



## Submission to the Portfolio Committee on Social Development on the Children's Amendment Bill [B19B of 2006]

August, 2007 - Comprehensive Social Security for Orphaned and Vulnerable Children

### Introduction

ACCESS is an alliance of approximately 1500 children's sector organisations drawn from all nine provinces in the country. It includes rural and urban based organisations, small and large, community based organisations, faith-based organisations, NGO's, social security service providers, and research institutions. Our member organisations include representatives from a diverse range of sub-sectors/disciplines within the children's sector, including health, early childhood, education, general children's rights, child poverty, socio-economic rights, refugee children, street children, orphans and children made vulnerable by HIV/AIDS, nutrition / food security, housing and gender. In addition our members perform a diverse range of functions within the sector, including the provision of paralegal services, research, caring for children made vulnerable in drop-in care centres and home based care, early childhood care and development, primary and secondary education, advocacy, training and literacy, welfare services and social work. Our membership in turn includes a number of further coalitions and networks such as CINDI, TAC and the Congress for ECD.

This submission is informed by our member's experiences both on the ground and from an academic perspective. The experience of our vast membership has led us to call for an alternate model for dealing with orphaned and vulnerable children (OVCs). We propose a redress of the foster care system to effectively manage the array of problems faced by OVCs. The current system is failing those that it was intended to support. The Children's Amendment Bill provides the opportunity to make far reaching changes to an extremely vulnerable sector of our society. It allows for the alleviation of an overburdened foster care system and the redirection of services to where they are most urgently needed. This submission addresses chapters 8 (Prevention and Early Intervention Services), Chapter 11 (Alternative Care) and Chapter 12 (Foster Care) of the Children's Amendment Bill. It also relates to the Social Assistance Act.

We feel it is imperative to review the grants, services and benefits available to children as well as the gaps, holistically so as to effectively address the needs of all OVCs.

### Who was the Foster care system intended for?

Placing children in foster care was intended to cater for children who needed care and protection due to neglect, abandonment or abuse. These children required access to additional services to aid them in coping with the abuse or neglect to which they had been subjected. These needs explain why the Foster Care Grant is a larger amount than the Child Support Grant. Its primary purpose was not as a poverty relief tool but rather as a tool to deal with the special needs of this group of vulnerable children. The placement of a child in foster care was viewed as a child protection mechanism with the intention of ultimate reunification with the foster child's family. The Foster care grant was therefore to be made available to a temporary caregiver when necessary.

### Why Change the current Foster Care system?

#### 1. The system is overburdened

The foster care system is already greatly overburdened. The legal procedure involved in placing children in foster care puts a huge burden on the justice system as well as social services. Social workers are experiencing massive backlogs in cases – child welfare reported that in Pietermaritzburg alone they had a backlog of 5000 cases and a two-year waiting list in 2005<sup>1</sup>.

The Department of Social Development has sought to deal with the increasing number of orphans due to the HIV/AIDS pandemic by incorporating these children into the foster care system and thus making the FCG available to their caregivers. These orphaned children are not necessarily in need of the protection services for which the foster care system was intended. These children are often taken care of by other adult caregivers<sup>2</sup>. They have not necessarily been neglected, abused or abandoned. These children are most in need of poverty relief rather than protection services.

Large numbers of newly orphaned children will be entering the system each year, thus increasing the strain on the current system. These children are forced to go through the complicated and lengthy legal process of applying for foster care thus clogging both the judicial system as well as social services.

By placing an extra burden on this already overloaded system, we are doing a great disservice to the children who should be benefiting from the foster care system and who genuinely need child protection. Children requiring foster care are increasingly not being placed in the most appropriate care conditions. Yet the system is now expected to take on all OVCs, who do not necessarily require alternative care but poverty relief.

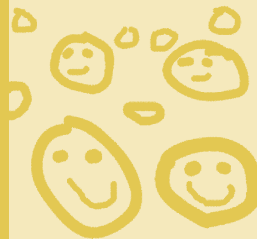
<sup>1</sup> ACCESS Foster Care Review Workshop, May 2006

<sup>2</sup> Meintjies, Budlender, Giese, Johnson (2003) Children in 'Need of Care' or In Need of Cash

## 2. The system is unjust

The Foster Care Grant (FCG) is a far greater amount than the Child Support Grant (CSG). Even if the current system could cope with the extra burden of all OVCs, it is difficult to justify directing a much larger grant (FCG) towards children whose parents are no longer alive than to those whose parents are still living in severe poverty. It also creates a perverse incentive for parents to place their children legally in the care of others so that the children will benefit from the larger grant. This situation is further exacerbated by the fact that the CSG only extends to children up to the age of 14, older children in the 14 to 18 age group who are poor and vulnerable and equally deserving of the CSG in terms of the current Social Assistance Act are not eligible which amounts to discrimination.

