



## Spotlight on policy affecting socio-economic rights

PAULA PROUDLOCK and SOLANGE ROSA, of the Children's Institute, University of Cape Town, look at a selection of policy and law reform processes that affect children's socio-economic rights, providing an update on the progress, the history and responses from civil society.

In this article we deal with:

- the report of the Committee of Inquiry into a Comprehensive Social Security System (The Taylor Report)
- the extension of Child Support Grant (CSG)
- the amendment to the Social Assistance Act
- the draft Children's Bill
- the National Health Bill
- the Disability Assessment Tool

### The Taylor Report

#### Latest developments:

The Portfolio Committee held public hearings on 9 and 10 June 2003.

Many presentations focused on children, the disabled, women and people living with HIV/AIDS, and the difficulties these sectors have in accessing social grants. All presenters supported the call for the extension of the CSG to age 18-years, while the majority called for a basic income grant for everyone to follow this extension.

A report of the proceedings and recommendations made in the presentations is currently being drafted. The report's recommendations will be discussed in the ANC Caucus Group, then possibly at the Cabinet *Lekgotla* in July and finally tabled in parliament at the next sitting. Cabinet will, we hope, make policy decisions on the main issues, which will allow currently stalled legislative processes to move forward.

#### Background:

The Committee of Inquiry (COI) was established by the government in 2000 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. the CSG 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 (universal meaning that everybody should get them). Through these grants it is hoped that everybody will get a basic minimum grant to reduce poverty. The three grants are the Basic Income Grant (for everyone above 18 but below 65), the CSG (for children 0–18-years) and the Pension (old people over 65).

To provide for special needs of children, the report recommends the Foster Care Grant (FCG) for children in alternative care (not living with their parents) and the Care Dependency Grant (CDG) for those who are disabled. It suggests that the way we define disability must be broadened 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, 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.

According to the report, these services will be provided to everyone or may have some rules limiting who can benefit from them.

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### Civil society responses:

The Alliance for Children's Entitlement to Social Security (ACCESS) was formed in March 2001 as a vehicle for the children's sector to engage with the national social security policy reform process that was taking place through the COI process. Since March 2001, ACCESS and its members have sent numerous submissions to the COI, the Department of Social Development and parliamentary committees on social development and social services. 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.

For more information, contact Solange Rosa (Children's Institute, UCT) [solange@rmh.uct.ac.za](mailto:solange@rmh.uct.ac.za), 021 685-7441.

### Extension of the Child Support Grant to age 14

#### Latest Developments:

It is three months since the implementation of the extension of the CSG to children under 14-years, starting with children under 9 as of 1st April 2003. Since the announcement of the extension there has been much confusion as to how the phased-in approach is working, amongst provincial officials and people seeking the CSG.

There is continuous reporting of cases of caregivers being turned away from social services offices across South Africa

for various reasons related to a lack of clear communication and an unreasonable implementation policy.

The National Government, together with other government departments, is still working on a public communication strategy on the implementation of the extension and will be consulting with other stakeholders at a forum in July. The draft Communication Strategy includes the use of the mass media, key milestones, and ministerial road shows and involves labour, business and NGO partners such as ACCESS, the Children's Rights Centre and Soul City. The communication strategy intends to run until March 2004.

Welfare Departments in some provinces have taken unilateral decisions not to register children who are between 8 and 9-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-years 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 8 and 9-years until next year 'because of lack of capacity'.

The national government has reportedly sent out an internal communication package explaining the implementation of the extension to all provincial departments. Provincial departments are in turn responsible for ensuring that their social security officials understand and implement the new law.

The CSG 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 CSG to all children under 18-years of age.

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is one of the recommendations of the Report of the Committee of Inquiry into Comprehensive Social Security System for South Africa and the South African Law Commission's draft Children's Bill.

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### Civil Society's response:

On 14 February 2003, ACCESS celebrated the announcement by the State President to progressively extend the CSG to poor children up to the age of 14-years. This announcement was a historic moment for the children of this country. The 400 member organisations of ACCESS have been working and campaigning for an extension of this grant to all children for the past five years and more.

When the announcement was made, ACCESS immediately started thinking of how to ensure the new policy was implemented quickly. However, when it was announced that the extension would be phased in over a three-year period using age as the determining factor, ACCESS members were very disappointed. From members' direct experiences of the complicated and difficult application processes, ACCESS knew that the phased approach would cause a number of problems. As predicted, these problems are occurring across the country, especially in the provinces with the highest poverty levels.

