Comprehensive review of the provision of social assistance to children in family care

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Acronyms

ACESS	Alliance for Children's Entitlement to Social Security
CDG	Care dependency grant
CSG	Child support grant
DSD	Department of Social Development
ECD	Early childhood development
FCG	Foster child grant
GHS	General Household Survey
LINC	Leadership and Innovation Network for Collaboration in the Children's Sector
NACCW	National Association of Child Care Workers
NIDS	National Income Dynamics Study
NPO	Non-profit organisation
PATH	Programme of Advancement through Health and Education
SALC	South African Law Commission
SASSA	South African Social Security Agency
UNICEF	United Nations Children's Fund

Executive summary

This report details the findings of a study into social assistance for children in family care i.e. children who are living with related family members other than their biological parents.

The terms of reference for the study highlighted the core of the problem as being the absence of specific social assistance for children in the care of related family members, adopted children and those awaiting adoption, and children in child-headed households. In the absence of such specific assistance, the foster child grant has become the grant of choice both for the caregivers and those who advise and assist the children and their caregivers.

This preference is understandable given the substantial difference in the amount provided for by the foster child grant (FCG) and the child support grant (CSG), which is the other grant available to these categories of children. However, the preference has "choked up" the foster child placement system on both the social development and justice sides. It has placed a significant financial burden on government in terms of both the amount paid out and the human resources, court and other costs associated with foster care placements and supervision. Use of the foster child grant for these children has created legal and constitutional challenges. It has raised questions of equity. In particular, use of the grants for these categories of children seems to contradict the principle proposed by the Lund Committee that there should be no discrimination based on the family form in which the child lives. (The Lund Committee, which was appointed by the then Minister of Welfare in the late 1990s, developed the proposal for what became the CSG.) to develop The "choking up" of the foster care placement system and heavy human resource demands also means that these human resources (particularly social workers, magistrates and court personnel) are not available to be used in providing the required protection services for abused, neglected and exploited children who are the original intended target of the foster care system.

The practice of using the foster care system for children living with related family results in these children becoming "wards of the state" once the court has "placed" them in "alternative care". This categorisation as "wards of the state" results in much stronger constitutional obligations on the state than the state bears for children living in family care without the intervention of the courts. For "wards of the state", government is directly responsible for providing for the needs of the child. For children in family care, in contrast, government is only obliged to provide support where the family is unable to provide. The Constitutional Court has recommended that such support includes material assistance such as that provided by social grants and government-subsidised programmes. Further, obligations in respect of children in family care are subject to the principle of progressive realisation within available resources, in contrast to the immediate responsibility in respect of children in alternative care.

In terms of adoption, government has developed an adoption policy that envisaged a strong increase in the number of adoptions. Adoptions are favoured because they constitute a permanent placement, while foster placements are generally temporary placements subject to two yearly court renewals (with the possibility of longer placements). This requirement of regular renewals stems from the fact that foster care is "alternative care". Further, adoption provides the new parents with full parental rights and responsibilities and the children are no longer "wards of the state". This is not the case for foster parents, who are caring for children

on the state's behalf. There are, however, two main challenges standing in the way of the desired increase in the number of adoptions that relate directly to the current investigation. Firstly, while the Children's Act states that prospective adoptive parents cannot be excluded only on the basis of their financial means, social workers remain reluctant to place children with parents who are poor. Secondly, poorer families who are fostering children (and thus receiving the foster child grant) might hesitate to adopt because they would lose the income from the grant on adopting the child.

In terms of child-headed households, section 137 of the Children's Act defines such households as those in which the parent, guardian or care-giver of the household is terminally ill, has died, or has abandoned the children in the household, and in which a child aged 16 years or older has assumed the role of care-giver in the absence of an adult family member who can play this role. This study, however, focuses on households in which the parent, guardian or care-giver has died or abandoned the children, as the main grant-related problems arise in such households where there is no adult to receive the grant.

For this constrained definition of child-headed households, one problem with the CSG is that children younger than 16 cannot access the grants on behalf of their siblings. A second problem with the CSG is that a child of 16 or 17 years is not able to access the grant in respect of care of him- or herself. A third concern among some interviewees was that children in child-headed households who benefit from grants all seem to receive the low-value CSG rather than the higher-value FCG. This is so because, firstly, courts are reluctant to appoint a 16- or 17-year old as a foster parent. Secondly, the adult mentors who assist these households under some schemes (such as the Isibindi programme) cannot receive the foster grant because they are not living with the children.

This study proposes a kinship child support grant that builds on the proposals of the South African Law Commission at the time the Children's Act was being developed. In line with the Commission, the proposal is that such a grant would require neither a court process and the associated heavy social work process for placement nor subsequent monitoring of the placement. Instead, orphaned children in the "informal" care of related family members would be able to access the same range of prevention and early intervention services that would be available to all children and that would, hopefully, be expanded with the resources freed up by not having the large numbers of children in family care going through the foster processes. Family members would only receive the foster child grant if a child is placed with them by the court because the child has been found to be in need of special "care and protection" as envisaged in the Children's Act.

A refinement of the Commission's proposal is that the kinship child support grant would be a variant of the existing child support grant – in effect a child support grant with a supplement because the primary caregiver is not the child's parent and the child's parent is not alive to provide for him/her. This supplement could be justified on the basis that while biological parents have a duty to maintain their children, the same duty does not lie with other family members (although, arguably, it does lie with grandparents). The kinship child support grant would be available only for the approximately 1,6 million maternal and double orphans. The many children living with related family members and whose mothers are still alive but living or working elsewhere would continue to qualify for the CSG.

Although adoptive parents have the duty to maintain the adopted child, most of the scenarios explored in the study envisage the supplemented child support grant also being available to

adoptive parents. This would be done so as to incentivise adoptions. Alternatively, one of the scenarios envisages adoptive parents being eligible for the ordinary CSG.

Importantly, the introduction of a new supplementary grant without other changes would leave the system highly inequitable and would also not address the related perverse incentives created by the substantial gap between the amount of the CSG and FCG. The problems in this respect were recognised as a major challenge by the Lund Committee and South African Law Commission but were not addressed by either of them. Recent developments have substantially increased the need for urgent action. Indeed, several interviewees felt that the entire welfare system for vulnerable groups was under threat if substantial changes were not introduced soon.

The proposed approach thus includes a phased-in increase in the amount of the child support grant to bring it to a level where it is more or less equal to the per capita cost of food in Statistics South Africa's lower poverty line. This would, in turn, make it equivalent to 60% of the value of the foster child grant. It would thus reduce the strength of the perverse incentive.

At a theoretical level, the proposals are in line with the understanding that the foster child grant is provided for children who need specialised government intervention to provide for their care and protection directly, whereas the child support grant and its supplementary version are poverty grants aimed at supporting parents and family to care for the children in their care.

Three scenarios are modelled. As noted, the increase in the CSG is phased in. Across all scenarios, this is done by setting the CSG at 44% of the target food component amount in the first year, 52% of the target amount in the second year, and 60% of the FCG amount in the third year. This increase yields a CSG that is approximately 73% of the target food component amount in the first year, 87% of the target amount in the second year, and 100% of the target amount from the third year onwards. Some of the scenarios also keep the FCG (at R770 in 2012) constant in nominal terms (i.e. keeping the rand amount the same without adjusting for inflation) for the three years, while one scenario has the FCG staying constant in real terms i.e. with the rand amount increasing with inflation. After three years, all the grants would increase each year at least in line with inflation.

Most of the scenarios incorporate a means test for all the poverty grants i.e. all except the FCG. However, there is a possibility that the CSG will be universalised so that it is available for all children without a means test. One of the scenarios thus assumes that none of the grants has a means test. Where a means test is used, it is based on the current real level of the CSG means test on the basis that it is more or less equivalent to one of the standard poverty lines of around R2 500 per month for a household with just under five members in 2009. The eligibility rate using this means test is assumed to be 75%.

In each of the three scenarios the grants are available for the following categories of children, sometimes with and sometimes without a means test:

- The foster child grant is provided for children found by the court to be in need of "care and protection" and placed with a foster parent/s. The foster parent may or may not be family (kin) of the child, and the child may or may not be orphaned
- The kinship child support grant is provided to children who are not found by the court to be in need of "care and protection" but who are living with related family as a res8qwwwwwwwwwwwwwwwwwwult of double or maternal orphanhood

- The adoption grant is provided for children who have been formally adopted
- The child support grant is provided to all other children living with their parents or with relatives.

The three scenarios are as follows for the three years of phase-in, after which all grants would increase each year at least in line with inflation.

Scenario 1
- Foster child grant at constant nominal value of R770 (the value set for 2012/13)
- Universal child support grant "grown" to 60% of FCG, equivalent to food component of poverty line
- Kinship child support and adoption grants set at 80% of FCG, with no means test

Scenario 2
- Foster child grant at constant nominal value of R770
- Means-tested child support grant "grown" to 60% of FCG, equivalent to food component of poverty line
- Means-tested kinship child support and adoption grants set at 80% of FCG

Scenario 3
- Foster child grant at constant real value (i.e. adjusted with inflation)
- Means-tested child support grant "grown" to 60% of adjusted FCG, equivalent to food component of poverty line
- Means-tested kinship child support grant set at 60% of FCG, equivalent to food component of poverty line
- No adoption grant – these children eligible for CSG

The modelling does not cover the cost of Social Development and Justice staff involved in processing the foster care placement and South African Social Security Agency staff involves in application for grant. It also does not cover the costs associated with approving an adoption.

The scenarios are modelled in nominal rather than real values so as to be able to model keeping the nominal value of the FCG constant. An inflation rate of 6% per year is used. All calculations are based on 100% take-up by eligible caregivers. The fact that this level of take-up will not occur in reality means that the estimates overstate the financial cost.

The three scenarios are presented in two ways. The first set of results assumes that all children will immediately be covered by the new system. The second set of results allows for children who would fall under informal family care with the proposed approach but are currently in foster care to continue to receive the full FCG for two years until their current court orders expire. At that point they would be transferred to the kinship child support grant plus linked to prevention and early intervention programmes.

