

# Weighing up the policy proposals: Some considerations

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**A** key question to ask when considering each proposal is: What is our long-term vision for comprehensive social protection for children and what role will social assistance play in that vision? Given the current economic climate, the long-term vision will need to be phased in gradually over time. How do we choose what to do in the short to medium term to move towards that long-term vision?

In making choices about short- to medium-term reforms we should ensure that the steps taken now will contribute to the achievement of the long-term vision. We should also consider the international and constitutional law principle that when resources are scarce, the State should prioritise vulnerable groups whose needs are most urgent and whose ability to enjoy all rights is most in peril if they do not have access to social security.<sup>1</sup>

Government has drafted a Discussion Paper on Comprehensive Social Security Reforms, in which its long-term vision is presumably outlined, but at the time of going to press the paper had not yet emerged into the public domain. In the absence of clarity on the long-term vision, the proposals outlined in this paper could appear as incomplete, stand-alone or opposing options. However this is not necessarily the case. Some of the proposals could be adapted and combined or one could represent the long-term vision, with some of the others being steps towards that vision.

Below is an analysis of the proposals from a constitutional and good governance perspective (using the principles listed on p. 77) which poses some critical questions and suggestions with the intention of stimulating debate and discussion.

## Increasing the amount of the Child Support Grant

The law gives the Social Development and Finance Ministers authority to increase the grant amount.<sup>2</sup> Yet this authority has been used only to protect the grant value from being eroded by inflation. The CSG thus remains at a low value compared to other social grants, and is below all three official poverty lines.

The low value is problematic when viewed together with the fact that 30% of children still live below the food poverty line (the lowest poverty line).<sup>3</sup> In this context, there is a strong argument to be made that these children's constitutional rights to equality, social assistance and basic nutrition are not being realised. Due to the interdependence of rights, children living in dire poverty with insufficient food are also likely to be struggling to enjoy their rights to survival and development, health and education. The current CSG is therefore at risk of failing the constitutional test of reasonableness as it does not provide adequately for "*a significant segment of the population... whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril*".<sup>4</sup>

Legal authority at a regional law level in support of the proposal can be found in the recent recommendations by the African

Committee on the Rights and Welfare of the Child. In reviewing South Africa's progress in implementing the African Charter of the Rights and Welfare of the Child, the Committee expressed concern at the prevalence of poverty and inequality,<sup>5</sup> advised the State to address income inequality "in particular through more effective pro-poor policies and child rights sensitive budgeting and expenditure",<sup>6</sup> and recommended that the CSG value should be increased.<sup>7</sup> At an international law level, the UN Committee on the Rights of the Child has also recommended that the State review the value of the CSG and base it on an objective assessment of the actual costs of meeting the needs of a child.<sup>8</sup>

With the evidence showing that the current CSG, small as it is, has positive impacts on children's nutrition, health and education, increasing the value is likely to improve these positive outcomes further, thereby furthering the realisation of a range of rights for the poorest children. To maximise this impact it would be important that early childhood development programmes, education, health and social services are easily accessible and of sufficient quality.

In terms of policy coherence, aligning the value of the CSG to an official poverty line would take us back to the original vision for the CSG, in which the grant amount is based on an objective measure. This proposal also does well when considered against the good governance principles of effectiveness, accessibility and administrative feasibility: It would be easy to implement as all it requires is the publication of a notice in the government gazette, and it would place no additional burden on the administration of the social assistance system.

Where this proposal potentially faces its biggest challenge is the principle of affordability in a climate of fiscal austerity. However given the significant size and vulnerability of the target group being disadvantaged by the low value of the grant, and the constitutional and international law authority, there is a strong argument to be made that the necessary changes should be made to the country's finance policies to enable an increase to be phased in.

## Universalising the Child Support Grant

The second proposal proposes removing the means test and introducing a universal CSG – a benefit that is available to every primary caregiver irrespective of their income status. While increasing the amount would provide more money to the existing target group of poor children, universalising the CSG would expand the grant to reach more children, including the non-poor.

