



ACCESS

Alliance for Children's Entitlement to Social Security

SOCIAL SECURITY POLICY AND LAW REFORM UPDATE

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Produced for ACCESS by the Children's Institute (UCT)

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This update contains current information on the social security policy and law reform processes that affect children. We will be sending you an Update every month. We hope that this information is useful to you. Please contact us if you have any thoughts, views, ideas or questions on social security policy or law reform.

Some of the ways in which you can participate in the policy and law reform processes:

- ✚ Communicate with your local MP about what you and your organization are doing and what you think of the laws and policies that are being proposed, through visits to their constituency offices, telephone calls, letters, faxes etc.
- ✚ Talk/write to your MEC. You can also meet with provincial and local officials, particularly those involved with social development, health, education or finance, to raise your concerns.
- ✚ Have meetings or discussions with other people in your community about how the proposed laws and policies might affect you, or ideas for what kinds of policies or laws you would like to see in place.
- ✚ Send submissions on the proposed laws to the Department and to Parliament when they call for submissions.
- ✚ Use local and national media to inform others about the social security reform and important issues in your community. Use community radio, write letters to the editor, or opinion articles for local and national newspapers. Ask your local station to do a story on the reform processes that are currently happening or talk about your own or your organization's experiences with these issues.

Acknowledgements

The Update is compiled by the Children's Institute, UCT. (Solange Rosa, Paula Proudlock and Kevin Ernstzen)

Information is obtained from: Parliamentary Monitoring Group, Contact Trust, Department of Social Development, Black Sash, Socio-Economic Rights Project (CLC at UWC), Refugee Rights Project, Lawyers for Human Rights and the Legal Resources Centre.

1. LEGISLATION

Extension of the Child Support Grant

Latest Developments:

It is almost three months since the President, in his state-of-the-nation address, announced the progressive implementation of the child support grant to children under 14 years, starting with children under 9 as of 1st April 2003. Despite a clear policy position made three months ago by National Government, government has not yet produced or implemented a communication strategy on the implementation of the extension.

As a result, there has been much confusion as to how the phased-in approach is working, amongst provincial officials and people seeking the CSG. Welfare Departments in some provinces have taken unilateral decisions not to register children who are between eight and nine years old. For example in Mpumalanga there are reports that only children who were in the system before and who fell off after reaching 7 can register this year. In Limpopo and the Eastern Cape there are reports that the Welfare Departments have taken a decision not to register children who are between eight and nine years until next year "because of lack of capacity".

ACCESS is still continuously receiving cases and reports of parents and caregivers being turned away from social services offices across South Africa for various reasons related to a lack of clear communication and an unreasonable policy.

Background:

Government has extended the Child Support Grant in phases to children under the age of 14 years over a period of 3 years.

- The first phase is from 1st April 2003 to 31st March 2004
Children under the age of 9 may apply for the CSG during this phase.
- The second phase is from 1st April 2004 to 31st March 2005
Children under the age of 11 may apply for the CSG during this phase.
- The final phase is from 1st April 2005 to 31st March 2006
Children under the age of 14 may apply for the CSG at this stage.

The regulations came into effect on 1 April 2003.

The current Child Support Grant was introduced in 1998 as government's primary programme aimed at very poor children under 7 years of age. The grant now reaches 2, 6 million children under 7. The Department has projected that the extension of the grant from children under 7-years to children under 14-years, will add a further 3.2 million children to the programme. An extra R10, 9 billion has been allocated to the Department in order to implement the extension over a three year period.

The Minister of Social Development, in response to a question in Parliament as to whether the CSG will be extended to all children under 18 years, said that "it is hoped that in future the grant will progress to cover all children up to 18 years of age". (5 March 2003). The extension of the Child Support Grant to all children under 18 years of age is one of the recommendations of the Report of the Committee of Inquiry into Comprehensive Social Security System for SA.

For more information contact Selwyn Jehoma at the Department of Social Development on (012) 312 7746 or 7747 or email: jehomas@socdev.gov.za

What is ACESS doing?

ACESS has been liaising with the Department of Social Development to get clarity for members and the public in general on how the phased-in system will work. After receiving reports of confusion from caregivers, ACESS and the Children's Institute began to produce Case Alert, a bi-weekly update monitoring the implementation of the phased-in extension. Case Alert highlights the real problems that people are experiencing on the ground in trying to access the extended CSG. Case Alert is sent to the National and Provincial Departments of Social Development, Parliament, the Media and civil society.