The proposal implicit in the second set of results will assist in countering potential legal challenges that the transfer from the higher valued FCG to a slightly lower KCSG is a regressive move. Firstly, the proposal allows for a notice and a transition period. Secondly, it does not over-ride existing court orders. Thirdly, while the caregiver may receive a slightly smaller amount of money, this will be balanced by linkages to prevention and early intervention programmes. The second set of results has higher costs for the first two years,

but the same level as for the first set by year 3, by when the current foster care placements should have lapsed.

Scenario 2, with means testing of all grants except the FCG and a constant nominal value for the FCG for three years, is the least expensive of the three options. The total cost of full take-up in year 3, when the CSG has reached its target level, is R79 424,7m. Scenario 1, with constant nominal FCG but no means testing for any of the grants, is the most expensive, at R105 761,0m. Scenario, with constant real value for the FCG, but the kinship child support grant set at 60% of the FCG value, has a cost that is closer to scenario 2 than to scenario 1, at R91 888,9m.

The main cost driver for the higher cost of Scenario 1 is the lack of a means test for the CSG. If a means test was introduced into this scenario for the CSG (but not for any of the other grants), the cost would fall to R82 455,5 million in year 3, only marginally more than the lowest-cost Scenario 2.

While the estimates for the cheapest proposed scenario are noticeably higher than the expenditure projected with the current set of grants, the comparison is misleading in that the estimates assume that all children who are eligible receive grants while, in reality, only about 80% of eligible children receive grants. If the proposed scenarios assumed that only 80% of eligible children received grants, the increased expenditure would be relatively minor for a system that is more logical and equitable, and will also be more sustainable in terms of human resource requirements.

The study includes an assessment of the various scenarios against the key principles that should inform social security for children. The principles addressed by all options include the following:

- *Progressive realisation of rights*: All options see an increase in the number of children benefiting from a more substantial CSG. All options should result in the system working far more efficiently because of the decreases in bureaucracy for what are now foster placements but will become kinship care arrangements This will result in children accessing the benefits quicker and with less expenditure of time, effort and money on the part of caregivers. The fact that all options provide for a grant of lesser value for children in family care than the foster child grant that some children in family care are currently accessing could be seen as a step “backwards”. For this to be acceptable in terms of the principle of progressive realisation, government would need to show that the increased realisation of rights in respect of the larger number of children who access grants more readily, as well as the greater equity in the system and overall opportunity for realisation of rights in the broader system, outweigh the harm suffered by the children in family care currently benefiting from the foster child grant.
- *Within available resources*: All options will radically decrease the workload of social workers and the courts by simplifying the process required for supporting tha majority of kinship care arrangements This should free up social workers for delivery of other services for children and other vulnerable groups. It should also free up the resources that were to be spent on employing additional social workers for employment of other less costly staff, such as child care workers.
- *Efficiency*: The shift of large numbers of children from foster care to a simpler process for supporting kinship care also increases efficiency.

- *Equity*: The reduction in the gap between the size of the various grants reduces a current serious inequity, including urban/rural disparity in access to the different grants.
- *Logic*: All options distinguish more clearly between the social security-oriented grants and the specialised protection services-oriented FCG.
- *Ease of introduction*: The kinship child support grant would not necessarily require a change to the Social Assistance Act. The supplementary amount for relatives caring for orphans could be introduced through an amendment to the regulations that determine the CSG amount. The increases to the base CSG amount could also be effected without any change to the Act by the Minister of Social Development in consultation with the Minister of Finance publishing a notice in the government gazette.

The study suggests that many of the longstanding and long-recognised challenges in the current system of social security for children can be solved. The challenges will, however, not be solved if it is only social assistance that is addressed. The scenarios are based on the assumption that a range of other reforms will happen. The reforms include:

- Providing for the recognition of kinship care for orphans without requirement for court involvement
- Expanding the roles of cadres of workers other than social workers and providing the funding for this to happen
- Expanding and funding provision of prevention and early intervention services
- Removing barriers for kin applying for formal legal recognition of their de facto parenting rights and responsibilities by devolving the power to hear and consider guardianship applications to the Children's Court.

These reforms will help in addressing the impossible workloads currently faced by social workers and the courts. They will also reduce some of the costs incurred by government in addition to the grant amount itself. Further, increased service provision by the other cadres and increased provision of prevention and early intervention services will reduce the number of children who need full foster care, and also reduce the number of children needing institutionalisation in child and youth care centres.

Increased provision of, and linking of families to, prevention and early intervention services would also provide a more solid basis for government to claim that social grants are part of a package of services delivered to children rather than a solution on their own.

1 Introduction

This report details the findings of a study into what the terms of reference referred to as social assistance for children in alternative care. As discussed further below, the title of the terms of reference already implicitly highlighted one of the questions that the study needed to tackle, namely which children should be considered as being in "alternative care" and how this, in turn, might affect the social assistance to be provided to different categories of children.

The terms of reference were issued by the national Department of Social Development (DSD) in the second half of 2011, and Community Agency for Social Enquiry, in partnership with the Children's Institute of the University of Cape Town, was awarded the contract for undertaking the study.

The Department emphasised the importance and urgency of the study. The urgency was felt from the side of the government, given the challenges faced currently in terms of human, financial and other sources. The urgency was also felt by the many children and their caregivers who need social assistance, as well as the organisations who seek to support them.

The timeline for the study was given as four months. While the topic is large, the short timeline seemed appropriate given both the urgency of finding solutions and the fact that a lot of prior work has already been done on this and related issues.

The main method used for the study was desktop review. This was supplemented by telephonic interviews with eleven key people in government, academia and civil society. (Names and affiliation of interviewees are recorded in an appendix to this report.) The project also involved database analysis and modelling work to come up with the numbers of children who might be covered under various scenarios as well as the likely cost to government of each scenario.

The report is presented in six sections, as follows:

- *Setting the context* describes the three child grants currently available in South Africa, presents and elaborates on the problem statement in the terms of reference for this study, describes the proposals made by the then South African Law Commission (SALC – subsequently renamed the South African Law Reform Commission) and the related decisions of the legislature during the development of the Children's Act, and finally describes a range of other ongoing reforms and initiatives that are relevant for children's social assistance grants.
- *International experience* presents pen-sketches of social assistance for children in selected countries. For the most part these are countries suggested by the ten interviewees.
- *Number of children in different categories* presents evidence and analysis of the numbers of children in different categories who might be eligible for various grants.
- *Principles* discusses what the Constitution requires and what interviewees and the literature suggest should be the principles underlying the design of a social security system for children in South Africa
- *The three scenarios to be modelled* motivates three possible scenarios.

- *The modelling* presents analysis of the numbers and costs involved in the different scenarios, and discusses the extent to which each is in line with the principles discussed in the earlier section.
- The *conclusion* includes a short discussion of the key issues that are not tackled by this report but need to be tackled if any system of child social security in South Africa is to deliver in the best interests of children.

2 Setting the context

2.1 Current child grants in South Africa

Currently, three child grants are available in South Africa.

The child support grant (CSG) is available to primary caregivers of children under 18 years who pass the means test. As at 31 March 2011, 10 371 950 children were beneficiaries of the grant (South African Social Security Agency (SASSA), 2011: 6). The value of the grant up until end March is R270 per month (increasing to R280 per month as from April 2012). The cut-off for the means test is ten times this amount i.e. R2 700 per month for a single person, and R5 400 for joint spousal income if the person is married. The primary caregiver must be 16 years or older, and – while the number of biological children for whom the caregiver can receive the grant is not limited – an individual can receive the CSG for a maximum of six non-biological children. The average processing time for a CSG application is around 9 days. The first payment usually occurs within 6 weeks of the application being finalised.

The foster child grant (FCG) is available to those who have been appointed as foster parents after the court has found the child to be "in need of care and protection" and made a court order placing the child in foster care with the specified foster parent. The grant is available for children up to 18 years, but can be extended to 21 years if the child is studying and dependent on the foster parent/s. As at 31 March 2011, 512 874 children were benefiting from the grant. The current value of the grant is R740 per month (increasing to R770 as from April 2012). There is no means test for the grant. Foster placements with non-family members must usually be reviewed every two years but can be made long-term after the first two years if certain conditions are met. The Children's Act specifies that this process involves assessment by a social worker and a court process to extend the placement order. For foster placements with family members, the court can at its first placement order or any extension order thereafter order that the placement be longer than two years or permanent thereby doing away with the need for further court extensions. Such long-term placements with family or non-family where court reviews are no longer required must still be monitored and evaluated by a social service professional at least every two years. As elaborated below, there are enormous backlogs in processing the placements, and years can elapse between the caregiver approaching a social worker about foster care, the first court inquiry and judgment and receipt of the first grant payment. There are also backlogs in processing the court order extensions and ensuring regular monitoring by social service professionals. Unlike for the other grants, foster child grant beneficiaries are paid from the date of the court order and not from the date of first application.

The care dependency grant (CDG) is available to caregivers of children under 18 years who are severely physically or mentally disabled. As at 31 March 2011, there were 112 185 child beneficiaries of the grant. The current value of the grant is R1 140 per month (increasing to R1 200 as from 1 April 2012). Foster parents of children who are severely disabled are entitled to receive both the FCG and the CDG. The caregiver, unless a foster parent, must pass a means test. The current cut-off for the means test is R11 400 for a single person and R22 800 for joint spousal income if the person is married.

Table 1 shows the value of the three child grants over the period 1999 to April 2012. The gap between the CSG and FCG remains substantial, although the gap has narrowed, at least in relative terms. In 1999 the FCG was 3,7 times the CSG while today (early 2012) it is 2,7 times the CSG.

