

Introducing a Child Support Grant top-up for orphaned children living with family members

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The proposal is to use the CSG as the preferred form of social assistance for caregivers of orphans. This will reduce the use of foster care placements (and the associated Foster Child Grant (FCG)) for orphaned children living with relatives. The proposal is different from the other options presented in this essay as it is not strictly an extension or expansion of the CSG. The CSG is a poverty alleviation grant which has always been available to family members caring for orphaned children, while the FCG is designed to support children who are in need of care and protection and have been placed in alternative care. The purpose of the proposed "top-up" for orphaned children is in effect a strategy to discourage families and social workers from opting for foster care purely because of the financial incentive. The bigger "top-up" amount would also help to prevent the shift from being seen as regressive, as many orphaned children have already been placed in the foster care system and are receiving the larger FCG.

In October 2016, the CSG is worth R360 per month while the FCG is worth R890 per month. The value of the CSG top-up has not been finalised, but it is likely to be about 50% higher than the current CSG (i.e. R540 in 2016 Rands).¹

The background to this somewhat complex problem has been outlined in some detail in on pp. 68 – 74, and the main arguments and counter-arguments are summarised below.

Arguments for the policy option

The primary motivation for the CSG top-up is to reduce the foster care caseload so that social workers are better able to respond to priority cases where children are known to be at risk of abuse or neglect, or are already in need of child protection services. Child protection services are known to be under-resourced in South Africa and are not always able to respond to urgent cases of need, even when these have been reported.

In other words, the policy option makes use of the existing social assistance programme to address a problem in the child protection system. If this is to work, then the amount of the top-up is important: It must provide an incentive for people to opt for the easier CSG top-up process, rather than trying to get foster care placements in order to receive the FCG. Social workers and social service practitioners must also be convinced that orphans (as a category) are not automatically in need of child protection services. Like all children, they are potentially at risk, and need to be able to rely on preventive and responsive services when they need them.

The procedures required for foster care (and the FCG) are outlined in some detail on pp. 68 – 74. They follow a much more complex statutory process than the administrative process required for the CSG. Briefly, in order to receive an FCG, the child must have been placed in foster care by a court. Before applying for a court date, a social worker needs to have conducted an initial

investigation and compiled a report with recommendations. Most court orders are for a period of two years, followed by a review every two years and an extension of the foster care placement by a court. If the review is not done, then the court order expires and the FCG cannot be paid. The requirements for an FCG are therefore much more burdensome – to applicants and to state institutions – than those for a CSG.

There are a number of arguments for introducing a CSG top-up:

- a. Focus child protection services where they are needed most.
 - South Africa has very high rates of child abuse and violence. Prevention and intervention services are inadequate. There are many children in urgent need of intervention and protection.
 - It has been argued for many years that the administrative burden of foster care uses up social worker time and capacity, to the detriment of services for children in urgent need.²
 - If this is true, then reducing the administrative burden caused by a massive load of foster care placements could result in an improvement in welfare and protection services. If it is not true, then the removal of a large burden of foster care cases would reveal service delivery problems in the child protection system, which could then be addressed.
- b. It is not feasible or sustainable to have all orphans in the foster care system as it currently operates, and a 2011 court order requires that the Department of Social Development (DSD) find an alternative, sustainable solution.
 - The child protection system came under strain as foster care numbers grew with increased intake of orphans. This is shown by the mass lapsing of 120,000 FCGs between 2009 and 2011 due to foster care orders expiring because social workers did not review the placements in time. A 2011 court order³ placed a temporary moratorium on lapsing and gave social workers temporary authority to extend foster care orders administratively, until the end of 2014. By this time the DSD was to have come up with a "comprehensive legal solution" to the problem.
 - By the end of 2014, there was still no comprehensive legal solution and another 300,000 foster care orders had expired. At that time, DSD made an urgent application to the court to extend the 2011 order to December 2017. It is only because the court granted this extension that the 300,000 children with expired foster care orders could continue receiving grants.
 - Therefore, by the end of 2017, the DSD will have relied for over six years on a court order to prevent the majority of FCGs from lapsing.