The Children's Institute has been producing regular Case Alerts on the implementation of the phased-in extension, on behalf of ACESS. The Case Alerts highlight the real problems that real people are experiencing on the ground in trying to access the CSG.

ACESS is calling on the Department to institute the following:

- There is an urgent need for the government to have a clear communication strategy on the new policy position,
- Such a communication strategy should be written and widely distributed in all forms of media in different languages to both government officials and caregivers/parents across the country,
- A policy decision should be taken that once a child has been registered for a CSG, they do not fall off the system until they reach age 14 years. This would also avoid the unnecessary bureaucratic process of registering a child three times before they reach 14 and causing unnecessary costs to parents/caregivers. This is in effect what will happen to most children aged 8 who turn 9 years before 1 April 2004.
- All the confusion and disadvantage to caregivers and children could be avoided if Government took a decision to IMMEDIATELY extend the child support grant to all children under 14 and committed to a reasonable timeframe for the extension of the grant to all children under 18 years.

ACESS, in partnership with Soul City and the Department of Social Development, is also involved in producing materials, including posters and pamphlets, to inform people of the extension, as well as publicizing on radio, TV and other media. Jamborees and roadshows have also been happening in collaboration with Soul City and the Department of Social Development to register as many eligible children as possible.

For more information, contact Solange Rosa or Paula Proudlock (Children's Institute - UCT) solange@rmh.uct.ac.za, 084 408 2956 or paula@rmh.uct.ac.za 021 – 689 5404

Amendment of the Social Assistance Act

Latest Developments:

The new draft Social Assistance Bill is still with the Department of Social Development and has not yet been sent to the Minister. The Department has indicated that it will be sent to the Minister together with the draft National Social Security Agency Bill, once that Bill has been finalized.

Background:

The Social Assistance Act provides social grants for the following categories of people: the aged (women over 60 years of age, and men over 65 years of age); adults with disabilities; children in foster care; children with severe disabilities; and very poor children under the age of nine. The Report of the Committee of Inquiry into a Comprehensive Social Security System for South Africa identified a number of categories that remain uncovered by social assistance. These include children over the age of seven, children with chronic illnesses and disabilities who do not meet the strict medically based disability criteria, all unemployed adults who are not yet old enough to qualify for a pension and all non-citizens.

The new draft Social Assistance Bill comes at a time when Cabinet has not yet met to discuss and make decisions with regards to social security policy reform. Cabinet will be meeting to take these decisions in July 2003. The bill will therefore be adapted again after Cabinet has met in July and taken decisions with regards to the recommendations of the Committee of Inquiry into a Comprehensive Social Security System for South Africa.

For more information contact Selwyn Jehoma at the Department of Social Development on (012) 312 7746 or 7747 or email: jehomas@socdev.gov.za

What is ACCESS doing:

Since March 2001, ACCESS has been providing input to the Department of Social Development on issues relevant to the Social Assistance Act. Most recently, when the Department asked for comment on the draft Social Assistance Bill in January 2003, ACCESS and partner organisations made a submission to the Department of Social Development. The submission included suggestions on how to enable vulnerable children, including child-headed households, refugee children, street children and children affected and infected with HIV/AIDS to access social assistance. Some concerns were addressed by the Department, however, critical issues on vulnerable children accessing social assistance are outstanding. The Department has said that these issues should be dealt with in the Children's Bill process.

ACCESS is planning to make further submissions to the Department, Minister and to Parliament. We will also be organizing meetings between members and Departmental officials to discuss the critical gaps in more detail, including a workshop on access to social assistance for children living without adults in June 2003.

For more information, contact Solange Rosa or Paula Proudlock (Children's Institute, UCT) solange@rmh.uct.ac.za, 084 408 2956 or paula@rmh.uct.ac.za, 021 - 689 5404

Draft Children's Bill

Latest Developments:

The Department of Social Development has held bi-lateral meetings with individual departments of Labour, Justice, Health, Home Affairs, Local Government, Education and SAPS over the past month, in order to discuss issues upon which no consensus had been reached at the interdepartmental workshop in March 2003. The Department is currently making the necessary amendments to the Bill and will then take the amended Bill for final agreement amongst the Departments concerned. Following that process, the Bill will be costed and presented to the Minister, who will then submit it to the Cabinet Committee. At that stage, ACCESS members will have an opportunity to comment on the proposed bill.