Table 1. Value of child grants 1999-2012

	Foster care	Care dependency	Child support	FCG/CSG
Jul 1999	374	520	100	3.7
Jul 2000	390	540	100	3.9
Jul 2001	410	570	110	3.7
Oct 2002	460	640	140	3.3
Apr 2003	500	700	160	3.1
Apr 2004	530	740	170	3.1
Apr 2005	560	780	180	3.1
Apr 2006	590	820	190	3.1
Apr 2007	620	870	200	3.1
Apr 2008	650	940	210	3.1
Oct 2008	650	960	230	2.8
Apr 2009	680	1010	240	2.8
Apr 2010	710	1080	250	2.8
Apr 2011	740	1140	260	2.8
Oct 2011	740	1140	270	2.7
April 2012	770	1200	280	2.8

In real terms (expressed in 2008 rands), the value of the FCG decreased minimally from R631 to R627 over the period up until October 2011, while the CDG increased from R877 to R965, and the CSG from R169 to R229.

2.2 Problem statement in the terms of reference

The core of the problem statement in the terms of reference read as follows:

The South African social assistance programme provides for three categories of vulnerable children, namely (a) children placed in foster care; (b) children in households with no or low income; and (c) children with severe disabilities. Although the Social Assistance Act of 2004 provides an important support mechanism for children in compromised family environments, the legislation does not address the plight of other vulnerable children.

The South African Law Commission in its report which became the foundation of the Children's Act identified other groups of children for whom a social assistance is required, such as those children in kinship families and those adopted or awaiting adoption. Furthermore, the provision of social assistance does not address the plight of children who find themselves in child-headed households.

In the absence of the Social Assistance Act providing for these children, the foster child grant has become a means by default, a way of accessing social assistance for some of these children.

The implication is that the foster child grant which was meant to be a temporary measure has become a permanent benefit; and as a result has choked up the system of processing foster child benefits for social workers and for the justice system. Further, this has led to significant fiscal, financial, institutional, organisational, legal, constitutional, and communication implications. In addition, the foster care system, having been designed for a particular category of vulnerable children, in itself faces judicial and administrative challenges.

In light of the aforementioned, it is clear that there are gaps within the Social Assistance Act in relation to children's benefits. To address these challenges, the imperativeness and urgency of this study cannot be overemphasised.

2.3 Expanding on the problem statement

The problem statement found in the terms of reference and reproduced above covers a range of inter-related and sometimes complicated issues. The sub-sections that follow expand on the most important of these issues, drawing on both the interviews with the eleven key informants and reading.

2.3.1 The new vision of child grants introduced by the child support grant

The assertion in the problem statement that particular children are not catered for by the existing grants could be considered controversial. One of the major innovations of the CSG was that it was meant to cater for all children. "Follow-the-child" was a key principle underlying the design, with the intention that the child should not suffer discrimination on the basis of the form of the family in which he or she lived. In particular, the CSG was designed to be available, without a complicated court process, to both biological parents and extended family members caring for children. The memorandum to the Welfare Laws Amendment Bill [B90-97] which introduced the CSG was explicit about the intention in respect of kin caring for children: *"1.3 The Bill aims to amend section 10 of the Child Care Act, 1983 (Act No. 74 of 1983), so as to exempt members of the extended family of the child from the prohibition against receiving and caring for children younger than seven years, apart from their parents without the prior consent of a commissioner of child welfare."* (The reference to seven years arises because at that point the CSG was only available for children under seven years of age.)

As Sloth-Nielsen (forthcoming) explains, in contrast to the CSG, the FCG is not in strict terms part of the social security system. Instead, it is part of a "specialised welfare intervention" for most-at-risk children "temporarily deprived of a family environment". (Because the term "welfare" has several different meanings, elsewhere in this paper we

sometimes prefer to use the term "protection" to refer to such specialised interventions.) However, as Loffell (2005) notes, in practice foster care is a permanent or long-term placement both because many children are placed with kin (with whom they would probably stay even if not placed in foster care), and because of the attraction of the size of the grant relative to that of the CSG, impossible caseloads of staff (and thus impossibility of doing the required reviews adequately or at all) and challenges with adoptions (in that there is currently no grant for adoption, and also a range of other reasons why people do not find adoption attractive).

Why then does the problem statement name at least three categories of children as being not catered for by the current system of grants?

- In respect of children cared for by family members, the relative sizes of the CSG and the FCG make the FCG the grant of choice for family members and for many of the social workers and others who assist them.
- Similarly, with adoption, the challenge is that on adoption the caregiver will be eligible for the lower-valued CSG rather than the FCG – and will only be eligible if the means test is passed.
- With children in child-headed households, the challenge is the absence of a primary caregiver 16 years or older in the household to receive the grants as for the CSG the caregiver needs to be 16 years or older and for foster care the foster parent (who receives the grant) is required to be part of the household (in that the children have to remain in their care/custody) and must be 18 years or older.

For the first two categories, the main challenge is the relative size of the CSG and FCG. With children in child-headed households the relative size of the grants is not necessarily the main challenge. Other challenges are discussed below. The relative size of the grants does, nevertheless, influence the solution hoped for by advocates for these children.

Article 137(5)(a) of the Children's Act provides that the child heading a child-headed household or the adult designated to supervise the household can collect and administer "any social security grant or other grant" to which the household is entitled. Current regulations in respect of the CSG state that a child of 16 or older can qualify as a primary caregiver. Child heads of this age can therefore access the CSG for their siblings, although not for care for themselves.

Article 137(5)(a) also seems to open up the possibility for a child head to receive the foster child grant in respect of siblings for whom he or she is responsible. However, currently such children would receive – if they are fortunate – the CSG. In reality, SOCPEN data reveal that of the 8 155 child beneficiaries whose primary caregiver was 16 or 17 years old as at end December 2011, 95% were two years or younger, and 98% three years or younger. It thus seems that the overwhelming majority of the 7 778 child primary caregivers were receiving the grant in respect of their own children rather than in respect of siblings. Further, most of these child recipients of the CSG are probably not living in child-headed households, but instead living with other adults, including parents in some cases.

A pilot project in Port St Johns, which is being jointly implemented by Child Welfare South Africa and the National Association of Child Care Workers (NACCW) is exploring the possibility of child heads being recognised as foster parents and receiving the higher-valued grant. However, currently there is no evidence of children under 18 having been appointed as foster parents of their siblings.

2.3.2 Defining alternative care

The terms of reference for this project included the term "alternative care" in the title. This sub-section discusses these different understandings and motivates why the definition used in this paper seems most appropriate for the South African context and this paper in particular.

The UN Guidelines on Children in Alternative Care appear to define alternative care as care provided by any person other than a parent. The Guidelines thus refer to "children who are deprived of parental care or who are at risk of being so." In doing so, the guidelines encompass what is often referred to as "informal care", which includes care by family members, within the concept of alternative care.

In contrast, section 28(1)(b) of the South African Constitution says that a child has a right to family care or parental care, or to appropriate alternative care when the child is removed from the "family environment". This wording implies that family care, which would include care by a family member/kinship care, is not alternative care, and that the term family care excludes parental care. The Constitution thus recognises three distinct forms of care. The Constitution, as the supreme law in South Africa, takes precedence over international guidelines in cases where the Constitution and international law differ.

The Children's Act, following the Constitution, can also be interpreted as recognising these three forms of care (as well as others), with parental care recognised in sections 18 to 21, extended family care in sections 32, 23 and 24, and alternative care in chapter 11. Chapter 11 defines a child to be "in alternative care (only) if the child has been placed" in foster care, a child and youth care centre or temporary safe care. Sections 180(3) and 186 allow for children to be placed in foster care with family members. Once placed, such children living with family members would be "in alternative care". However, the vast majority of children living with family members have not been placed by the courts and are thus not "in alternative care" but instead in "family care".

Child-headed households are not included in the alternative care chapter, but instead are dealt with in Chapter 7, which deals with "Protection of children". The chapter allows for household headed by children 16 years or older to be recognised by the Department and supported by adult mentors. Ann Skelton (personal communication) suggests that this provision reflects the fact that such recognition of and support for these households is not seen by government as a solution to children in need of care and protection, but instead constitute "pragmatic recognition of an existing situation". This reading echoes that of others who felt that child-headed households were not an ideal situation and should not be encouraged. Sloth-Nielsen (forthcoming) writes that recognition of such a household by the Department is a protective measure for the children concerned to ensure that they are provided with services and protection rather than a placement. Recognition is accorded on the basis that studies suggest that siblings may fare better when they remain together than they would do if separated when placed in alternative care, including kinship care.

A related issue is how one defines "wards of the state". Several interviewees suggested that the current system was failing children who were wards of the state, and in respect of whom government thus had a heightened responsibility. However, children only become wards of the state once declared in need of care and protection by the courts. This leaves open the question of whether children in the care of family should be declared in need of care and

protection by the courts in order that they may receive greater protection than children living with parents.

The definition of alternative care is not simply a technical issue. The international definition that excludes only care by parents seems to be based on the underlying notion that nuclear family is "best" for children. Yet the nuclear family is not necessarily the norm in South Africa and other parts of Africa, and has not ever been the norm. This conception informs concerns about what might happen to children not living with their parents, and the resultant desire to have targeted vetting of the non-parental caregivers and ongoing monitoring. What this conception ignores is the many instances in which children living with parents may be abused, neglected or exploited.

For this study, we use the conception of the South African Constitution and the Children's Act as to what constitutes alternative care as this seems more appropriate for child-raising practices in South Africa (and elsewhere in Africa). At the same time, however, we emphasise the importance of provision of prevention and early intervention services for all children, so that those in need can be identified and supported regardless of their living arrangements. This raises the issue of the duty of the state not only in terms of provision of social security money, but also in terms of services. This issue is not directly within the scope of our study, but was raised repeatedly by our interviewees and in the literature. A full "best interests" solution for South Africa's children requires a "package" of services and social assistance.