- Even though DSD's preferred approach has been to formalise orphans' living arrangements with extended family by placing them in foster care, only about a third of maternally orphaned childrenⁱ were reached after 10 years, and in recent years the numbers of children in foster care have ceased to grow and have actually decreased (see figure 23 on p. 70).
 - The DSD's own estimates do not show any growth in the number of projected FCG beneficiaries over the medium term.⁴ In other words there is no budgeted plan to reach more orphans.
 - The 2011 court order requires a comprehensive legal solution but the solution cannot include the administrative extension of grants by social workers as this has been deemed unconstitutional by a state law advisor. Trying to get all orphaned children into foster care is not a feasible solution.
- c. It is probably not necessary or appropriate to have all orphans automatically placed in the foster care system when they are living with family members.
- Family care is common in South Africa and has been so for many generations. Many children are raised by their grandmothers, aunts, uncles, older siblings or other relatives. Three million non-orphans live with extended family in the absence of their biological parents, for example because their parents are migrant workers. They are not considered to be automatically in need of supervision and protection by the State, so it is not clear why orphaned children living with family in the same circumstances should be assumed to need monitoring and be made wards of the State through the foster care system.
 - Traditional foster care placement is premised on temporary alternative care, with the possibility of family reunification. Foster parents do not have full parental rights. It is therefore not an ideal arrangement for orphans, as a permanent care arrangement with full parental rights would provide a more stable environment for the child. Guardianship could be a solution to the lack of parental rights if orders for guardianship can be made accessible at children's court level in the future. Like other caregivers, income-poor guardians would qualify for the CSG and those caring for orphans would be eligible for the top-up.
- d. There is an existing alternative: the CSG.
- The CSG is administratively easy and much quicker to access than the FCG, and is already available to orphans living with families.
 - Maternally orphaned children are already more likely to be receiving the CSG than the FCG.
 - The easier CSG route would reduce delays in accessing income support for orphaned children.

What challenges would it address?

The reduction in foster care placements and reviews would liberate social workers and the courts so that they are better able to respond timeously to children in need of care and protection.

Having a CSG top-up could expedite access to a (larger) grant for caregivers of orphaned children. Relatives who care for orphaned children are already eligible for the CSG if they pass the means test. So it should be relatively quick and easy for them to receive the top-up grant. In other words the CSG option would offer families faster and more efficient access to social assistance than applying for the FCG which first requires a foster care placement.

This approach would not exclude orphans from being able to access child care and protection services, in the same way as any other child who is found to be in need of care and protection as defined in section 150 (1) of the Children's Act⁵ for example, because they have been abandoned, abused or neglected.

How would it work in practice?

- Family members caring for orphaned children would apply directly to the South African Social Security Agency (SASSA), using the CSG process for quick enrolment.
- The applicant would need to provide death certificates of parents (or at least one parent combined with an affidavit) to qualify for the top-up amount.
- The applicant would need to provide proof that s/he is a family member. (This is not arduous, as all CSG applicants need to "prove" their relationship to the child through an affidavit.)
- All other requirements would be as for the CSG. For example, the applicant would have to pass the means test (currently not required for the FCG); and the grant would be available to children until they turn 18. The FCG is in theory available until the foster child is 21 years, if they are still attending an educational institution. This seldom happens in practice however.
- There could be a requirement that the details of caregivers be sent by SASSA to provincial DSD after the CSG top-up application has been processed so that DSD can initiate a follow-up home visit to see whether the child is also in need of protection services. This would place the responsibility for assessment on the DSD, but de-link the assessment from the grant, thereby preventing delays in accessing social assistance.
- There should be a transition phase during which those relatives already receiving the FCG for orphans in their care are retained in that system. This should be coupled with increased use of section 186 of the Children's Act which extends the orders until the child turns 18 and requires home visits at two-yearly intervals by a social service professional.

Possible pitfalls, trade-offs and critical questions for further consideration

There are a number of design issues that require careful consideration.

ⁱ See P. 108 in the Children Count section for orphaning rates, or visit www.childrencount.uct.ac.za for trends.

Defining and identifying orphans

The DSD has suggested that they might start by targeting double orphans, and extend the CSG top-up to maternal orphans later.ⁱⁱ This is likely to be problematic. The current definition of orphan in the Children's Act is "a child who has no surviving parent caring for him or her". This was intended to be interpreted to mean a double orphan, or an orphan who has lost one parent and is not being cared for by the other parent. Yet most maternal orphans do not have co-resident fathers who care for them.

Some maternal orphans (whose fathers are alive but not living with them) are already in foster care, and it may be seen as regressive to limit their benefit to the much smaller CSG – rather than the CSG top-up.

Over two-thirds of children do not have their fathers' details recorded on their birth certificates⁶ and many do not know the whereabouts of their fathers or even if they are alive. This makes it very difficult to prove or disprove paternal death. In many cases it will be impossible to distinguish between single (maternal) orphans and double orphans.

Determining the amount of the top-up

The top-up is in effect a monetary incentive to remain outside the foster care system unless protection services are actually needed. However there is no evidence-base for what amount of top-up would be acceptable or effective.