By placing an extra burden on this already overloaded system, we are doing a great disservice to the children who should be benefiting from the foster care system and who genuinely need child protection.



## Proposed Alternate Model for Orphaned and Vulnerable Children

### 1: Registration of the legal relationship between child and caregiver providing care and contact (limited to children whose parents are deceased and/or abandoned by the surviving parent if any):

This step involves the recognition of the care received from a caregiver. This recognition would be done through an informal, non court process. It is clear that this category of children are in need of care but not protection so it is unnecessary for a court to determine this, rather the situation of care can be recognised administratively.

These children's caregivers would then be entitled to the parental rights and responsibilities as set out in section 18 (2) (a), (b) and (d) of the Children's Act No 38 of 2005 but not to s18 (2) (c) guardianship.

This ensures that there is an express duty on the caregiver to maintain the child. A caregiver would not be able to voluntarily break this relationship.

This envisioned system would allow these children to access a CSG rather than FCG (see 4 below) as well as various support services and programmes. These would need to be budgeted for and produced by the provincial governments and targeted at all poor and vulnerable children including orphans. This comprehensive package to address the needs of children should include access to health care, nutrition, education, psycho-social support and social security in the form of an extended Child Support Grant to 18.

The registration of this legal relationship would not impact on s32 of the Children's Act, 2005 which recognizes the care of a child by a person not holding parental responsibilities and rights.

### 2: Current foster care process remains limited to all other children orphaned and in need of care and protection such as abused or neglected children.

These children must also be able to access grants. Education, psychosocial support, health care and nutrition. Their special needs can be addressed more effectively.

### 3. Expand Chapter 8 (Prevention and Early Intervention Services) of the Children's Amendment Bill.

This chapter should include children who have had to deal with loss and bereavement. This system does not rely solely on social workers and the judicial system but rather allows for the psycho-social support services provided by NGOs to enhance the support of these children. There needs to be a link between the receipt of a grant and the localised community based comprehensive services to be provided.

Provincial government would need to facilitate the provision and rolling out of the support services that are available. Support services must provide a comprehensive range of services and benefits such as access to grants, education, health care, nutrition, psychosocial support. This is a developmental approach in line with Social Development Welfare Policy rather than a residual / treatment approach.

### 4. Introduce appropriate measures to ensure adequate financial assistance for the caregivers of poor children

1. Keep the Foster Care Grant only for the strict foster care court ordered placements, which ultimately should be equalised in terms of the monetary value with the CSG. The recommendation was to keep the FCG amount the same while gradually increasing the amount of the CSG.
2. Introduce an extended Child Support Grant available for all children up to 18 in need of financial support – such as those in a “registered relationship” with a family caregiver. The CSG should have two rates:
  - One for parents – general CSG R200; and
  - One for non parents – special CSG rate (which is more than R200 but less than the R620 for foster care recommended rate of R350). There would be a burden on the non parent to provide some sort of proof of parental death, abandonment or absence.

having two rates for the Child Support Grant recognises the need to provide additional financial support to people who are caring for children who not there own whilst still relieving the pressure on the foster care and protection system.

The CSG application would be administered through the South African Social Security Agency as it is currently and would not be administered through social workers and the courts. This would serve as a disincentive to apply for the slightly higher court administered foster care grant. The burden of proof on the non parents to provide evidence of the death, abandonment or absence of the biological parents would prevent biological parents from placing their children in the care of kin in order to receive a higher CSG amount. The new system could be introduced with immediate effect through amendments to the CSG regulations without incurring a great deal of cost to introduce a completely new system. Current eligibility for the CSG would still apply as dictated by the means test which is being revised in line with inflation. This would offer a viable solution to caregivers providing kinship care to non relatives who would no longer be eligible for foster care grants.

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. The motivation for

#### Extend CSG to 18

An extended CSG should be implemented to cover children aged 14 to 18 who are currently falling outside the social security provisions. This is precisely the time when poor parents and caregivers will need the most help to ensure that the child is able to remain in school and complete Matric. Extending the CSG to 18 will have profound, long-term effects for these children in terms of helping them become skilled for jobs in the new economy rather than having to drop out to try and find unskilled, informal sector work.