Universal access to social assistance is likely to reduce the stigma experienced by grant beneficiaries and therefore to enhance their right to dignity. By removing the need for proof of income to pass the means test, universalising the grant could increase access for eligible beneficiaries who are currently excluded by the documentation required. It would also open up access to poor

children who are just above the income threshold yet in need of social assistance.

Universalisation treats all people equally, irrespective of their income status. In a context of high income inequality, such an approach does not necessarily translate into greater realisation of the right to equality for the very poor. This is where the financing mechanisms for universalisation become very relevant – to ensure that redistribution of wealth is built into the system. In addressing the question of affordability, the authors propose that the significant budget needed for universalisation can be created through reforms to the tax system. The net result being that those who do not need state assistance will in effect pay it back through increased taxes. However it is not clear from the proposal to what extent this will benefit the very poor. Without an increase to the value of the grant, universalisation does not offer those currently in receipt of a CSG a larger amount than they are getting now. Therefore on its own it is not likely to result in greater realisation of poor children's rights to nutrition, health and education. This is problematic given the number of children still living below the food poverty line and the extreme income inequality in the country.

The option of increasing taxes to fund the expansion of social assistance can be used to support any of the proposals put forward in this essay – not only universalisation. A key benefit of universalisation is its potential to create solidarity and political buy-in – thereby protecting the social assistance programme from contraction and laying a firmer political foundation for expansions in the long term.

### **Increasing the amount and gradually removing the means test**

Could the proposals for universalisation and increasing the grant value be adapted and combined to achieve the best outcome? For example, a R100 increase in the CSG would automatically result in a R1,000 increase in the monthly income threshold. This is because the formula for the income threshold is tied to the value of the grant. Such an increase would benefit the very poor as well as enable more families just above the current means test threshold to access the CSG, thereby increasing both the benefits for individual children and the number of children reached. Repeating this increase every second year would be steps towards universalisation.

### **Introducing a pregnancy and maternal benefit**

While our social security system provides a measure of income security for women in formal employment during maternity leave (via UIF and labour laws), there is no such support for women in informal employment, and no recognition of unpaid care work by unemployed mothers.

The proposal for a pregnancy and maternal benefit is aimed at remedying this gap by providing income support, combined with incentives to promote use of health services, for pregnant women during pregnancy and until the child is two years old (in addition to the CSG for the child). For these women, it will advance their

rights to social security, dignity, equality, food and health. It would also represent an increased state investment in the formative early years of childhood with positive impacts on young children's rights to survival and development, nutrition, health and early birth registration. The proposal, however, does not provide income support for a range of other caregivers including grandmothers and other extended family members who play a large role as primary caregivers of young children.

With regards to the good governance principle of policy coherence, the proposal could be strengthened with clearer synergy with government's recently published (2015) National Integrated Early Childhood Development (ECD) Policy (as outlined on p. 13).

In terms of administrative feasibility, while the social assistance component of the proposal may be easily administered, the level of inter-departmental co-ordination required for the conditions that are built into the full comprehensive benefit may be difficult to achieve. If the benefit is aligned with other government policies such as the National Integrated ECD Policy, it could possibly gather the necessary high-level political support that is required for successful inter-departmental co-ordination. However, imposing conditions dependent on other departments' capacity to deliver services is likely to exclude the most vulnerable women from accessing the "incentive" income benefit. For example, a woman in a rural area far from the nearest clinic is less likely to be able to fulfil a condition of regular antenatal visits to earn the incentive amount, than a woman living in an urban area.

Both the social assistance benefit and the comprehensive inter-departmental package have a price tag that raises the affordability flag in the current economic climate. However the long-term negative developmental outcomes for mothers and infants currently living in poverty may well be more costly in the long term.