The higher the top-up, the more likely that families caring for orphans would be happy to use this option rather than trying to get the FCG, unless they are really in need of protection services. But the higher the top-up, the more it creates an inequity in the amount of social assistance received by orphans and by other children who may be equally poor or even poorer. One potential way to address this is to increase the value of the CSG over time to reduce inequities among child grants.

The DSD's objective in the Medium Term Strategic Framework is to provide a CSG top-up that is 50% greater in value than the CSG by 2017.⁷

Potential counter-arguments and possible responses

Some non-governmental organisations and social workers remain concerned that orphans as a category are vulnerable in that they are at particular risk of being abused or neglected, and that they should be monitored. This concern has been the basis of some opposition to the proposed CSG top-up.

One response to this is that child abuse can happen anywhere, and that parents are known to abuse children too. It is impossible to monitor all children, which is why child protection services are meant to be preventative and responsive and should have the capacity to respond promptly and effectively.ⁱⁱⁱ

Another response to this argument is that child protection services are not reaching all orphaned children anyway under the

current system. At various times over the past few years, 300,000 foster care orders have been in a state of expiry because they were not reviewed – in other words, social workers did not return to the household to check on the child within the required timeframe. It is only because of a court-ordered moratorium that grants have not lapsed.

A further response is that social service practitioners (including social workers) could still visit orphans to see whether they are in need of care and protection, or in need of counselling or other services, and either provide these services or refer them. The DSD could require SASSA to provide a list of CSG top-up beneficiaries, so that they can do an initial follow-up visit (and even subsequent visits, if they have time and resources). However the principle of the CSG top-up is that these visits or assessments should not obstruct or delay access to social assistance, and that not all children living with relatives are likely to need this level of care and protection.

It is possible that family members caring for orphaned children will want to apply for the CSG top-up as an interim source of financial support while still applying for formal foster care placement (which would give them more money through the FCG). If this happens, then the CSG top-up will not help to relieve the burden on the child protection system, and may in fact exacerbate it.

The provincial departments of social development and the social workers who provide services will need to be convinced that orphans (as a category) are not regarded as automatically in need of care and protection.

Proponents of the CSG top-up see it as an opportunity for re-invigorating and implementing good quality and responsive developmental social services, in conjunction with community-based prevention and early intervention services that can be accessed by all children in need. If government continues to roll out community-based services like *Isibindi*,⁸ that would improve referral to services where needed.

Current status

- A proposal for the CSG top-up for orphans was approved in principle by Cabinet in December 2015.⁹ The review of the 1997 White Paper for Social Welfare by the Ministerial Committee also included a proposal on an extended CSG for orphans living with relatives.¹⁰
- Cabinet approved a draft Social Assistance Amendment Bill in October 2016, which will be released for public comment. Amongst other things, the Bill will empower the Minister to create the CSG top-up.¹¹
- An amendment to the Children's Act needs to be drafted and finalised to give effect to a "comprehensive legal solution" to the foster care crisis. This was meant to happen by the end of 2014, but the deadline has been extended by the court to the end of 2017.

ii Double orphans have lost both biological parents. Maternal orphans have lost their mother.

iii The proposal in the Review of the White Paper on Social Welfare relating to the establishment of a social protection floor that specifies the welfare and community development services that everyone should have access to; and the recommended incremental increases in welfare budgets, aim to close this gap.

References

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Johannesburg Child Welfare (2005) *Conceptualisation of Foster Care*. A workshop paper for Portfolio Committee on Social Development. Presented to the Portfolio Committee on 13 April 2005. PP. 1-14.
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- 4 National Treasury (2015) *Estimates of National Expenditure 2015*. Pretoria: National Treasury.
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- 6 Statistics South Africa (2015) *Recorded Live Births 2014. Statistical release P0305*. Pretoria: Stats SA.
- 7 Republic of South Africa (2014) *Medium Term Strategic Framework (MTSF) 2014 – 2019*. Pretoria: RSA.
- 8 National Association of Child Care Workers (2016) *Isibindi – Creating Circles of Care*. Viewed 12 October 2016: <http://www.naccw.org.za/isibindi>.
- 9 See no. 1 above.
- 10 See no. 1 above.
- 11 Department of Social Development (2016) *The Minister of Social Development Welcomes Approval to Amend the Social Assistance Act by Cabinet*. Media Statement, 4 October 2016. Viewed 5 October 2016: http://www.dsd.gov.za/index.php?option=com_content&task=view&id=826&Itemid=1.