2.3.3 Adoption

The question of an adoption grant is covered in depth in another paper (Budlender, 2009). The earlier paper was developed as part of a broader process of developing an adoption strategy (Business Enterprises and Centre for Child Law, 2009). The overall aim of the strategy was to expand the number of children who are adopted. Benefits envisaged for such expansion included the following:

- That adoption provides for a permanent placement, whereas placement in foster care or in a child and youth care centre lasts for only two years unless the court order is extended. Permanent placements are considered by international and constitutional law to be in the best interests of the child.
- Adoption is a cost-effective (cheaper) option for the state than other alternatives

The most important points for our purposes related to how an adoption grant could facilitate the desired increase in the number of adoptions.

Two aspects are particularly important for the purposes of the current investigation:

- Firstly, one of the reasons offered for the limited number of adoptions in the past, and especially adoptions within poorer black communities, was that social workers were reluctant to place children with prospective parents who did not appear to have the financial means to support them. Section 231(4) and (5) of the Children's Act states that a prospective adoptive parent cannot be rejected on the grounds of financial status. However, social workers reportedly are still not approving adoptions for prospective parents who are very poor.
- Secondly, in addition to the reluctance on the part of social workers, poorer families who are fostering children (and thus receiving the foster child grant) might hesitate to adopt because they would lose the income from the grant on adopting the child.

An adoption grant would remove these impediments, as would a larger CSG.

The strategy provides an estimate of a total of just over 50 000 adopted children at the time the paper was written. The annual number of adoptions ranged between 2 055 and 2 601 between 2003/04 and 2007/08, with the lowest number for 2007/08. Among the children adopted over this period, 5 339 were white compared to 4 613 African, despite a much larger African child population and higher rates of orphaning among African children.

Some of the most important factors discouraging more adoptions were identified as follows:

- There were more children needing placement than families available and willing to adopt them
- Those wanting to adopt often had to wait a long time for a child to be found and the adoption approved, thus discouraging families from adopting more than one child
- Adoption was uncommon in cases where children were living with relatives, and in particular grandmothers, thus excluding the largest single category of orphaned children. Adoption by a grandmother would create the confusing situation where an individual person was both mother and grandmother.
- Cultural impediments included the problems that would arise in relation to family and life cycle rituals as a result of the adopted children not being linked with ancestors.
- Finding adoptive parents for older children is particularly difficult. This places limits on the extent to which children currently in foster care can instead be adopted as the overwhelming majority of foster children are in their teens.
- Finding adoptive parents for siblings is also difficult as taking on more children places additional financial and other demands on the prospective parents. This places limits on the extent to which adoption is the solution for the many orphans who have siblings.

Most important for our purposes, the lack of a specific adoption grant (or adequately sized general caregiver grants) – on grounds that the legal status places the duty of maintenance on the adoptive parent – acted as a disincentive where a foster care placement, with accompanying grant, was available. This factor became even more important with the promulgation of the Children's Act because section 231 of the Act states that an adoptive parent may not be disqualified by virtue of his or her financial status. The section also states that an adoptive parent can be in receipt of a state grant. This is different from the situation under the Child Care Act, where section 18(4)(a) required that a person wanting to adopt a child must possess adequate means to maintain and educate the child. In the words of the adoption strategy, the Children's Act "move[s] away from the 'adequate means' test to a 'willing and able' test" (Business Enterprises and Centre for Child Law, 2009: 22).

It is not only the absence of an adoption grant that makes adoption more cost-effective. There is also a saving, when compared to foster placements, in that adopted children do not require two-yearly reviews. Adoption is also a much cheaper option than placement in a child and youth care centre, for which government pays a monthly amount that is substantially higher than the foster child grant. The earlier costing of the Children's Bill found that, in the absence of a grant, adoption was seventeen times cheaper than foster care and 125 times cheaper than a children's home (Barberton, 2006: 107).

The paper, and the strategy, proposed that an adoption grant with the following features be introduced:

- The grant would be paid monthly until the child's eighteenth birthday as long as the child remained living with the adoptive parents.
- The grant would be means-tested. This would reduce a disincentive for poor adults considering adoption. It would also confirm that the grant was essentially a poverty grant. It would be in line with the principle of progress realisation (see below).
- The grant should only be available for domestic adoptions.
- The grant would be at the same level as the foster child grant. Receipt of the adoption grant would not disqualify the beneficiary from receiving the care dependency grant to cover special care-related expenses. The possibility of receiving both grants would thus encourage adoption of special needs children.
- Child beneficiaries of adoption grants would enjoy the same associated benefits – such as automatic exemption from school fees and free public health care – as enjoyed by other child grant beneficiaries.
- No conditions would be attached to the adoption grant given the very limited evidence internationally that conditions enhance the impact of a grant and the lack of systems and resources to monitor conditions effectively.

The principles that informed the design of the proposed adoption grant were as follows:

- Non-discrimination and equity: Adopted children should not be placed at more risk of poverty than those in foster care or those living with biological parents.
- Simplicity: The additional bureaucratic burdens placed on government, non-government agencies and practitioners, or beneficiaries should be kept to a minimum. The system should be simple to understand both for those who implement it and for those who might benefit.
- Monitoring of utilisation of grant: Given that there is no reason to suspect that an adoptive parent would be more likely than the beneficiary of any other grant to misuse the grant, it would therefore be discriminatory to impose a monitoring system on use of the grant when this does not exist for any other grant.
- Avoid unnecessary new elements: The adoption grant should be as similar to the existing grants in as many respects as possible so as to diminish the implementation challenges.

The costing estimates for the adoption grant assumed that the number of adopted children with caregivers who passed the means test would increase from 23 233 in 2009 to 25 578 in 2014. This is similar to the numbers used for the more conservative scenario of the earlier costing of the Children's Bill (Barberton, 2006). With these numbers, adoption grants with a value equal to that of the foster child grant would account for only 0,2% of the total value of all other grants combined. If the number of children doubled, the cost of the adoption grant would still be less than half a percent of the total value of all other grants when costed at a value equal to that of the foster child grant.

One of the advantages of adoption over both fostering and informal family care is that adoption gives the carer full parental rights and responsibilities as the adoptive parent becomes the guardian of the child. In contrast, neither foster parents nor family caregivers automatically become the guardian of a child for whom they care unless they were appointed as such in the will of the child's biological parent. A foster parent or family caregiver can also obtain guardianship rights through a parenting rights agreement that has been registered with a family advocate and confirmed by the High Court. Alternatively, the foster parent or family caregiver can apply for guardianship to the High Court. These provisions are not ideal

given the large numbers of children who are being cared for by people other than biological and adoptive parents as the High Court is inaccessible in both physical and financial terms. The provisions are not the direct focus of this study, but amendment of the provisions, especially devolving guardianship decision making powers to the Children's Courts, would remove obstacles that currently influence choices as to who cares for a child.

2.3.4 Child-headed households

Section 137 of the Children's Act defines child-headed households as those in which the parent, guardian or care-giver of the household is terminally ill, has died, or has abandoned the children in the household, and in which a child aged 16 years or older has assumed the role of care-giver in the absence of an adult family member who can play this role. It was, however, agreed that for the purposes of this investigation the focus should be on households 78in which the parent, guardian or care-giver has died or abandoned the children, as the main grant-related problems arise in such households where there is no adult to receive the grant.

For this constrained definition of child-headed households, one problem with the CSG is that child heads younger than 16 cannot access the grants. This is so because the Social Assistance Act defines a primary caregiver as a person 16 years or older and section 137 of the Children's Act only allows children aged 16 or older to be recognised as heads of the household.

A second problem with the CSG is that a child head of 16 or 17 years would not be able to access the grant in respect of care of him- or herself despite the fact that the age limit for the child beneficiary of the CSG is 18 years. There seems to be no reason why the regulations could not be changed to allow for a self-carer grant for the relatively few children who would fall in this category. If they are considered responsible enough to care for others, they should be considered responsible enough to care for themselves. Further, section 137(9) of the Children's Act provides legal authority for an amendment to ensure that 16 and 17 year old child heads are not excluded from receiving their own CSGs. The section provides that "a child-headed household may not be excluded from any grant… solely by reason of the fact that the household is headed by a child".

A greater concern among interviewees was that these children were receiving the low-value CSG rather than the higher-value FCG. The Port St Johns pilot project described elsewhere in this paper is currently investigating the possibility of a child head being appointed as the foster parent of his/her siblings, and managing the money and other care needs under the supervision of a mentor. This is an alternative to the current provision in the Act, which allows for a responsible adult (such as a mentor) to receive the grant on behalf of children in the child-headed household.

The discussion on child-headed households is part of a larger debate and exploration of the appropriate modalities for children in such circumstances. The solution is likely to include several alternatives, including the approach being tested in the Port St Johns pilot project and a range of cluster foster care arrangements. An ideal solution would avoid privileging this type of household and thus creating an incentive for them to be formed or sustained where other options are available. As several interviewees noted, provisions for child-headed households were introduced into the Act because such households existed and the children in them need to be provided for. However, ideally all children should be in the care of adults.

The modalities through which care is organised for these children are beyond the scope of this project. Our concern is with what different modalities would mean in terms of social assistance grants.

2.3.5 Resource implications

The terms of reference for this study explicitly require consideration of the cost of proposed solution/s. A narrow reading of this would focus on the cost of paying social security i.e. the grant. A broader reading requires consideration of the cost of processing the social security and the associated requirements in terms of approval, monitoring, review and renewal of grants. An even broader reading would require consideration of the cost of the full package of services (including child protection services where necessary) and social assistance (the grant).

The very broad view is far beyond the scope of this study. For the middle view – that considers costs of approval, monitoring, review and renewal – we do not provide a cost estimate. However, we do repeatedly point to where particular options will decrease or increase this type of costs. We also have an estimate from a previous study (Meintjes et al, 2005) of the nature and amount of the cost. What the current study does provide is estimates of the cost of the grants themselves, under different scenarios.