ACCESS 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 is working. After receiving reports of confusion from caregivers, the Children's Institute and ACCESS 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.

ACCESS 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 in different languages and widely distributed to all forms of media, as well as 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.

- All the confusion and disadvantage to caregivers and children could be avoided if the government took a decision to *immediately* extend the CSG to all children under 14 and committed itself to a reasonable timeframe for the extension of the grant to all children under 18-years.

ACCESS, 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 publicising it 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.

More recently, ACCESS and two members, the Children's Institute and the New Women's Movement, made a presentation to the National Council of Provinces (NCOP) Select Committee on Social Services regarding the problems encountered by people trying to access the new extended CSG. One of the people directly affected, Florence Mahlangu, also presented on her personal experience of trying to get the CSG for her 8-year-old son. The NCOP committee is helping to follow up with the provincial departments on the problems and promised to organise a meeting with the Minister for Social Development around the issues raised. Members of parliament in their constituencies will also be assisting people to access their grants.

If you have any cases to report, contact Connie Mpokotho at [connie@rmh.uct.ac.za](mailto:connie@rmh.uct.ac.za), Telephone 021 689-8303 or 689-5404.

### Draft Social Assistance Bill

#### Latest Developments:

In a presentation to the Portfolio Committee on Social Development, the department reported on progress on the Bill to date. Consultations have been held with the provinces and MINMEC and the draft Bill is going to cabinet in July with the intention of tabling it in parliament in August 2003.

#### 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 9.

The report of the Taylor Committee identified a number of categories that remain uncovered by social assistance. These include children over the age of 7 (now 9), 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.

In a recent presentation to the Portfolio Committee on Social Development, the Department of Social Development indicated that the new draft Social Assistance Bill will not be introducing any major policy shifts, since new national social assistance legislation is needed, because of the problems caused by the assignment of social assistance administration to the provinces. However contradictory information on this issue has been circulating and we are still awaiting clarity.

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### Civil society response:

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 its partner organisations – Black Sash, the Community Law Centre, Children's Institute and the South African Federal Council on Disability – made a submission. This 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.

Although some concerns were addressed by the department, critical issues on vulnerable children accessing social assistance are outstanding. In February, in response to a follow-up with the Department on these critical issues, the department said that these issues should be dealt with in the Children's Bill process. However, the Children's Bill process has now removed the social security aspects from the Children's Bill and the department has said that these issues will now be addressed in the Social Assistance Act.

ACCESS is planning to make further submissions to the Minister and to parliament. The Children's Institute, Black Sash, and the Community Law Centre will be organising 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 August 2003.

For more information, contact Solange Rosa (Children's Institute, UCT) [solange@rmh.uct.ac.za](mailto:solange@rmh.uct.ac.za), 021 685-7441.

### Draft Children's Bill

#### Latest Developments:

Over the past month the Department of Social Development has completed meetings with affected government departments, in order to reach consensus on the Bill, and has incorporated the necessary amendments. A costing process on the Bill has also been initiated but it is unclear as to when that process will be finalised. The draft Bill is now ready to be submitted to the Cabinet committee. However, Cabinet may not be prepared to consider the Bill without a complete costing.

The chapters on social security, inter-departmental planning and implementation, and Children in

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Especially Difficult Circumstances (CEDC) have all been removed from the Bill.

The Department reports that the social security aspects will be dealt with in the Social Assistance Act, yet the Director General has also indicated that the Social Assistance Bill will not introduce any new policy shifts. Clarity on where children's social security needs will be provided for, and how the children's sector can participate in the decision-making process, is urgently needed to avoid children's social security needs being neglected.

The interdepartmental planning and implementation chapter provided for a national policy framework that would provide a process and forum for interdepartmental strategies to be discussed, planned and implemented. The categories of vulnerable children, outlined in the chapter on CEDC, that would benefit from such an approach include child-headed households, children affected by HIV/AIDS, children suffering from malnutrition, children with disabilities and chronic illnesses, street children, refugee children, and children living in poverty. Addressing these children's many needs requires a co-ordinated, interdepartmental approach.

The Minister of Social Development has said on many occasions, "Children are everyone's business", and the Children's Sector supports the Minister in this call. However, the new draft of the Bill makes it clear that the protection and well-being of children is the Minister of Social Development's business. This places an undue onus on the Department of Social Development, while absolving the other departments from their responsibility to actively contribute to the care and protection of children.

#### 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 elaborates on the Constitutional rights and provides

greater clarity on how they should be interpreted and the obligations that flow from the rights.