The big question on everyone's minds is will the Bill make it to Parliament this year or will it have to wait until after the April 2004 national elections?

Background:

The Draft Children's Bill constitutes a comprehensive rewrite of the 1983 Child Care Act. The re-write is aimed at: ensuring that the new Act takes into account South Africa's International Law and Constitutional obligations towards children; harmonising all relevant child care legislation; and Africanising our child care system. The draft bill contains a list of children's rights. This list does not merely incorporate a list of the rights in the Constitution, but elaborates on the Constitutional rights and provides greater clarity on how they should be interpreted and the obligations that flow from the rights. The draft Children's Bill also contains a social security scheme for children that includes a child support grant for all children under 18 years of age.

In January 2003, the South African Law Commission (SALC) finished its 5 year process of reviewing and re-writing the 1983 Child Care Act and submitted it to the Minister of Social Development. The Department of Social Development is now primarily responsible for driving the process forward.

For more information contact Agnes Muller at (012) 312 7586 or email: agnes.muller@socdev.gov.za

What is ACCESS doing:

Since March 2001, ACCESS has been providing information to the SALC and the Department with regards to the social security aspects of the Children's Bill. ACCESS is on the National Working Group which is leading the process for debate and discussion amongst civil society and assisting with coordination of input into the draft bill when it goes to Parliament. Within this National Working Group, ACCESS will facilitate debate, discussion and input on the social security provisions, including how they affect vulnerable children.

For more information on the social security aspects of the Bill, contact Solange Rosa (Children's Institute, UCT) on 084 408 2956, solange@rmh.uct.ac.za

For information on other aspects of the Bill and the National Working Group, please contact Paula Proudlock (Children's Institute, UCT) on 021 – 689 5404 or paula@rmh.uct.ac.za

Draft National Social Security Agency Bill

Latest Developments:

The draft National Social Security Agency Bill is still with the Department of Social Development and has not yet been sent to the Minister. The Department has indicated that it will hold on to the bill until they have had a chance to meet with civil society and NEHAWU regarding objections to the setting up of an Agency.

A briefing by the Department to the Portfolio Committee on Social Development on progress in relation to the Social Security Agency Bill, was held on the 21st of May. At the briefing, the Department reported that it has now finalised a draft and submitted this and the Social Assistance Bill to the state law advisors. A new directorate is to be established to focus only on

social assistance. The Department is setting aside fifteen staff members (to be deployed next week) to concentrate solely on looking at the implications of the reorganisation of administration of grants in setting up the agency. They will look at the constitutional, financial, personnel and service delivery implications of a new agency, which will include assessing the implications in a transitional phase.

A complete detailed investigation as just outlined should be finished by June and submitted in time for the cabinet Lekgotla. The Department indicated that it was likely that there will be much debate around the Bill and it will not be passed in the present parliamentary year. Elections next year would delay it being passed until the end of 2004, and it would only start the process of becoming operational in 2005.

Background:

The draft National Social Security Agency Bill seeks to create a separate public entity outside of the public service that will be primarily responsible for the delivery of social grants. Over time, the IT and physical infrastructure of the Agency could also be used to deliver other cash transfers and benefits such as UIF, Workmen's Compensation. This would move us towards an integrated social security delivery service.

The draft bill was submitted to the National Treasury, the Department of Social Development and the Department of Public Service and Administration (DPSA). The proposal was that a specialist institution be established to manage and administer social grants. The Agency would be a public entity in terms of Schedule 3A of the Public Finance Management Act. It was further proposed that a Transitional Committee from the 3 departments be established to carry this work forward. In October 2002, the Cabinet gave their approval in principle to the setting up of an Agency.

For more information contact Selwyn Jehoma at the Department of Social Development on (012) 312 7746 or 7747 or email: jehomas@socdev.gov.za

What is ACCESS doing?