### **Other proposals for investing more in infants**

None of the proposals discussed so far provide a solution to the problem of inaccessible identity documents and birth certificates which continue to pose a barrier to the CSG for a significant number of vulnerable children including infants and orphans. Regulation 11(1) of the Social Assistance Act does in fact allow applicants to submit alternative forms of documentation if they cannot provide ID or birth certificates. However the numbers of children recorded as having been successful in submitting alternative documents is very low indicating that this regulation is not adequately promoted as an available alternative.<sup>9</sup>

Are there other proposals that are affordable and could be implemented in the short to medium term to address the low take-up amongst infants? Possibilities include having SASSA officials in maternity wards together with Home Affairs to ensure that mothers apply for the CSG at the same time as birth registration<sup>10</sup> or allowing pregnant women to pre-register for the CSG (as proposed by the National Integrated ECD Policy).<sup>11</sup>

### Extending the CSG to 21 years for youth in education

The proposal is aimed firstly at ensuring equality for youth on the different grant systems. While an extension to 21 is available for youth on the FCG who are still in education or training, the CSG cannot be extended beyond 18 years.

Equalising the two systems would address this differentiation in the law. However, in reality few FCGs are paid to youth over 18 years.<sup>1</sup> This is probably due to a lack of knowledge of the extension option, confusion around the education condition, and the complicated procedure required to activate the extension. If the experience with the FCG is repeated, this proposal is likely to face challenges with regards to the good governance principles of accessibility and administrative feasibility.

Only those youth still in education and training would qualify. The proposal thus neglects those youth unable to access education and training – arguably a more disadvantaged group than those in education. The proposal therefore does not perform well with regards to the achievement of substantive equality.

The proposal faces a challenge with regards to policy coherence as it aims to extend a child benefit beyond the constitutionally and statutorily defined age of childhood. On the affordability front, the budget required is relatively small, but significant in the context of the current demands on the fiscus for increased state subsidisation of higher education. This raises questions about what basket of interventions would be most effective at addressing the structural and economic factors that limit young people's access to further education and employment.

### CSG top-up for orphans

The CSG top-up for orphans living with relatives aims to prioritise the best interests of two vulnerable groups of children, namely, orphans living with relatives and children who have been abused and neglected. It could improve access to a higher valued grant for over a million orphans and free up social workers to provide better quality child protection services to abused and neglected children. For these categories of children the reform has the potential to further the realisation of their rights to social assistance, nutrition, health, education and protection.

This proposal, complemented by the necessary amendment to the Children's Act, could provide the much needed solution to the crisis of backlogs and lapsing of grants in the foster care system. In terms of a High Court order, a comprehensive legal solution must be in place by December 2017.<sup>12</sup> In terms of international law, the two committees of experts monitoring South Africa's progress in implementing the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child have both recently recommended that the state prioritise reform to address the backlogs and lapsing of grants in the foster care system.<sup>13</sup> The UN Committee specifically urges the state to "expedite the revision of the Social Assistance Act aimed at introducing an extended support grant for families caring for orphans".<sup>14</sup>

There are important considerations to bear in mind in the design of this proposal to avoid it being regressive:

- The orphans living with relatives who are currently receiving a FCG should not suddenly lose their FCGs. This can be achieved if they are allowed to age out of the system by staying on the FCG until they reach 18.
- The reform should benefit a significantly larger group of orphans than those currently benefiting from the FCG. If government chooses to target only double orphans with the top-up, leaving the larger group of maternal orphans to rely on the lower CSG, this consideration will not be met.
- The amount of the top-up needs to be large enough to bring the benefit close to the current FCG amount. Whether a top-up of 50% of the current CSG value will be sufficient is an issue for further research and consultation.
- To avoid disparity across the country, the Children's Act would need to be amended to ensure that all social workers and courts only use the FCG for children in need of care and protection and refer families caring for orphans to apply to SASSA for the CSG top-up.
- To ensure that the reform has benefits for abused and neglected children, social worker time saved by the reform should be re-allocated to cases of child abuse and neglect.