Resources are not only about money. The current system relies heavily on foster care, which has onerous requirements in respect of vetting of caregivers and ongoing monitoring. This brings with it severe challenges given the shortage of human resources, and especially the shortage of social workers. The issue is not only, or perhaps even primarily, the cost of employing these staff. The human resources simply do not exist, and will not do so in sufficient numbers for the foreseeable future despite the ongoing efforts in respect of training of additional social workers and the recognition and growth in numbers of other social service practitioners such as social auxiliary workers and child and youth care workers.

Information provided by the South African Council for Social Service Professionals illustrates the extent of the shortage of personnel (Dawes quoted in Giese, 2011: 12). In 2011, there were 13 773 registered social workers, less than the 14 322 recorded in 2009. In addition, there were 2 057 registered auxiliary workers, but almost half of these were based in Gauteng. These estimates include social workers employed by government and non-profit organisations (NPOs), those working in public and private services, and those servicing all vulnerable groups, not only children. It is estimated that only 45% (6 198) of the social workers provide direct welfare services. Where social workers do provide welfare services, reports over the years suggest that 80% or more of their time is spent on processing foster care cases (see, for example, Department of Welfare, 1996; Meintjes et al, 2005; Community Agency for Social Enquiry, 2006), leaving little or no time for child-related protection services, never mind services for other vulnerable groups.

The numbers above must be contrasted with the 16 000 and 66 000 social workers required for child-related services alone estimated for the lowest and highest scenarios of the costing of the Children's Act (Barberton, 2006).

As noted above, the Children's Act makes provision for child and youth care workers and auxiliaries to undertake some tasks that would previously have been reserved for social workers. However, in 2010 there were only 9 000 such workers in the country, most of whom

worked in child and youth care centres. These numbers should grow by a further 10 000 workers employed mainly in community care settings through the roll-out of the Isibindi programme. These workers will strengthen prevention and early intervention services available to vulnerable families.

The lack of human resource capacity is not restricted to social workers and related staff. There are also problems in this respect in the courts, leading to long delays – with likely damage to children as a result. As one interviewee said, "A month in a vulnerable child's life is an ordeal." Even if courts did have capacity in terms of staff numbers and facilities, interviewees and the literature record concerns about the understanding of some magistrates of the needs of children. While the court process for renewal of foster care placements was presumably introduced in the Children's Act to protect children, the evidence suggests that all that it has done is introduce new rigidities that are clogging up the system even further.

Government's provision of full bursaries for social work students had resulted in 2 086 students graduating by end 2010, virtually all of whom were subsequently employed by provincial departments of social development. However, this initiative and the higher salaries resulting from the occupation-specific dispensation (introduced in the hope of making social work more attractive) have not come anywhere near in achieving the absolute numbers required by the current provisions in respect of foster care and other services requiring such workers.

2.3.6 Conditions

The terms of reference state that the study should assess the "conditions to be attached, if any" to the proposed support for children in family care. A report recently commissioned by the National Planning Commission (Budlender, 2011) synthesises available evidence on, among others, the feasibility of attaching behavioural conditions to social assistance grants such as the CSG and others, the arguments and evidence for and against conditions against the background of the South African context, and the financial and social cost of introducing conditions (or "conditionalities") for grants.

The report makes an important distinction between qualifying characteristics and conditions. Legislation in relation to unconditional grants define a right which becomes an entitlement for people with specified characteristics who meet specified qualifying requirements, such as passing a means test. For conditional grants, in contrast, legislation similarly specifies characteristics and qualifications but, in addition, require that the applicant must behave in a specified way to continue receiving the grant. In addition to qualifying characteristics and conditions, there are other requirements that can serve to exclude some applicants who have the specified characteristics and meet the qualifications. One such potential barrier involves administrative requirements, such as possession of an identity document.

There is a further distinction between "hard" and "soft" conditions. The former state that beneficiaries who do not behave in the prescribed way will risk losing the grant. In contrast, non-compliance with soft conditions does not result in loss of the grants and may, at least in theory, result in government assisting the beneficiary to comply.

There seem to be three main arguments offered for conditions in South Africa. The first argument relates to the benefits that might be felt beyond the immediate beneficiary/ies. The argument states that individual families might not, for example, take into account the benefit

that society derives from a more educated citizenry and workforce when deciding whether or not to send their child to school. This argument is expanded in some of the literature to the assumption that poor people do not always know what is best for themselves. It is also extended to the argument that grants encourage dependency. The second argument relates to the fact that people might feel stigmatised if they receive a grant. The third argument relates to the fact that conditions may make grants more politically acceptable to those who are not eligible.

Since 1994 there have been several attempts to introduce conditions for child grants in South Africa (Hall, 2011). In 1998, when the CSG was introduced, several conditions were attached, including that applicants provide proof that their children had been immunised. This requirement was dropped when it became clear that the requirement discriminated against already disadvantaged children with poor access to health care services. In 2004, draft regulations for the Social Assistance Act were issued which stated that the child must be immunised and, if of school-going age, must attend school regularly. These conditions generated advocacy efforts from civil society and were dropped from the regulations. In 2009, draft regulations were issued that required six-monthly proof of the child's enrolment and attendance at school, failing which the grant would be suspended. These hard conditions were converted into soft conditions on the basis of comments received on the draft regulations.

Currently primary caregiver recipients of the CSG must provide proof, signed by the head of the educational institution, that child beneficiaries between the age of seven and 18 are attending an educational institution. If the child is not attending, they must notify the Director-General of DSD in writing. This is a soft condition because the grant may not be suspended if a child fails to attend school and school attendance is also not an eligibility requirement for new applications. Nevertheless, the condition imposes time and financial costs on caregivers and heads of educational institutions. To be effective, they also require that already over-burdened social workers take on an additional task of investigating and assisting with cases of non-attendance. Currently, there is reportedly no capacity even within national DSD to deal with the boxes of letters received on a monthly basis from primary caregivers.

2.4 Development of the Children's Act

2.4.1 Proposals of the South African Law Reform Commission

The South African Law Reform Commission (SALC) played a key role in the development of what became the Children's Act of 2005, as amended in 2007. The SALC's research and recommendations included proposals relating both directly and indirectly to social security. In terms of direct relevance, the Commission proposed a set of social security grants for children. These proposals were later omitted from the Bill and Act on the grounds that they were more appropriate in a separate Social Assistance Act. Namibia (see below) seems to be choosing the opposite decision after seeing what had happened in South Africa. Sloth-Nielsen (forthcoming) suggests that South Africa chose the more traditional approach with her observation that there is generally little, if any, interaction between the "development oriented economists and social protection experts" who design cash transfer schemes and related forms of care and the social work and legal experts who draft protection legislation.

In terms of indirect relevance, the SALC made proposals in respect of alternative care, including foster care. These proposals, with some amendments, were included in the Act.

During the interviews for this paper, many of the interviewees referred back to the SALC's proposals. Those who did so included those who at the time were in favour of the proposals and disappointed that they were not accepted. There were also others who were probably not in favour of the proposals at the time, but now felt that they should be reconsidered. The literature reviewed revealed that the SALC recommendations received strong support both during the deliberations and subsequently. Those supporting the recommendations, sometimes with slight adaptations, included networks such as the National Welfare Social Service and Development Forum and the Alliance for Children's Access to Social Security (ACESS).

This section therefore summarises the core of the proposals in respect of grants and related forms of care. What must be remembered is that these recommendations were put forward in about 2001. There have been some important changes since the proposals were put forward. In particular, the coverage, amount and means test for the child support grant have increased. These have not, however, addressed all the problems.

The recommendations in respect of kinship care (equivalent to what we refer to as family care in this paper) are of key importance for this study. The Commission recommended the introduction of court-ordered kinship care for children coming before the court via the formal child protection system in cases of abuse or neglect. It recommended that in the case of placement with family, the court should have the option of a permanent placement, and also have the option of specifying whether or not regular supervision and monitoring were required. Further, the Commission recommended that relatives caring for children on an informal basis should not need to go through a formal court process in order to have specified parental rights, but that this should instead be done administratively.

The Commission recommended that:

- Foster care placements with persons unrelated to the child should be supported through a non-means-tested grant as is presently the case.
- Children in court-ordered kinship care should qualify for a grant structured on the same basis as the foster child grant.
- Kinship care arrangements not requiring court intervention should provide access to a non-means-tested child grant.
- All three categories of grants should be supplemented with an additional needs-based grant such as the care dependency grant if the child had special needs with cost implications, such as a disability.

The Commission made further recommendations in respect of the CSG and FCG, some of which have since been implemented. In respect of the CSG it recommended as follows:

- The CSG should be extended to 18 years (subsequently done)
- The amount of the CSG should be increased (subsequently partially done) and determined by objective poverty measures linked to inflation (not done)
- The CSG should be non-means tested and universally available (A serious proposal is on the table in this respect, as discussed below)
- AIDS orphans and child-headed households should be enabled to access the CSG immediately.

In respect of the foster child grant, it recommended:

- Subsidised adoptions should be introduced in order to encourage families to adopt children (proposal on the table)
- The process of accessing the FCG should be simplified (not done – the process was made more complicated)
- Incentives should be introduced for fostering HIV and Aids orphans, such as tax rebates, free health care and education for foster children and biological children, coverage of funeral expenses of HIV-positive children (partially done, for example child grant beneficiaries are automatically exempt from school and hospital fees).

The amount of the foster care, court-ordered kinship care and the adoption grant were to be set at the same level so as to remove perverse incentives. For informal kinship care, the Commission suggested that a narrow interpretation of the Constitution would allow for a lower amount.

The Commission recognised the problem of the large gap between the FCG and CSG. It did not see its way clear to recommending a cut in the FCG until an adequate alternative safety net existed. However, it recognised the perverse incentive created for parents to place a child with a relative who could claim the FCG rather than claiming for the CSG themselves. The Commission thus followed in the footsteps of the Lund Committee in naming this serious problem but not confronting it.