A submission prepared by civil society organizations including the Community Law Centre at UWC, ACCESS, the Unions and others, was submitted to the Department on Social Development and the Minister for Social Development. No parliamentary hearings will be held specifically on the Agency Bill, but the issue of an Agency will arise and be discussed in the parliamentary hearings on the Committee of Inquiry into a Comprehensive Social Security System. These hearings are taking place on 9 and 10 June in Parliament.

For more information, contact Prof Sandy Liebenberg (Socio Economic Rights Project, CLC) on 021 -959 2950, sliebenberg@uwc.ac.za

2. POLICY

Reform of South Africa's Social Security Policy Report of the Committee of Inquiry into a Comprehensive Social Security System

Latest Developments:

The Portfolio Committee on Social Development has scheduled **public hearings on the Report for 9 and 10 June 2003**. Cabinet will be discussing the Report in July.

Background:

The Committee of Inquiry (COI) was established by Government as a research and advisory body to inform government's social security policy reform process. The Committee's task was to investigate options for reforming South Africa's social security system. This involved examining the poverty problem in South Africa; looking at the current social security system, including all the social grants (eg. child support grant and the pension); and making recommendations for reform.

The Report recommends that South Africans should have a package of grants, benefits and services to protect them against poverty:

To address Income Poverty, the Committee recommended that three universal grants be provided. Through these grants it is hoped that everybody would get a basic minimum grant to reduce poverty. Universal means that everybody should get them. The three grants are the Basic Income Grant (for everyone above 18 but below 65), the Child Support Grant (for children 0 to 18 years) and the Pension (old people over 65).

To provide for special needs of children e.g. those living with disabilities, chronic illness or children who are forced to live apart from their parents: The report recommends the Foster Care Grant for children in alternate care (not living with their parents) and the Care Dependency Grant for children who are disabled. It suggests that the way we define disability must be broader to include children who are chronically ill, including those with HIV/AIDS.

The Committee further recommends that a basic package of services must be available – according to the report these services will be provided to everyone (universal) or may have some rules limiting who can benefit from them, including free and adequate public health care, free primary and secondary school, free basic water and sanitation, free basic electricity, accessible and affordable public transport, access to affordable and adequate housing, and access to jobs and skills training.

For more information contact Selwyn Jehoma at the Department of Social Development on (012) 312 7746 or 7747 or email: jehomas@socdev.gov.za

What is ACCESS doing?

ACCESS was formed in March 2001 primarily as a vehicle for the children's sector to engage with the national social security policy reform process. Since March 2001, ACCESS has sent numerous submissions to the COI, Department of Social Development and Parliamentary committees on Social Development. The submissions have put forward ACCESS members recommendations for a new comprehensive social security system that prioritises children. The majority of ACCESS's recommendations, stemming from the March 2001 workshop, were incorporated into the COI Report Recommendations that Cabinet will be considering in July 2003.

ACCESS is preparing members and children for a number of presentations and submissions for the public hearings of the Portfolio Committee on Social Development on the Recommendations of the Report.

For more information, contact Solange Rosa or Paula Proudlock (Children's Institute, UCT) solange@rmh.uct.ac.za, 084 408 2956 or paula@rmh.uct.ac.za, 021 – 689 5404.

Draft policy on social benefits to children and families

Latest Developments:

In a briefing to the Portfolio Committee on Social Development in Parliament on 5 March 2003, the Department reported that they intend to draft and finalise a policy on social benefits for children and families by December 2003.

Background:

This policy is being drafted by the Chief Directorate for Social Security Policy and Planning. (Directorate for Child and Family Benefits). The policy is intended to be a comprehensive policy and implementation framework for child grants. The policy will need to be followed by legislation (amendments to the Social Assistance Act and incorporation of aspects into the new Children's Bill).

Policy on social benefits to the disabled and elderly

Latest Developments:

In a briefing to the Portfolio Committee on Social Development in Parliament on 5 March 2003, the Department reported that they intend to draft and finalise a policy on social benefits for the disabled and elderly by November 2003.

Background:

This policy is being drafted by the Chief Directorate on Social Security Policy and Planning (Directorate on Disability and Retirement Benefits). It will include a policy on deductions from social grant payments.

Anti-poverty Strategy

Latest Developments:

In a briefing to the Portfolio Committee on Social Development in Parliament on 5 March 2003, the Department of Social Development listed this strategy as a key output for 2003/2004. The Department intends to have a draft strategy ready by March 2004.