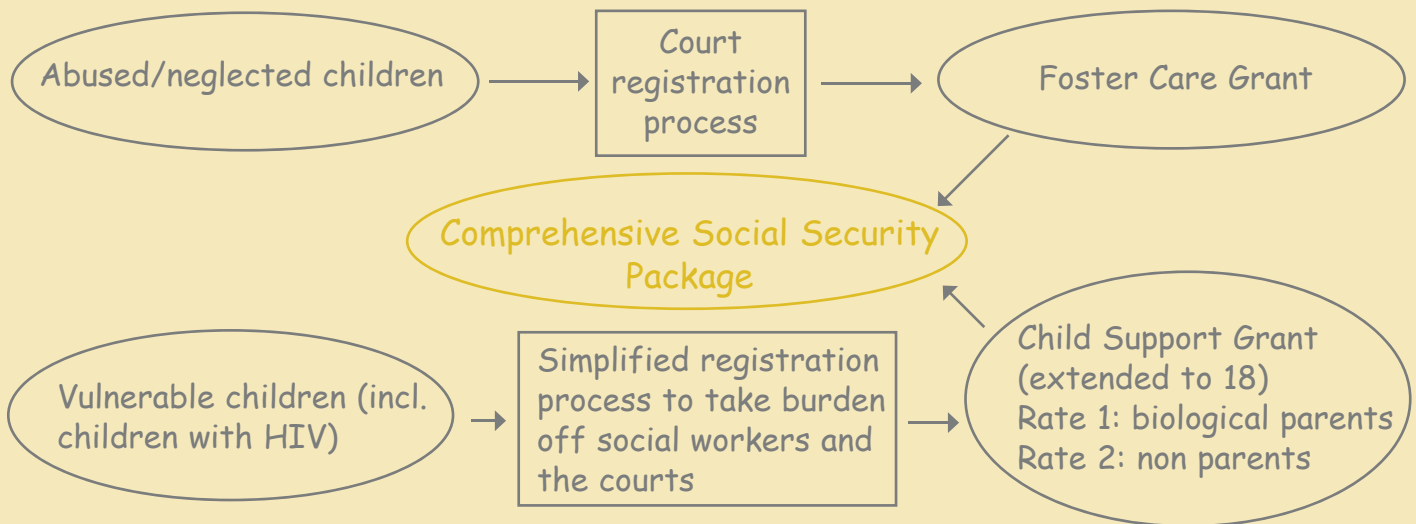
#### Provide a CSG at a higher rate for caregivers other than biological parents and keep the FCG for strict foster care court ordered placements.

Offering a higher rate of CSG to the caregivers of children per section 18 (2) (a), (b) and (d), lessens the perverse incentive of wanting to claim the inappropriate Foster Care Grant. This new rate would still be significantly lower than Foster Care Grant which will be given only to those children who have undergone court-ordered placements. The FCG should remain in place for children requiring child protection through the strict foster care system to ensure that their special needs are met.

There would still be an obligation on the non-parent care-giver to demonstrate that the biological parent/s cannot care for the child/ren (e.g. due to death, severe chronic illness, or abandonment).

Initially, the new higher rate could possibly be R350 (the current single-rate CSG is R200). Both rates, however, should be increased in real terms each financial year while the FCG rate should be frozen at least for the foreseeable future.

## Alternate Care Diagram



## What issues are addressed by instituting an alternative model for orphaned and vulnerable children?

### An alternative system will:

1. Reduce clogging of the courts
2. Alleviate some of the pressure on social workers;
3. Reduce perverse incentive of FCG;
4. Increase the roles for informal / NGO psychosocial support services.
5. Introduce a comprehensive care package which is developmental for all vulnerable children and does not stigmatise or single out orphans;
6. Recognise and accommodate the need for support and actually provide this support. The current foster care system recognises the need for support but is incapable of providing it.

## Conclusion

We request that our proposal of an alternate approach to dealing with orphaned and vulnerable children is taken into consideration in finalising the Children's Amendment Bill. Whilst we have not addressed Chapters 8, 11 and 12 clause by clause we have sought to provide an alternative approach which we perceive to be the most efficient and realistic way of ensuring that the true needs of orphaned and vulnerable children are met.

## Contact Details

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## Contributions

The recommendations outlined in this submission were developed by an ACCESS working group made up of the following organizations: Johannesburg Child Welfare Society, Childline SA, Legal Resource Centre, Child Welfare SA, Civil Society Advocacy Programme, DICAG, Children's Institute, CINDI Child Advocacy Project, CHAIN, Pietermaritzburg Child Welfare Society and the ACCESS national office. Although the working group reached general consensus on the recommendations put forward in this submission a number of concerns should be noted. A number of the organizations recommended that the dual CSG system be introduced with immediate effect as a short term solution to addressing the problems with the current Foster Care System. However in the long term it is recommended that a Kinship Care Grant be introduced or that the second rate CSG be equalized in monetary value to the FCG. A further concern was noted around the potential burden of proof on non biological parents or caregivers of children to demonstrate that the biological parent/s cannot care for the child/ren (e.g. due to death, severe chronic illness, or abandonment). The working group recommends that the burden of proof on non biological parents need not be onerous, for example in the absence of a death certificate applicants should be allowed to make use of affidavits in their application. The objective is to have a more accessible administrative process implemented through SASSA and not a court procedure which is more onerous.