THE USE OF THE CHILD PROTECTION SYSTEM FOR POVERTY ALLEVIATION

A CASE STUDY FROM SOUTH AFRICA

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• The South African Constitution guarantees the right to social security, including appropriate social assistance for those who are unable to support themselves and their dependants.

• The state has a duty to progressively realise this right.

• The Social Assistance Act of 2004 forms the legal framework.

• Social grants are state-funded, unconditional cash transfers that have been shown to have effectively reduced extreme poverty in South Africa.

• The Child Support Grant is now one of the largest unconditional cash transfer programmes in the world, reaching more than 11 million children.
2008-2015: South African Social Security Agency SOCPEN monthly reports

End March 2015:

- CSG: 11,703,165
- FCG: 499,774
- CDG: 126,777

2008-2015: South African Social Security Agency SOCPEN monthly reports
FORMAL FOSTER CARE

• Formal foster care is a form of alternative care for children removed children from their family environment due to abuse or neglect.

• The Children’s Act of 2005 provides the legal framework.

• Formal foster care consists of:
  • Investigations by social workers
  • Court-ordered placements
  • Visits and supervision by social workers
  • Court reviews of the placements every two years

• Court appointed foster parents are entitled to the FCG.
## COMPARISON

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<td><strong>Enrolment</strong></td>
<td>Quick administrative process (SASSA)</td>
<td>Foster care placement (social worker + court), then application</td>
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<td><strong>Review / extension</strong></td>
<td>None (up to 18 years)</td>
<td>2-yearly</td>
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Relatives caring for orphaned children encouraged to apply for foster care

Large numbers of FCGs start lapsing

Court ordered moratorium on lapsing

300,000 expired court orders

Sources: 1998-2007: National Treasury Intergovernmental Fiscal Review; financial year-end figures
2008-2015: South African Social Security Agency SOCPEN monthly reports; financial year-end
Compiled by Katharine Hall, Children’s Institute, UCT
IS THIS IN THE BEST INTERESTS OF ALL VULNERABLE CHILDREN?

• The foster care system was designed to handle 50 000 to 100 000 cases per year.
• There are currently over 500 000 children in foster care – the majority are orphans living with relatives.
• The majority of orphans live with relatives and are in need of social assistance from the state. A smaller number are also in need of supportive social welfare services; a few are in need of protection services or state alternative care.
• Is the child protection system the most appropriate response for orphaned children living with relatives?
• The child protection system is under resourced with regards to financial and human resources.
• Attempting to reach all orphans with the FCG is diverting scarce resources and capacity away from abused and neglected children.
WHO IS IN NEED OF CARE?

- The question of whether orphaned children living with relatives should be placed with relatives has come before the courts in two cases.

- The law states that “a child is in need of care and protection if, the child...has been abandoned or orphaned and is without any visible means of support.”

- This ambiguous phrasing has led to differing interpretations.

- In the case of SS:
  - A 10 year old boy who had been living in the care of his great aunt and uncle for several years. They were poor and received the CSG. Following his mother’s death, they applied for the FCG.
  - The magistrate said no. “The country’s foster care system has become an income maintenance system.”
  - High Court ultimately ruled that the child could be placed in foster care with his relatives.
WHO IS IN NEED OF CARE?

• In the Manana case:
  • Three children were living with their grandmother, who applied for a foster care order.
  • The lower court found the children were not in need of state care; in the appeal to the High Court, it was found that it was in the best interests of the children in front of the court to be placed in foster care and therefore receive the FCG.

• These cases show the varying interpretations of who is in need of care and protection.

• Although the courts must consider the best interests of the child in front of them, their findings have broader implications for an already struggling system.

• There are 1.4 million double and maternal orphans in South Africa, most of who are living with relatives. The system as it stands cannot cope with these numbers.

• Is this the most appropriate response for orphaned children living with relatives?
WHO DO CHILDREN LIVE WITH?

- **Live with both parents**: 6 292 000 (34%)
- **Live with mother (not father)**: 7 134 000 (38%)
- **Live with relatives - mother lives elsewhere**: 3 094 000 (17%)
- **Live with relatives - mother deceased**: 1 207 000 (6%)
- **Live with father (not mother)**: 677 000 (4%)
- **Other / non-related**: 116 000 (1%)
- **Unclassifiable**: 54 000

72% live with mother

8% maternally orphaned

Statistics South Africa: General Household Survey 2012
Analysis by Katharine Hall, Children’s Institute, UCT
ARE ORPHANS RELATIVELY MORE VULNERABLE?

• However, in South Africa, large numbers of children live with relatives, whether their parents are alive or not.

• This use of formal foster care for orphaned children raises the question: are orphaned children living with relatives more vulnerable and in greater need of state care and protection than non-orphans living with relatives?

• We need to look at the literature to understand in what ways orphaned children are ‘worse off’ than other children; this will help inform appropriate responses.

• Studies address a range of outcomes: mostly education, but also nutrition, levels of poverty, psychosocial outcomes and abuse and neglect.
ARE ORPHANS RELATIVELY MORE VULNERABLE?

• The evidence is mixed; literature suggests some increased vulnerability for orphaned children but the relationships are not always consistent and are likely to vary by context.
  
  • Education – some negative impacts of orphanhood, but relationships not clear and consistent
  
  • Poverty levels – mixed
  
  • Psychological and emotional outcomes – orphaned children more likely to report psychological distress (role of AIDS illness and orphaning – Cluver et al)
  
  • Abuse and maltreatment – few studies consider abuse as a primary outcome, making it difficult to draw conclusions (Nicholls et al, 2012; Meinck et al 2013).

• Seems some orphans more “at risk” than others, depending on the measure.

• Co-residence of parents seems to impact outcomes, not only orphan status.

• Other factors, particularly household wealth, are often a greater predictor of outcomes than orphan status.
CONCLUSIONS

• South Africa has clear constitutional commitment to social security and the legal framework, but challenges in implementation remain.

• The foster child grant has traditionally formed part of the child protection system intended for children who are in state care because of abuse and neglect, but has increasingly been used to respond to the needs of maternally orphaned children living with children.

• The ambiguity about the purpose of the grant means that the aims of providing social assistance and child protection have been conflated in the FCG.

• In the last decade there has been a rapid increase in the numbers of children in the foster care system. This has placed enormous strain on an under-resourced system and the system is now in crisis.

• The current situation is not sustainable and the court has ordered that a “comprehensive legal solution” needs to be found by Dec 2017.
CONCLUSIONS

• Any comprehensive legal solution will need to consider both the right to social assistance and the right to protection for children in need of care.

• Policy choices have budgetary implications and take place in the context of broader conversation about the need for inclusive and responsive social protection.

• There is a need to go back to the evidence to review what the needs of these children are, to determine the most appropriate and sustainable responses.

• A comprehensive legal solution will need to consider the following questions:
  • How do we ensure that orphaned children living with relatives who are in need of poverty alleviation receive a grant timeously?
  • How do we ensure that social workers are able to provide supportive social work services and respond to children in need of state care and protection?
  • How do we ensure that the policy choice is a step forward in progressively realising the right to social security for all children in need of poverty relief?
THANK YOU