The Commission noted that the Department of Social Development was at that point channelling kin to the CSG rather than to the foster care process. Similarly, some magistrates were reluctant to award foster care when children were living with grandmothers and other relatives. The Commission found this problematic given the restriction of the CSG to children under seven years as well as the small size of the grant. It therefore recommended "as an interim emergency measure" that the Ministers of Justice and Social Development issue directives favouring foster care with relatives. This was subsequently done, although not as an interim measure, when Minister Skweyiya instructed that the FCG should be the grant of choice for kin.

2.4.2 The Children's Act

Two grant-related recommendations of the SALC were incorporated into Section 186 of the Children's Act, namely the concept of court-ordered kinship care, and provision for court orders with duration longer than two years for children placed with family.

The fact that the Bill was split into two parts – those parts affecting only national government which were incorporated in the 2005 Act, and those parts affecting the provinces, addressed in the 2007 amendment – resulted in decision-making on foster care being split into two separate sets of deliberations.

In the deliberations on the 2005 Bill the parliamentary Portfolio Committee made a deliberate decision to replace "or" with "and" in section 150(1)(a), which 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 change signalled the Committee's view of the FCG as a protection services grant rather than a poverty grant. Indeed, the Committee stated explicitly that the "mere fact of abandonment or being orphaned did not immediately render a child in need of care and protection" (Children's Institute, 20112). Children whose main need was financial

would be provided for by other means, such as kinship care. However, by the time the Committee deliberated on the 2007 amendment, provisions for court-ordered and informal kinship care had been removed, the Department had not amended the Social Assistance Act to provide for an informal kinship care grant, and sections 180 and 186 referred to the possibility of family members becoming foster parents.

The composite Act thus incorporates a contradiction. This, in turn, has resulted in differing interpretations by magistrates, as discussed below. There are also reportedly different views within the Department as to the appropriate approach. The Committee agreed that an urgent review and reform was needed in respect of foster care and guardianship. This current study of social security for family care, although some years later, could be seen as that review.

2.4.3 Subsequent developments

As indicated above, some of the recommendations of the SALC that were not made part of the Children's Act have nevertheless been taken forward. These include expansion of coverage of the CSG to reach children up to the age of 18, and changing of the means test to remove the urban formal/other distinction and to increase the income threshold for the means test substantially. For the FCG, regulations issued in 2008 removed the means test on the income of the child.

These changes addressed some of the recommendations of the SALC. However, the major challenge identified by the SALC report of the difference between the size of the CSG and FCG remained.

It is also likely that, while the Commission recognised the negative consequences that would result from not implementing its recommendations, the extent of the current problem exceeds the Commission's expectations. For example, in March 2001, at the time the Commission was developing recommendations, a total of 52 642 children were benefiting from FCGs, up from about 42 000 in 1995/6. Currently, the number of FCGs is, at more than 500 000, close on ten times the 2001 level.

2.5 Ongoing reforms and related processes

At the time this study was undertaken, there were several related processes ongoing. This section describes those that are most relevant for this study. This is done both so as to provide background, and to explain why a range of issues are considered out of the direct scope for the current study.

2.5.1 Revision of the Children's Act

The Department of Social Development has embarked on a major initiative to review and revise the Children's Act. In undertaking this task, the Department is taking the need for consultation very seriously. The process of consultation and the scope and complexity of the Act mean that this process will take some time, likely until the end of 2012. The Department hopes to table the revisions in Parliament only in the 2013/14 legislative cycle. Decisions that relate to social assistance for children in family care therefore need to be made at an Executive level in 2012.

2.5.2 Project to improve management of foster care placements

The Department is engaged in a process of revising the way in which it manages foster care placements. The project plan (Department of Social Development, 2011b) provides for short-term (August-December 2011), medium-term (January-June 2012) and long-term (July 2012-March 2014) actions (Department of Social Development, 2011). This section describes both the problem being addressed and the planned actions in some detail so as to give a sense of the magnitude of the challenges faced in the current system.

The process was initiated in response to a serious backlog in renewal of foster care placements. The backlog – which it now appears affected more than 300 000 children – sparked a court challenge (Centre for Child Law v Minister of Social Development and Others Case No 21726/11).

In June 2011, the North Gauteng High Court ruled that all orders that had expired since 1 April 2009 (the date the Children's Act came into effect) would be deemed not to have expired and these children would continue to receive the grant for the next two years. For the approximately 110 000 children whose court orders had expired and whose grants had lapsed, the grants were to be re-instated and back pay provided from the date the grant was lapsed. For both categories of children, before the expiry of the court order in May 2013, a social worker would need to apply for extension using an administrative process rather than the more burdensome court review process required by legislation.

The court order did not directly address the problem of backlogs in new applications, but would assist indirectly by freeing up court time. The court order also did not address the issue of orders granted after 1 April 2010 which will start lapsing in April 2012 and will add to the backlog. However, the court ordered the Department of Social Development to find a comprehensive legal solution to the problem by 2014.

The problems addressed by the court case and subsequent project have existed for many years. For example, in 2005 Child Welfare reported that in Pietermaritzburg alone there was a backlog of 5 000 cases and a two-year waiting list (ACESS, 2007). In 2006, the Gauteng legislature commissioned a review of the system (Community Agency for Social Enquiry, 2006) after discovering that the foster care backlog in the province stood at 16 497 cases in March 2005. By February 2006, the Gauteng backlog was even larger, at 25 713 cases, with some of these cases opened as early as 1999. (The Gauteng review notes differences in definition of backlog. For example, in Gauteng a backlog was generally defined as a case older than six months. The count in Gauteng included the backlog in supervision.) A statement by Minister Skweyiya in October 2008 noted a backlog of approximately 157 000 foster care cases waiting to be finalised (Department of Social Development, 2008). All of these reports come from before the Children's Act was implemented.

The extent of the backlogs discovered as a result of the court case are not all that surprising given the meteoric increase in the number of FCG beneficiaries over a period of about ten years. Before 2000, fewer than 50 000 children were receiving the FCG at any one time. By April 2010, close on 520,000 children were receiving the FCG – more than ten times the number ten years earlier. This increase was encouraged by public statements by, among others, then-Minister of Social Development, Zola Skweyiya, stating that the FCG would be made available to relatives who cared for orphaned children.

In recognition of the problem, in February 2010 SASSA introduced a new code in respect of the reason for the FCG lapsing. From that date, the number of foster care orders lapsing on account of "failure to review" far exceeds the number lapsing because the court order expired. The number of cases given this new code illustrates how the problem has worsened since the introduction of the Children's Act. Thus for 2010/11 orders that had expired or had not been reviewed accounted for 45% of all lapsed orders, as against 35% for the previous year. In absolute terms, 74 149 orders fell in this category as against 39 200 the previous year. One of the results was a reversal in the trend of increasing numbers of foster care beneficiaries (Hall and Proudlock, 2011).

The situation was exacerbated with the passing of the Children's Act because the Act requires that extension of orders be done by the Children's Court rather than administratively by the Department. Funding problems experienced by the non-profit organisations (NPOs) who have historically been responsible for most of the placements and extensions also contributed to the crisis, as the resultant shortage of NPO social workers created an additional burden for government-employed social workers. In addition, SASSA began utilising a new regulation (27)(1)(c) under the Social Assistance Act that gave the agency the authority to lapse or suspend the grant if they found that the court order had expired.

The project plan notes that there is a mismatch between the databases of the South African Social Security Agency (SASSA) and that of DSD. There is also some difficulty in ascertaining exactly how many social workers are responsible for foster care placements and renewals at any one time. Nevertheless, the available data are sufficient to give a sense of the size of the problem and the extent to which it has been addressed thus far.

The North Gauteng High Court order "regularised" 317 785 foster care orders. The project plan refers to these as a "technical" backlog because administrative orders had to be issued and included in the orders on file. By August 2011, the technical backlog stood at 174 469, over half of the original total. The Department hoped to finalise this aspect by end November 2011. A further 19 294 court orders that lapsed between 2006 and March 2009 were not covered by the High Court Order.

In terms of human resources, the project plan records a total of 5 306 social workers providing social work services. These services include, but are not limited to, foster care services to 553 916 foster children. This gives a ratio of 1: 104 as opposed to the ratio of 1:60 prescribed in the Draft DSD Norms and Standards for Welfare Services. Expressed differently, an additional 3 725 social workers who work only on this task are required to manage 553 916 foster children. The cost of these additional workers would be R840,1 million at July 2011 salary levels if all workers were employed at the bottom notch of the lowest level of social worker in government employ. The ratio ranges from 1: 473 in KwaZulu-Natal to 1: 33 in Western Cape. The project plan's short-term provisions include a new "realistic" norm relating to the number of extension orders to be dealt with by each social worker on a weekly basis. For those specialising in foster care, the norm is 10 new cases, 10 reviews, and 10 lapsed cases. For generic social workers, the norm is 5 for each of the three types. The plan notes that the Act makes provision for other social service professionals such as social auxiliary workers to provide a range of support tasks, thus freeing up time of social workers for therapeutic services.

The project plan includes a total of 43 activities. Summarising, for the short term there are activities related to:

- development of an administration and management system for dealing with the backlog. This includes, for example, alignment and verification of the SASSA and DSD databases and extension of orders that are due to expire;
- Ensuring availability of the necessary human resources, through an audit of capacity of current caseloads, and training of supervisors, social workers and social auxiliary workers, as well as overtime work; and
- Monitoring and evaluation of work in the provinces.

Medium-term actions include use of the IT system to track orders due for review, improved funding for NGOs including 100% funding for statutory work such as foster care placements, recruitment of retired and resigned social workers, and provision of capital equipment such as laptops and cellphones.

Long-term actions include review of the policy and amendment of legislation, as well as development of a foster care specialisation within dedicated alternative care units.

These planned actions are important, but will not alone solve the challenges related to the foster child grant that gave rise to the need for the current study. Further, this is not the first time that there has been a concerted attempt to address the problems related to backlog. For example, in about 2005 Gauteng employed extra contract social workers to deal with the then backlog, and subsequently converted these into permanent posts. In late 2006 the province created posts for social auxiliary workers. These workers were tasked with assisting with some of the administrative work associated with foster care placements, under the supervision of a social worker. Norms were set for the social workers who worked only on the foster care backlog (Community Agency for Social Enquiry, 2006). Despite these efforts, the current project plan for addressing the backlog records Gauteng as accounting for 45 379 of the approximately 300 000 expired court orders.

