The majority of the children who participated were not receiving children’s suffering due to a lack of support from the government. Two large child participation processes undertaken by the Children’s Institute to hear from the children themselves 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 insufficient 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’ capacity to process them. Vital 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 that 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 millions of other children made vulnerable by growing up in an informal dwelling.

- It is only with the implementation of such social assistance that children in South Africa will be appropriately and equally supported through the AIDS pandemic.

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.

Extending the child support grant to children under 18 years

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 Constitution, 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 child’s means. The CSG (R70 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 R100 per month if the child is his or her sole-care primary care-giver either live in a rural area or in an informal dwelling. 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 a child support grant 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 well-coming 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 and 18 years.

The current CSG is a cash transfer from the government to support poor families in providing for children. The CSG is an important social protection system further to its knees, rendering it even less able to provide protection to children who really need it.

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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 fulfill its constitutional obligation to ensure the right of access to 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), Benefits of the CSG: Hearing from the children themselves

Two large child participation processes undertaken by the Children’s Institute and ACESS highlight the 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.

The impact of HIV/AIDS

Research by the Children’s Institute 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 insufficient 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’ capacity to process them. Vital numbers of orphans are already unable to access FCGs as a result.

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- It is only with the implementation of such social assistance that children in South Africa will be appropriately and equally supported through the AIDS pandemic.

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.

As of 30 September 2004, over 5.2 million children were receiving the CSG. Estimates based on 2001 show that a total of 9.7 million children under 18 years of age were living on less than R225 per month. (pers comm. A. Leatt from A. Leatt from SCOPEN data, Castren & Shakes 2004)
Reducing child poverty in South Africa

Using a poverty line of R420 a month, Woldari 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, Woldari found that 54.3% 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 (89%) and KwaZulu-Natal (66%) experience the highest child poverty rates.

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 deep poverty,
- 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 are poor. This amounts to more than 13 million children. However, poverty is not evenly distributed among 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 BGI.

In the case of Grootboom vs the State, the Constitutional Court elaborated upon the requirement on the State to institute a rea- sonable 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.

The criteria include the assurance that the programme does not ‘exclude those in desperate need and living in intolerable condi- tions’. According to the Court, 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 who are living in poverty.

In addition, the Constitutional Court iterated that ‘a programme that excludes a significant segment of society cannot be said to be “reasonable”. 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 pro- gramme 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.

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 assist- ance. 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 no assistance.

Children speak on poverty

“I don’t have uniform for school. I will be happy if I can have money for trans- port 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.”

The Constitutional Court reaffirmed the position in the TAC case and went further by ruling that social security (section 27(1)(c)) can indeed create duties for the State and independent rights of children who lack parental care.

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 to social assistance, 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 is the principle that ‘everyone is equal before the law and the state has the right to equal protection and benefit of the law’. Section 9(3) prohibits unfair discrimination ‘by the State directly or indirectly, on the basis of a list of grounds’ and possibly other unjustified grounds. Section 9(3) 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 dis- crimination 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 15-year-old but deny it to a 16-year-old who is in a similar poverty-stricken situation.

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.