In January 2003, the South African Law Commission (SALC) finished its five year process of reviewing and re-writing the 1983 Child Care Act and submitted it to the Minister of Social Development. All the leading children's sector umbrella organisations supported the SALC draft, with its innovative concepts aimed at addressing the high rates of child abuse and neglect and providing for better protection and care of all children in South Africa.

The Department of Social Development is now primarily responsible for driving the process forward.

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#### Civil society response:

Since 1995, when the SALC began its reform process, children's sector organisations have been actively contributing, at workshops and through submissions, to the law reform process. In January 2003, the Children's Institute and Resources Aimed at Prevention of Child Abuse and Neglect (RAPCAN) organised a small workshop of leading child sector organisations to discuss the need for a co-ordinated response from the sector. An interim Working Group was established and a follow-up National Workshop was convened in March 2003. Eighty child sector representatives attended the workshop and heard inputs from the SALC drafters and each other. More organisations have joined the Working Group, which is meeting again on the 17 and 18 July.

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

#### Draft National Health Bill

##### Latest Developments:

The National Health Bill (B32 of 2003) was tabled in parliament on 19 June 2003. The deadline for oral applications for parliamentary hearings is the 25 July and, for written submissions, 30 July 2003. The hearings will take place on 11, 12, and 13 August 2003.

#### Background:

The National Health Bill will repeal the 1977 National Health Act and create a new regulatory framework for the national health system. The Bill also sets out the rights and obligations of both users and health care providers.

For more information contact Debbie Pearmain at 012 312-0611 or peard@health.gov.za

#### Civil society response:

The Children's Institute is advocating for child specific health provisions to be incorporated into the Health Bill. The Bill represents a golden opportunity to entrench the gains made in child health care since 1994 and to legislate for the further promotion and protection of children's health rights. While the White Paper on Health recognised the need to create specialised structures and services for children, the Bill does not follow through with this vision; instead, it focuses on setting in place a purely regulatory system.

The inclusion of children's rights to basic health care services in the Constitution [s28(1)(c)] has been interpreted to mean that children's health care rights should enjoy priority when the state drafts legislation, allocates budgets or makes executive policy decisions. It can, therefore, be argued from a constitutional perspective that the National Health Act should include provisions aimed at ensuring that children's basic health care needs are adequately provided for and that there is a recognition of the special needs of children.

For more information, contact Paula Proudlock (Children's Institute, UCT) paula@mh.uct.ac.za, 021 685-1583.

#### Disability Assessment Tool

##### Latest Developments:

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

#### Civil society response:

Doctors and representatives from the disability (Disabled Children's Action Group (DICAG) and SAFCD) and children's sectors (Children's Institute and the Child Health Unit) have been calling for the CDG definition and eligibility criteria, and the assessment tool and process to be reformed for a number of years. The hard work by these doctors and organisations has resulted in a recognition of the need for the policy to shift and the initiation of a process to amend the assessment process and tool. However, these hard gains need to be followed through with continued input and advocacy to ensure that the final policy and legislative changes are made and the assessment tool follows these shifts.

For more information, contact: Petronella Linders at the SAFDC on 021 685-4216 or e-mail petro@ability.org.za

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 have a purely medical orientation. Consultative workshops, hosted by the Human Sciences Research Council (HSRC), the South African Federal Council on Disability (SAFCD), 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.

A draft Assessment Tool was developed and sent to stakeholders for comment. Those comments were incorporated and a first draft was 'piloted' in the North West in early July. It is now being revamped and will be piloted again in Bloemfontein and then KwaZulu-Natal.

Once all the piloting outcomes are incorporated, the final Assessment Tool will be delivered to the Department of Social Development at the end of September. HSRC will also develop the training manuals to go with the tool.

#### Background:

The Care Dependency Grant of R700 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 one and 18-years and 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 R48 000 per year being eligible.

A SMO employed in a government hospital performs an assessment to determine whether a child is severely disabled and requires care. This is a purely medical assessment. 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, guidelines and training in the assessment procedure in the use of the tool are lacking.

The terms 'severe disability', and 'permanent home care' are not adequately defined in the Social Assistance Act and its regulations. As a result, there is inconsistency in the application of the

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eligibility criteria, as SMOs have varying interpretations of the criteria. In practice, assessors do not strictly adhere to the legislative criteria, because they do not understand them.

The eligibility criteria are limited, and exclude children with chronic illnesses, including children suffering from HIV/AIDS. They also exclude children with 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 they are very sick and 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 e-mail: hmagregor@hsrc.ac.za.

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