



Proposed alternate model for orphaned and vulnerable children

Introduction

An ACCESS working group met on Monday 5 June 2006 to consolidate and review the outcomes of the input made by ACCESS members at various workshops with regards to the use of the Foster Care System to provide support for children orphaned by the HIV pandemic. The working group took into account the key factors that:

1. The FCS is collapsing under the strain of the numbers of applications for a foster care order and grant by family members taking care of children orphaned (through the death of one or both parents or the death of one and abandonment by the other).
2. For many applicants, the motivation for applying for a foster care order is to 1) have the caregiver relationship recognised and made official, 2) to allow the child access to the various forms of psycho-social support that comes with the foster care placement (in theory), and 3) to access the foster care grant.
3. The FCS cannot accommodate the current and definitely not future numbers of such applicants. The FCS cannot be fixed to make it work for this purpose. An alternative solution needs to be found which provides the benefits but not the problems and disadvantages that go hand in hand with the use of the FCS for these purposes.

In light of this the following model (made up of two stages) was developed:

Step 1

(a) Registration or

(b) court application for recognition of the relationship of care between the family caregiver and the orphaned child.

Step 2- accessing grants, services and benefits upon the registration of court ordered relationship

Step 1(a): Registration of the legal relationship between child and extended family caregiver (defined widely as in the Children's Bill) providing care and contact (limited to children whose parents are deceased and / or abandoned by the surviving parent if any):

- care and contact versus guardianship relationship which is registered through informal / non court process
- diminished the reliance on courts and social workers

These are children in need of care and the caregiver relationship (custodial rather than one of guardianship) must be officially recognised and sanctioned. There is no reason for an elaborate social worker inquiry or court determination to recognise and register this relationship.

Therefore it is suggested that as a first step the care and contact family caregiver submits an application to an administrative authority (whether this is through the department of social development or the justice department as for example in the clerk of the family court is open for debate - but we must be cautious about adding too onerous an application burden on the applicant).

As a general rule it is mandatory that this be determined administratively. It is not to go to court unless there is a dispute about the relationship or the suitability of the applicant or because there is some other agreed exception at play.

If registered these children are entitled to certain rights in terms of Section 18 2(a) (b) and (d) of the Children's Bill (Section 75). This expressly excludes (c) (guardianship). This means that there is an express duty on the person to maintain the child (which in turn means that if they cannot afford to maintain the child, they can apply for the various forms of poverty relief such as the CSG or any other relevant grant, service or benefit.)

Most importantly it must mean that this caregiver can then access OVC and other support programmes for vulnerable children which civil society must put pressure on provincial government to provide and budget for - including access to the Child Support Grant, health care, nutrition, education, psycho-social support life skills programmes etc. They would also have emergency rights e.g. the right to consent to medical care in terms of Section 32 (2) of the Children's Bill.

Once registered there must be provision for certainty so that the caregiver cannot voluntarily step out of this relationship without a further enquiry.

Step 1 (b): Current foster care process remains available for orphans but is limited to children orphaned and in need of care and protection, for example they are abused or neglected.

Step 2 - the registration of the relationship or the court order automatically serves as a key to access to the support programmes available to all vulnerable children, including OVC's

So for example they should, upon registration of the relationship automatically qualify for Chapter 8 (of the Children's Bill) rights, services and benefits (prevention and early intervention services). Chapter 8 must be expanded to include all children who have experienced bereavement etc. on a systematic broad-based model not reliant exclusively on the current court and social worker model.

In addition provincial governments must ensure that in each province there is a comprehensive range of support services and benefits available to vulnerable children at a community level through a community support centre. The idea is that these services can be provided by auxiliary social workers and other NGO service providers as well as government. The caregivers must be advised of the support package and how to access it when the relationship is registered. These services must include (preferably in a centralised one stop shop arrangement) access to grants, education, health care, nutrition, psychosocial support such as counselling etc.

The obligation to budget for provide / roll out the support services (other than grants which now rests on national government) that are available rests with provincial government who must be pressurised to provide this.

This is a developmental approach in line with Social Development Welfare Policy rather than a residual / treatment approach.

What grants are available for steps 1(a) and 1(b):

The group discussed whether the FCG grant should be available for all these children - not only those cared for into a court ordered foster care placement. There was agreement that the system should:

1. Keep the Foster Care Grant only for the strict foster care court ordered placements, which ultimately should be equalised into monetary value with the CSG.
2. Introduce an extended universal Child Support Grant available for all children in need of financial support - such as those in a "registered relationship" with a family caregiver.
3. Provide a means tested social relief of distress / destitution grant for families living on less than a certain amount in absolute poverty.

These children and families must then be linked to other services / programmes of a comprehensive nature provided through the community support centres. This is a voluntary not a conditional linking with the benefits.

This proposed alternate model addresses:

1. The clogging of Courts;
2. Pressure on social workers;
3. Increases the roles for informal / NGO psychosocial support services.
4. Introduces a comprehensive care package which is developmental for all vulnerable children and does not stigmatise or single out orphans;
5. Recognises and accommodates the need for support and actually provides it. The current foster care system recognises the need for support but is incapable of providing it.
6. Provides equity in the provision of grants, services and benefits to all vulnerable children.

ACCESS The Alliance for Children's Entitlement to Social Security works with a 1000 strong alliance of children's sector organisations to engage with policy and law reform processes through advocacy, lobbying for policy change, developing literacy materials, undertaking training and campaigns. ACCESS and its partners have been working on a blueprint for a comprehensive package for children made vulnerable by HIV/AIDS and to promote the adoption of a comprehensive approach by all relevant parties.

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