2.5.3 Foster care and the courts

The project plan described above relates primarily to planned actions on the part of DSD. The courts have also been affected by the increase in the number of foster care cases over the years. The coming into effect of the Children's Act exacerbated the already heavy workload with the requirement that foster placements be extended through the court system rather than administratively as under the Child Care Act. The pressure on the three key players – DSD, the courts and SASSA – has unfortunately resulted in some disagreement as to where the "blame" lies. In reality, it seems that the current system places all of the three agencies under pressure that they are not able to deal with current financial and human resources. Different interpretations of the requirements of the Act, both between agencies and within given agencies (for example, between magistrates) have added to the difficulties. Planning is further exacerbated by gaps and inconsistencies in data from different sources.

The courts have generally taken their new tasks seriously, including because they understand that the new requirements were introduced to combat fraud and to avoid a situation where children who should no longer be eligible continue to receive a grant. (The courts are responsible only for the placement, but the fact that placement translates into eligibility for the grant often results in conflation of the two in discussions on the topic.) Tensions have arisen between the courts and social workers, with the former claiming that the latter are not providing the required documents and evidence, while the latter claim that the former have unreasonable and burdensome demands.

Unfortunately, there is limited information availability that can be used to assess the magnitude of the burden placed on the courts. There seems to be general agreement that foster care is the most common alternative care placement order, with the magistrate in the court case on interpretation of section 150(1) (see below) estimating that foster care cases account for 70% of the children's court roll. An analysis of children's court orders would provide such information but would require a separate large study due to the location of court orders at each individual court. Unfortunately, the Department of Justice and Constitutional Development was not able to provide estimates of the number of children who had been placed in "permanent foster care" at their first placement in terms of section 186 of the Children's Act.

Earlier research (Meintjes et al, 2003) undertaken before the Children's Act came into effect, gives an idea of the time and effort required of the court in respect of the initial foster care placement. The research was conducted in courts in Durban, Khayelitsha, Ingwavuma, Umlazi and Cape Town and thus covered both urban and rural courts. Across the courts, the time required of a magistrate for a single foster care placement averaged 113 minutes i.e. nearly two hours. In addition, the time of the court clerk averaged 38 minutes. Where interpreters were required, the time spent on a single case by an interpreter was 168 minutes.

The tasks reported by magistrates were preparation for court, the court process itself, reading the documents, writing the court record, and checking and signing the court register. For clerks, the tasks were checking the record, consulting with the social worker, setting a date, checking the report, processing the order, checking it and sending it for typing, posting the record, and filing among others. The tasks for extension of a court order would be very similar. None of these tasks would be required for a simple grant such as the child support grant.

2.5.4 Court case to interpret section 150(1)(a)

Another case, currently on appeal in the South Gauteng High Court (Children's Court Case no: 14/1/4/-206/10. SGJ Case no: A3056/11), is also directly relevant to this study in that it affects whether orphaned children are automatically eligible for foster care. The dispute arises in how to interpret section 150(1)(a), which states: "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." The key question is the meaning of "visible means of support".

Worth noting is that this problem is also not new. Thus the 2006 study in Gauteng (Community Agency for Social Enquiry) heard social worker complaints about the differing interpretations of the term "in need of care" in the Child Care Act by the Commissioners of Child Welfare.

The case was heard in November 2010 in the Krugersdorp Children's Court. The magistrate's ruling was delivered in April 2011. The magistrate was clear that poverty alone did not make a child in need of care and protection. He said: "From the evidence it is clear that the main reason for this enquiry is to alleviate the parties' financial position by a foster care order and receipt of a foster grant. There is no necessity that it has to be a foster grant. I fully agree … that the country's foster care system has become an 'income maintenance' system."

The magistrate ruled that the ten-year-old child concerned was not a child in need of care and protection because he had "visible means of support" and had, in fact, been living with his great maternal aunt and uncle since he was two years old.

The applicant has appealed to the High Court. If the High Court confirms the magistrates finding, orphaned children living with relatives will not qualify for foster placement. If the Court overturns the magistrate's ruling, then orphaned children living with relatives will qualify for foster placements. The latter position aligns with current practice of the Department of Social Development, but the Department is reportedly currently divided as to how the clause should be interpreted.

The Minister has joined the case and is advancing the argument that the words "visible means of support" should be interpreted as a means test that would need to be administered by each magistrate. The Children's Institute has applied to be a friend of the court in order to give evidence on the categories and numbers of children who will be affected by the court's judgment. The case will be argued on 16 April 2012. The Department will be bound by this judgement.

2.5.5 Universalisation of the child support grant

As noted above, there have been major changes in the CSG since the time the SALC made its recommendations. There is also a further major revision on the table, namely universalisation of the grant. The proposal, which seems to enjoy support among important policy makers, would see the means test for the grant being dropped. Caregivers who pay tax would have the option of receiving the grant in the form of a tax benefit.

The reported motivations for universalisation are to remove the cost of administering the means test and promotion of equity. Previous research suggests that the cost to government of administering the simple one-off means test associated with the CSG is low – R18,77 per child in staff costs in 2005 (Budlender et al, 2005). The motivation in respect of promotion of equity was explained as the need to remove the inequity whereby two taxpayers with similar income pay the same amount of tax despite the fact that one has to provide for children while the other does not. Another possible motivation is to get middle class buy-in for this grant.

In exploring options we include this reform in one of the three scenarios but not in all scenarios, on the basis that the reform has not yet been finalised. We note at this point that previous research (Budlender et al, 2005) suggests that the cost of implementing the means test is relatively small, especially given the fact that it is a once-off cost. The saving gained by this reform thus needs to be weighed up against the cost of the extra children covered. Further, there will be a cost involved in ensuring that there is not double claiming through the tax system and standard CSG route.

2.5.6 Foster child grants for child-headed households

As noted above, Child Welfare and NACCW are exploring the possibility of child heads (aged 16 and above) of households being recognised as foster parents and receiving the FCG in respect of their siblings. The model involves support from a multi-disciplinary team that would offer a comprehensive package of services and quality care and support to the households. The project has a social auxiliary worker who serves as project manager and 79 community volunteers, 25 of whom are being trained as child and youth care workers with

the rest receiving a mix of non-accredited child care training. The initiative should be useful both in exploring the issues related to the grant and in highlighting all the other forms of support (and their cost) that are required for this approach to provide the protection needed by these children.

2.5.7 Government-funded replication of the Isibindi model

Another planned reform involves funding by government for replication of the Isibindi model developed by the National Association of Child Care Workers. This model provides for local community-based child and youth care workers to provide support to orphans and other vulnerable children "in the child's space", and to receive a stipend for doing so. When rolled out, this reform will make an important contribution for children in child-headed households in the sense defined in the Children's Act i.e. both those who parents and caregivers have died, and those who parents or caregivers are seriously ill. If expanded further, the reform would provide an avenue for providing the prevention, early intervention and protection and support services – and in particular the child-headed mentorship scheme envisaged in section 147 of the Children's Act – that so many interviewees stressed were an essential complement to grants.

This reform, if further expanded, could also assist in expanding prevention and early intervention services, as envisaged by the Children's Act. Such services are essential for all the scenarios proposed below. In particular, availability of such services would help in reducing the number of children in need of care and protection and ensuring that those who are in need of care and protection are identified, whether they are in the care of biological parents or other caregivers.

The 2012 Estimates of National Expenditure (National Treasury, 2012: 417) record allocations by national DSD of R6,7 million in 2012/13, R5,5 million in 2013/14 and R5,8 million in 2014/15 to support the rollout of child and youth care services using the Isibindi model. Further allocations will be needed by provincial departments if the Children's Act provision that these are services for which provision "must" be made is to be observed.

2.5.8 Early childhood development

A further initiative is the plan to expand the support provided by government for early childhood development (ECD). The budget allocations for this activity have expanded substantially over recent years, with accompanying increase in reach. Further expansion is planned. In particular, the plan is to standardise the subsidy for ECD centres at a rate of R15 per child per day attended. The norm is for this subsidy to be provided for 264 days per year and a rate of R15 thus translates into an average of R330 per month – a larger amount than the current CSG. The ECD subsidy is means-tested. However, attendance by the poorest children at ECD centres is less than that of better-off children. Thus, for example, in 2010 the percentage of children aged 0-4 years attending some sort of ECD service were highest in Gauteng and Western Cape, the two wealthiest provinces (Statistics South Africa, 2010: 23) This budget allocation is thus less poverty-targeted than the CSG.

3 International experience

The terms of reference did not require exploration of international experience. A thorough exploration in this respect was undertaken by the SALC as part of its work on the Children's Bill (SALC, 2011: 718ff). The Commission's review of foster care in 22 countries found major differences in how foster care was defined and implemented. Kinship foster care was sometimes, but not always, considered to be a form of foster care. Similarly, some countries applied the term foster care only to children placed through official channels such as courts, while others used the term to refer to all children not living with parents. Further, some countries only provided for temporary foster care, while in others such care was often provided on a long-term, more or less permanent, basis.

The Commission found that historically foster placements were used only for "healthy and generally non-problematic" children. "Treatment" fostering emerged in the early 1970s as a form of diversion for adolescents in trouble with the law. Treatment foster care for children in need of special care has since expanded in Europe and North America, and usually provides for the foster carers to receive payment, training and support additional to that provided to foster parents of "ordinary" children.

Some time has passed since the Commission's review was undertaken. We therefore asked our ten interviewees whether there were examples elsewhere in the world worth exploring.

