

Reaffirming the social security rights of children in South Africa with particular reference to the child support grant

Gladys Mirugi-Mukundi

While South Africa has one of the most progressive constitutions in the world, the realisation of socio-economic rights remains a mirage for the majority of its population. Widespread poverty and unemployment present significant challenges to the capacity of families to care for their children. Historical inequalities in education, health care and basic infrastructure have contributed to poor service delivery to children and aggravated the vulnerability of children from poor families.

It is against this background that the need for an effective mechanism for the protection and care of children becomes apparent. Empirical research and data (Berry, 2003) illustrate that the implementation of basic social services for children is imperative to poverty alleviation in South Africa.

The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has recognised that social security plays an important role in poverty alleviation, preventing social exclusion and promoting social inclusion (CESCR General Comment 19, UN doc. E/C.12/GC/19, para 3). This is true in South Africa too. The former Minister of Finance, Trevor Manuel, acknowledged in his 2009 budget speech that the child support grant (CSG) had 'contributed significantly to reducing child poverty' in South Africa (Manuel, 2009).

This paper examines the role of social security in advancing children's rights in South Africa, focusing on the CSG. It advocates the enhanced implementation of this right to give meaning to other socio-economic rights of children.

South African legal standards

The right of access to social security and social assistance is crucial to the realisation of other human rights. According to section 27 of the South African Constitution, this right belongs to 'everyone', which includes children. In addition, section 28(1)(c) guarantees every child the right to social services. The term 'social services' refers to a group of services such as basic nutrition, shelter, basic health care, education, social security and social welfare services, and family care or alternative care.

The Social Assistance Act 13 of 2004 provides the legislative framework for the realisation of the right to social security. It lays down the eligibility criteria and access procedures for social grants for the elderly, children living in

poverty, people with disabilities, children in need of foster care and people in social distress. As of 1 April 2006, the South African Social Security Agency (SASSA) has managed and administered social assistance grants (see South African Social Security Agency Act 9 of 2004).

At a policy level, the White Paper for Social Welfare of 1997 is the main policy document on social security. Its main areas of concern are 'poverty alleviation, social compensation and income distribution'.

In relation to jurisprudence, most cases related to social assistance have been dealt with at the lower court level. However, the Constitutional Court dealt with social security in the case of *Khosa v Minister of Social Development* 2004 (6) SA 505 (CC) [*Khosa*]. The Court noted in this case that

[t]he right of access to social security, including social assistance, for those unable to support themselves and their dependants is entrenched because as a society we value human beings and want to ensure that people are afforded their basic needs. A society must seek to ensure that the basic necessities of life are accessible to all if it is to be a society in which human dignity, freedom and equality are foundational (para 52).

Realisation of the right to social security for children

The Social Assistance Act provides for three types of social grants intended for the benefit of children: the CSG, the foster child grant (FCG) and the care dependency grant (CDG). For children from poor families, these grants are important to ensure their basic survival and their enjoyment of such other rights as the rights to education, to an adequate standard of living and to be protected from exploitative labour practices.

The CSG was introduced in 1998 with the sole purpose of helping children acquire basic sustenance. Since its inception, the CSG has been rolled out rapidly and now reaches more than eight million children. The cash value of the CSG is currently R250 a month.

Eligibility for the CSG

To qualify for the CSG, an applicant must be a primary caregiver of a child. A 'primary caregiver' includes a biological parent or relative, or a non-related person primarily responsible for the child. Initially, the CSG was available to South African citizens only. However, in the *Khosa* case, the Constitutional Court found it just and equitable to extend social grants to permanent residents. Again, in *Scalabrini Centre of Cape Town and Others v Minister of Social Development and Others* Case No 32056/2005, the

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High Court held that refugees may also apply for disability grants and social relief of distress.

Secondly, the applicant and spouse must meet the means test, which determines whether the applicant is poor enough to qualify for the grant. The formula currently used to link the threshold to the grant amount ensures that the calculation of the income threshold keeps pace with inflation. Thirdly, a person receiving a CSG cannot qualify for another social grant. Fourthly, the child and the caregiver must be resident in South Africa and the child cannot be cared for in a state institution such as in a child and youth care centre.