Background:

Chief Directorate on Development Implementation Support. (Directorate on Poverty Eradication).

✚ Integrated Strategy on HIV/AIDS

Latest Developments:

In a briefing to the Portfolio Committee on Social Development in Parliament on 5 March 2003, the Department of Social Development listed this strategy as a key output for 2003/2004. The Department reported that it intends to finalise this strategy by December 2003.

Background:

Chief Directorate on Development Implementation Support (Directorate on HIV/AIDS).

✚ Policy on the protection of orphans and vulnerable children affected by HIV/AIDS

Latest Developments:

In a briefing to the Portfolio Committee on Social Development in Parliament on 5 March 2003, the Department of Social Development listed this policy as a key output for 2003/2004. It intends to have the policy approved and co-ordinated action formalized by end of 2003.

Background:

Chief Directorate on Development Implementation Support (Directorate on HIV/AIDS).

✚ Policy on Social Relief of Distress

Latest Developments:

The Social Development Budget Vote 19 of 2003 states on page 423 that this policy will be finalized by December 2003 and implemented by November 2004.

Background:

Chief Directorate on Social Security Policy and Planning (Directorate on Child and Family Benefits)

The policy is intended to be a comprehensive policy and implementation framework for social relief of distress.

What are ACCESS members doing:

For more information, contact Isobel Frye from Black Sash on 021-461 7804 – ifrye@blacksash.org.za

✚ Strategy for the delivery of social welfare services to the disabled

Latest Developments:

The Department reported to Parliament on 5 March 2003 that this strategy will be finalized by March 2004.

Background:

Chief Directorate on Welfare Services Transformation (Directorate on Services to Persons with Disabilities).

Provision of anti-retroviral drugs in public hospitals

Latest Developments:

The Western Cape Government has made a public statement indicating an intention to provide HIV positive children with ARV treatment.

The following article appeared in the Cape Times on 17 April 2003:

"The aim of a plan, announced this week by the province's health MEC, Piet Meyer and health chief Craig Househam, is to provide antiretroviral drugs to all the children and babies in the province who need them. The Western Cape will be the first province to provide the drugs to children.

The plan will be finalised within two months, said provincial deputy-director general of health, Fareed Abdullah.

There are more than 200 children taking ARVs at Groote Schuur, Tygerberg and Red Cross Children's hospitals and at the Medécins sans Frontières clinic in Khayelitsha. Between 500 and 1 000 more children in the province would probably need the drugs, said Abdullah.

The drugs would cost around R8 000 a child a year, Abdullah said. The programme had not been budgeted for, he said, but the department would review this year's budget."

Background:

Cabinet is studying the possibility of providing anti-retroviral drugs (ARVs) in the public health sector as a means of improving the quality of life for those living with HIV/AIDS. A bilateral technical task team of the Department of Health (DOH) and the Treasury is working on cost implications of an expanding response to the impact of HIV/AIDS on all sectors of society.

For more information contact Nono Simelela at (012) 312 0121/2 or email: simeln@health.gov.za

What is ACCESS doing:

ACCESS is monitoring progress on this and also advocating for children infected with HIV/AIDS to access the care dependency grant.

Disability Assessment Tool

Latest Developments:

Legislation passed in 2001 has brought in disability panels to replace the State Medical Officer's assessment role, as well as the Pension Medical Officer's final approval of the application. However, no clear guidelines as to how these panels would operate are in place. Furthermore, provinces have the choice of using panels or continuing to use SMO's as assessors.

The development of a new assessment tool for use by the disability panels is underway. It is hoped that the new tool will include needs-based criteria, rather than a purely medical orientation. Consultative workshops, hosted by the Human Sciences Research Council, the South African Federal Council on Disability and the Department of Social Development, have been held around the country in order to get input from the disability sector on the assessment tool.

Processes have also been initiated to review the present definitions of disability, which would impact on both the adult and child disability grants.

Background:

The Care Dependency Grant of R 700 per month is awarded to caregivers of children with severe disabilities. The grant is intended to assist caregivers whose child can only be cared for at home. A child is therefore only eligible if he/she is aged between 1 – 18 yrs & requires permanent home care as a result of severe physical or intellectual disability. The grant is means-tested, with only caregivers receiving an income below R 48 000 p.a becoming eligible.