Looking at the right to equality, a concern has been expressed that targeting additional poverty relief to families caring for orphans could introduce inequity between orphans and non-orphans who are arguably living in the same poverty. However, there is already existing inequity in the law between orphans and non-orphans due to the large gap between the amounts of the FCG (R890) and the CSG (R360). Introducing a CSG-top up (approx R540 if the top-up is valued at 50% of the CSG value) will in fact reduce the inequity as it will reduce the difference between the amounts received by orphans and non-orphans from R530 to R180.

When looking at the principle of affordability the proposal does well due to the restricted numbers targeted and the fact that the FCG budget will decrease over time as a result of the reform.

In terms of policy coherence the proposal has positives and negatives. On the positive side it does not introduce a new grant but rather builds on the proven success of the easily accessible and administratively feasible CSG. It could also re-vitalise the CSG's innovative concept of the primary caregiver which emphasises recognition of the *de facto* carer of the child rather than the "legal" carer of the child. For this to be a success it is imperative that the *de facto* carer is recognised as eligible without the need for a social worker report or a court order.

On the negative side, if the proposal is introduced with a requirement that relatives first obtain a social worker report before they can apply for the top-up, it will detract from the simple primary caregiver concept as well as pose an access barrier for the majority of orphans. If the additional proof required to qualify

<sup>i</sup> Only 10% of all FCGs are received by youth aged 18 – 21. Calculations by Katharine Hall, Children's Institute, based on SOCPEN data extracted by special request, as at end March 2015.

for the top-up is onerous or difficult for beneficiaries to obtain, then the reform will not meet the good governance principle of accessibility. For example a strict requirement to produce the death certificates of both parents (in the case of double orphans) will reduce accessibility.

### Final considerations

The variety of options available, and categories of beneficiaries singled out for more investment, show there is much need for expanding the reach and benefits of the social assistance programme. Each proposal potentially takes us in a different direction, although it is possible to combine some of them, or to implement more than one. Adopting some of the proposals now may close the door on other proposals, particularly if they are seen as budget trade-offs. It is important therefore that the details of these proposals are made transparent and subjected to rigorous and informed debate. While debating the options it would be ideal to start moving towards consensus on the long-term vision that is in the best interests of all children living in poverty.

### References

- 1 *Government of the RSA and Others v Grootboom and Others* 2001 (1) SA 46 (CC) Paras 43 & 44. [Grootboom]
- 2 Social Assistance Act 13 of 2004. Section 32(2) (a)
- 3 Hall K & Sambu W (2016) Income and social grants – Children living in poverty. *Children Count* website, Children’s Institute, University of Cape Town. Viewed 23 September 2016: [www.childrencount.uct.ac.za](http://www.childrencount.uct.ac.za).
- 4 See no. 1 above. Paras 39 & 44.
- 5 African Committee of Experts on the Rights and Welfare of the Child (2015) *Concluding Recommendations on the Republic of South Africa’s Initial Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child*. Addis Ababa: ACERWC. Para. 6.
- 6 See no. 5 above. Para 9.
- 7 See no. 5 above. Para 41.
- 8 United Nations Committee on the Rights of the Child (2016) *Concluding Recommendations on the Second Periodic Report of the Republic of South Africa*. Geneva: UNCRC. Para 54.
- 9 Martin P (2014) Children’s rights to social assistance: A review of South Africa’s Child Support Grant. In: Proudlock P (ed) *South Africa’s Progress in Realising Children’s Rights: A Law Review*. Cape Town: Children’s Institute, UCT and Save the Children South Africa. P. 66.
- 10 As recommended on P. 60.
- 11 Republic of South Africa (2015) *National Integrated Early Childhood Development Policy*. Pretoria: RSA.
- 12 *Centre for Child Law v Minister of Social Development and others* (North Gauteng High Court) Case number 21726/11. Order of 10 May 2011a. Reported in Government Gazette, 20 May 2011. Available: [http://www.justice.gov.za/legislation/notices/2011/20110520\\_gg34303-n441-childact.pdf](http://www.justice.gov.za/legislation/notices/2011/20110520_gg34303-n441-childact.pdf).
- 13 See no. 5 above. Para 44.
- 14 See no. 8 above. Para 54.