Fifthly, the applicant must submit his or her own identity documents and a valid birth certificate for the child. The issue of documentation, particularly birth certificates, has been one of the most formidable challenges to accessing the CSG, especially in remote villages and towns where the nearest Department of Home Affairs office is miles away and mobile units do not operate. In *Alliance for Children's Entitlement to Social Security (ACCESS) v Minister of Social Development* Case No 5251/2005, the High Court ordered the Department of Social Development to allow alternative forms of identification and to give a detailed statistical report on its progress in giving the CSG to children and caregivers without identity documents. Although the acceptance of alternative forms of identification is laudable, the government is wary of corruption and determined to guard against undeserving individuals accessing the CSG.

Lastly, as from January 2010, the child for whom the grant is sought must be under the age of 16 years. This age limit will be extended to 17 in 2011 and 18 in 2012. The qualifying age limit was the subject of a challenge in *Mahlangu v Minister of Social Development and Minister of Finance* Case No 25754/05, where the High Court was asked to order the government to extend the grant to all poor children under the age of 18 years. Judgment is still pending in this case. Meanwhile, the government went ahead with extending the grant on a progressive basis as set out above. (See 2009 amendments to Regulation 6: Social Assistance Act.)

General challenges to accessing social grants

In the last decade, the social security system and access to social assistance grants have faced many hurdles that have led to several committees being set up to address deficiencies: the Lund Committee on Child and Family Support, 1996; the Ministerial Committee on the Abuse, Neglect and Ill-treatment of Older Persons, 2001; and the Committee of Inquiry into a Comprehensive Social Security System

(Department of Social Development, 2002). One of the key recommendations from these committees has been that access to social security and social assistance grants must be streamlined.

There continue to be several impediments to access to social assistance grants, including administrative problems, poor levels of service delivery, lack of knowledge about grants, the unilateral withdrawal of grants, and corruption and fraud, to mention but a few.

The administrative problems include a lack of documentation and poor conditions at grant pay points (Bonthuys, 2008: 340). Administrative inefficiencies prevent many eligible applicants from receiving assistance timeously. In many cases, the courts have held that delays in processing grants have been unreasonable. Examples include *Vumazonka and Others v MEC for Social Development and Welfare for Eastern Cape* 2005 (6) SA 229, in which the High Court found the delay in dealing with a disability grant application to be unreasonable. Also, in the case of *Kebogile Lobisa Ngamole v South African Social Security Agency* Case Nos 1033/08, 1025/08, 1024/08, 1038/08 and 1039/08, the High Court decried the conduct of the SASSA in respect of delays in processing applications for grants and noted that applications should have been timeously communicated to avoid unreasonable delays.

Corrupt and unhelpful officials add to the incessant delays in the process, discouraging grant applicants from pursuing their claims. According to the SASSA 2008-2009 annual report presented to the National Assembly's Portfolio Committee on Social Development, the agency brought 3 930 fraud cases to court in 2008-2009, of which 3 605 resulted in convictions. In 2009-2010, there were 2 110 cases producing 1 838 convictions.

Potential beneficiaries are sometimes prevented from accessing social grants by their own socio-economic circumstances. Some cannot even afford the cost of transport to government offices. Others do not know about the existence of grants, let alone the correct procedures for application. There is inadequate dissemination of information to communities about the social grants and the conditions of eligibility. Illiteracy, particularly in the rural areas, exacerbates the situation.

In order to address the challenges in the administration of social grants, the government is currently reviewing the payment system to reduce fraud and corruption (Gordhan, 2010).

Conclusion

The South African government is legally obliged to provide for social security and assistance to children. However, the realisation of this right through the CSG, as with other social grants, faces challenges in implementation, administration and logistics. Social assistance enables people living in poverty to meet basic subsistence needs, so it is imperative for the government to deal adequately with the challenges of effectively implementing social grants. Realising this right will not only ensure the realisation of

other socio-economic rights such as education, but also contribute to stemming the poverty cycle that affects children and people living in poverty in South Africa.

Gladys Mirugi-Mukundi is a former research consultant to the Socio-Economic Rights Project.

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