A State Medical Officer (SMO) employed in a government hospital performs an assessment to determine whether a child is severely disabled & requires care. The assessment is purely a medical assessment. However, the current assessment tool has serious defects and inadequately measures childhood disability and functioning. It also does not address the extra care needs of children with disabilities. Furthermore, there is a lack of guidelines & training in the assessment procedure & in the use of the tool.

The terms 'severe disability' & 'permanent home care' are not adequately defined in the Social Assistance Act. As a result, there is inconsistency with regards to the application of the eligibility criteria, as SMOs have varying interpretations of the criteria. In practice, assessors do not strictly adhere to the legislative criteria due to a lack of understanding of the criteria.

The scope of grant is limited, and excludes children with chronic illnesses, including children suffering from HIV/AIDS. It also excludes children with mild & moderate disabilities. Furthermore, children with severe disabilities who attend special schools are not entitled to the grant.

In practice, some children with chronic illnesses, including children with HIV do receive the grant, but only when their condition has become 'disabling'. In some instances, children with HIV are receiving it at an earlier stage.

For more information contact Hayley MacGregor at the HSRC on (021) 556 4822 or email: hmacgregor@hsrc.ac.za , or Petronella Linders at the SAFDC on 021-6854216 or email: petro@ability.org.za

What is ACCESS doing:

ACCESS members have attended the consultative workshops and provided input for the assessment tool, specifically in how it should relate to children's needs. ACCESS is continuing to monitor progress on the draft assessment tool and also advocating for children with moderate disabilities and chronic illnesses (including HIV) to access the Care Dependency Grant.

3. COURT CASES

Assignment: *Mashava v The President of the Republic of South Africa and Others, Case No. 17220/2002 (High Court, Transvaal Provincial Division)*

Background:

One of the major obstacles to the effective delivery of social grants has been the assignment of the administration of the Social Assistance Act to the provinces. What this assignment means is that the National Minister does not have clear policy control over the social assistance function and is thus unable to establish norms and standards for efficient and effective social security delivery. This is a problem because the National Government has no power to direct the provincial governments and has led to a varied and inequitable application of social security policy in the different provinces.

The assignment of the Act to the provinces is the subject of legal challenge in the *Mashava* case. The national government and all the provincial governments (with the exception of KwaZulu-Natal) are not opposing the challenge to the legal validity of the assignment. If the legal challenge succeeds, it will mean that the national Minister will have clear national control over social assistance and be able to set national policy in relation to the administration of social grants, and establish clear regulations, and norms and standards in relation to grants processing time, eligibility requirements, and suspension and termination procedures. The administration of social grants would then be delegated to the provincial spheres of government.

For more information contact Nick de Villiers at the Legal Resources Centre, Pretoria, on 012-3237673 nick@lrc.org.za.

Non-citizen's rights to Social Assistance: *Mahlaule and Others v The Minister of Social Development and Others, Case No. 25453/02 (High Court, Transvaal Provincial Division), Khosa and Others v The Minister of Social Development and Others, Case No. 25455/02 (High Court, Transvaal Provincial Division)*

Judgement:

In the case of *Mahlaule & others v The Minister of Social Development & Others*, the judge declared Section 4(b)(ii) of the Social Assistance Act, 59 of 1992, unconstitutional, and struck it down. That section says that only South African citizens are entitled to a child support grant. Both the applicant caregiver and the child were required under the Act to be resident in the Republic and citizens of South Africa, but this case says that applicants and children do not have to be South African citizens.

In the case of *Khosa & Others v The Minister of Social Development & Others*, the judge declared Section 3(c) of the Social Assistance Act, 59 of 1992, unconstitutional, and struck it down. In terms of Section 3(c), old age social grants (pensions) may only be paid to South African citizens resident in the Republic, however, the court has said that it is unconstitutional to require applicants to be South African citizens.

The Constitutional Court has yet to confirm both these judgements.

For more information contact Nick de Villiers at the Legal Resources Centre, Pretoria, on 012-3237673 nick@lrc.org.za or Shani Winterstein at Refugee Rights Project, Lawyers for Human Rights, Pretoria, (012) 320 2943 or email: shani@lhr.org.za