)(a) and (b)

(2) (a) Notwithstanding the provisions of subsection (1), the provisions of this Act will apply to all refugees in accordance with the provisions of Section 27(c) of the Refugees Act, 130 of 1998 and in further accordance with Article 24(1) of the 1951 United Nations Convention and Protocol relating to the Status of Refugees and Article 22 of the Universal Declaration of Human Rights. The same rights shall be enjoyed by the child, spouse or life partner of such refugee.

(b) In addition to subsection (2)(a), this Act shall further apply to all children who are dependant on refugees and asylum seekers, or who have entered South Africa as undocumented children.

## Eligibility for social assistance

6. A person is entitled to the appropriate social assistance grant if he or she —
- (a) is eligible in terms of sections 2(1), 6, 7, 8, 9, 10, 11 or 12;
  - (b) is resident in the Republic at the time of making the application;
  - (c) is a South African citizen, or a refugee, or a child, spouse or life partner of a refugee, or a child who is dependant on refugees and asylum seekers, or an undocumented child, or is a member of a group or category of persons prescribed by the Minister, with the concurrence of the Minister of Finance, by notice in the *Gazette*;
  - (d) complies with any additional requirements or conditions prescribed in terms of subsection (2).

## 5.6 Administration of Social Assistance

### 5.6.1 Application for Social Assistance

Many applicants for social assistance are sent backwards and forwards from social services offices to produce various documents required for their application. Sometimes these documents are not those specifically listed and this is confusing for applicants. Thus the requests for additional information for the purposes of assessing potential beneficiaries should be limited by allowing only those documents that are 'reasonably necessary' in order

for the administrator to consider an application. This will prevent the many cases of applicants being sent back and forth unreasonably, to produce various documents.

Furthermore, in terms of the principles of administrative justice, applicants for social assistance are entitled to reasons in writing for their failure to apply for social assistance successfully as well as the relevant appeal mechanisms. In our experience we have found that many people are turned away from social services offices and have their applications turned down without so much as an explanation as to why their application has been unsuccessful, nor are they told of the appeal mechanisms which they are entitled to make use of.

### **Suggested amendments:**

#### **Application for social assistance**

15. (1) Any person who wishes to apply for social assistance contemplated in sections 6 to 12 must do so in the prescribed manner.

(2) In considering an application made in terms of sub-section (1), the Agency may conduct an investigation and request such additional information, as is reasonably necessary to consider the application.

#### **Appeal**

19. (1) If an applicant disagrees with a decision made by an administrator in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.

(2) The Minister may, after considering the appeal and the administrator's reasons for the decision -

- (a) confirm, vary or set aside that decision; or
- (b) appoint an independent tribunal to consider the appeal in accordance with such conditions as the Minister may prescribe by notice in the Gazette, and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision or make any other decision which is just.

(3) Any decision taken by the Minister or an independent tribunal must be communicated to the applicant or beneficiary, as the case may be, together with adequate reasons, in writing.

## **6. CONCLUSION**

We recommend that the Portfolio Committee reject the Social Assistance Bill and South African Social Security Agency Bill at this point in time and call on the Committee to encourage the Executive to engage with the Taylor Committee Report in order to formulate a Comprehensive Social Security Policy whereafter the drafting of comprehensive social protection legislation will be appropriate.

However, if the Bills are to be passed, we request that our comments, based on our experience of the administration of social assistance on the ground, are taken into consideration in order that the shortfalls in current social assistance may be effectively addressed.