Most interviewees felt that, to the extent other country experiences might be useful for the particular challenges to be addressed in the study, the focus should be on other developing countries. However, many went on to note that South Africa was more advanced than most other developing countries in terms of social security. This is especially the case in respect of other countries in Southern Africa that share some of the social, demographic and economic characteristics that a social security system needs to take into account. In particular, if migrant labour is understood as one of the primary factors underlying the diverse living arrangements of children in South Africa, it is primarily to the countries directly affected by the apartheid version of migrant labour that one would want to turn. However, none of these countries has a social security system as well developed as South Africa's.

A further caution in respect of experience from sub-Saharan Africa is the extent to which provisions are influenced by donors. In particular, much of the donor and subsequent local support has taken the form of responses to HIV and AIDS, and the design might not always consider the full picture of children's needs. Roelen et al (2011: 20) note that in Botswana, where orphans access benefits regardless of the household's living standards, the results include resentment from other households in the community, as well as the possibility that orphans are seen as a route to access food vouchers. They note that a focus only on orphans not only runs the danger of stigmatising orphans, but also ignores "mounting evidence suggesting that poverty might be a more relevant marker for vulnerability than orphanhood per se." Similarly, a Namibian document (Ministry of Child Welfare and Gender Equality, 2009) notes that internationally people refer to the "lucky AIDS orphans" who meet the eligibility criteria of international donors.

3.1 Namibia

Namibia is especially interesting as it has a shared history of social security measures with South Africa because it was ruled by South Africa until it gained independence in 1990. At this point, the main child grant in Namibia is the state maintenance grant, which is the grant that was replaced in South Africa by the child support grant.

Namibia has a Child Care and Protection Bill which is currently before Cabinet and which will, it is hoped, be debated in Parliament during 2012. The drafters of the Child Care and Protection Bill consciously drew on South Africa's experience – both good and bad – in drawing up the Bill. One result is that the Bill covers both care arrangements and grants, avoiding the de-linking found in South Africa.

The Namibian Bill provides for two types of what is now known as foster care, namely kinship care and foster care. If the bill is passed, the latter term will refer only to cases in which the court places a child with persons previously unknown to the child. Foster care is thus defined as care of a child by a person who is *not* the parent, guardian, family member or extended family member, while kinship care is defined, following the international practice, as "care provided to a child by the extended family, friends or within the community network, in the home of the caregiver/s".

A child is regarded as being in kinship care if they are in the care of a member of the child's family or extended family other than the parent or guardian who has parental responsibilities and rights. The Bill states that a kinship care-giver may enter into a written kinship care agreement with the child's parent or guardian. These agreements will be registered with the clerk of the court but this will involve a simple administrative procedure. Courts will become involved only where child protective services are needed or where there are unresolved disputes. Courts will also be able to order a placement in kinship care where a child has been removed from the home, but it is anticipated that there will be few placements using this route. The bill states explicitly that the introduction of formal kinship care "should produce a considerable savings in administration costs and free up social workers for more proactive work."

The means-tested state maintenance grant, similar to our CSG, will be available to a parent, guardian, or kinship caregiver who is looking after a child. Residential care facilities, equivalent to our child and youth care centres, will also be entitled to receive the state maintenance grant for children in their care. The basic grant for all categories of children will be the same, and will be means-tested. However, caregivers of children with disabilities will receive both the state maintenance grant and an additional grant. The background document that informed the drafting of the bill (Ministry of Child Welfare and Gender Equality, 2009) suggests further that extra money might be offered to foster parents, who would also be required to undergo training.

The background document emphasises that the amount of the basic grant should be based on an objective measure. Ideally, it should be based on the costs of caring for a child in rural and urban settings. If this is not feasible, the background document suggests that the amount paid to Namibia's equivalent of South Africa's child and youth care centres be the amount of the basic grant.

The background document states that monitoring of kinship placements is "essential" given the higher likelihood of abuse and exploitation. It recommends that this be done primarily through community child care workers, working in tandem with schools and traditional authorities and utilising a standardised reporting mechanism.

The Namibian experience is useful beyond the category of children cared for by kin. In terms of the second category specified in the terms of reference for this study, the background document discusses the cultural reasons for resistance to adoption. The report concludes that it is unlikely that provision of a grant would encourage substantially more people to adopt.

Of potential importance for children in child-headed households, is a provision that could address some of the challenges faced when the existing caregiver dies or becomes unavailable. This provision states that the grant "is payable to the person in whose care the child concerned is, irrespective of whether such person applied for such grant."

More explicitly in terms of child-headed households, the Bill does not specify the age limit of a child who may head the household. Julia Sloth-Nielsen (draft) suggests that this provision could be contrary to the UN Guidelines for the Alternative Care in that it could deny children enjoying rights inherent to their child status, including access to education and leisure. In terms of access to grants, clause 220(2) provides that the "written designation of an adult supervising a child-headed household … serves as authorisation for the children in such household to gain immediate access to a grant contemplated in section 217."

Namibia's Children's Legal Status Act of 2006 addresses the issue of guardianship, which is awarded by default to the nearest relative or the caregiver. This contrasts with the situation in South Africa, where the High Court becomes the upper guardian of a child whose parent or guardian has died unless and until another guardian is appointed, which usually only happens if the child is adopted or if a person applies to court to be appointed as a guardian. Changing the South African provisions would remove one of the motivations for favouring adoption over fostering as, even without adopting, the family caregiver would have the powers associated with guardianship.

3.2 Malawi

Malawi was suggested by an interviewee as perhaps having some interesting lessons. Roelen et al (2011) included Malawi in their study as an example of a low-income country with relatively high HIV prevalence and a variety of social protection and child protection initiatives. One reason for caution is that this variety largely reflects initiatives introduced and funded by donors. The reasons for caution are (a) that such initiatives are often small-scale "pilots" in a restricted geographical area and (b) that they are only sustainable if donors continue to provide the funding and other support.

In respect of grants, Malawi does not currently have a national system and thus has little to teach South Africa. There are some grants, but there are small-scale pilot-type initiatives. For example, a pilot cash transfer scheme piloted in Mchinji district in 2006 involved collaboration of government, United Nations Children's Fund (UNICEF) and the National AIDS Commission, and was funded, among others, by the Global Fund to Fight AIDS, TB and Malaria (Working Group on Social Protection, 2007). The scheme involved a household

grant for ultra-poor and labour-constrained households, and included a child bonus for children attending school. A World Bank-supported pilot conditional grant, in Zomba district, focused only on unmarried girls and women age 13-22 years (Baird et al, 2010).

In respect of support and services, Malawi has drawn on community members and community-based organisations more extensively than in many other countries. However, Roelen et al (2011) note that most of the support is provided on a voluntary basis, and that the extent and quality of the support is uneven. A system that was fair both to the community members and to the children who need assistance would need further support for the community-based care and service providers and monitoring of standards.

3.3 Tanzania

Roelen et al (2011) include Tanzania as an example of a poor country that has tried to avoid exclusive focus on orphans by developing the concept of "most vulnerable children" (MVC). This concept was developed, among other reasons, in recognition of the fact that the overwhelming majority of children in the country are vulnerable on account of poverty. The focus found in most other countries on "orphans and vulnerable children" was thus deemed inappropriate.

The MVC focus is supported by establishment of MVC Committees at local level. These committees are responsible, among other tasks, for identifying MVCs. Until recently, the focus has been on providing for immediate and material needs, such as food and school uniforms. This has been the case in respect of both donor, government and local community support. The passing of the Law of the Child Act of 2009 and a recent study of violence against children (United Nations Children's Fund, 2011) has encouraged discussion of child protection more broadly conceived. However, at this point the discussion has not resulted in substantial changes in services provided.

3.4 Mauritius

Mauritius was suggested as a Southern African country at a similar level of development to South Africa and with a developed welfare system. There was also interest in the concept of a "family grant".

The idea of a family grant might seem attractive as a means of promoting families and the related social cohesion. However, such schemes are likely to have an underlying conception of what constitutes a family – all too often a conception that is based on the nuclear family. This is inappropriate for South Africa, as evidenced by statistics provided elsewhere in this paper highlighting, for example, the large number of South African children who live apart from parents. As noted above, it is to avoid this problem that the Lund Committee designed the child support grant to "follow the child".

The Mauritius' Family Allowance benefit was introduced in 1961 and targets "needy" individuals and families through a means test. The cost is fully covered by government. The "social aid" benefits are made up of a claimant allowance, a spouse allowance of the same size, and an amount for each child. The child amounts are much less than those for the

claimant and spouse, and increase with the age of the child. Further additions to the family amount are available in the form of a compassionate allowance for individuals with a serious illness, rent allowance, and a funeral grant.

This example is not particularly helpful for our purposes given the seeming assumption of a nuclear family, and the fact that the size of the allocation for a child is less than that for an adult member of the household.

3.5 Argentina

Argentina is at a similar level of economic development to South Africa, and shares some of the challenges of a deeply unequal society. It is unusual in the Latin American context, where targeted conditional child grants dominate, in that since 2010 it has a grant system that is more or less universal in terms of coverage of children. Because the allowance is larger than the amount of the conditional Families Programme, it has largely replaced it while also expanding the number of children benefiting from a grant. However, the new grant does include some conditions which have served to exclude some poor children.

Prior to 2010 Argentina had a government-paid child allowance that was available for formal wage workers. In December 2009, this system was universalised through the establishment of the *Assignación Universal por Hijo* (Universal Child Allowance), which provides a similar allowance for children of those who are not employed as well as for children of informal wage workers and wage workers whose income is below the income tax threshold. For those who pay income taxes, the child allowance takes the form of a tax deduction, similar to what is being proposed in South Africa if the child support grant is universalised. If parents are deceased or absent, an adult who is responsible for the child can receive the grant. Reportedly, very few children do not have a "responsible adult" in Argentina.

One weakness of the Argentinian system is that the AUH assumes nuclear families. It thus does not provide for situations where the child lives with the mother and has no contact with the father. The system also does not currently cater for a child who bears a child.

3.6 Jamaica

Jamaica was one of two countries visited by government officials, development partners and non-government representatives in 2006 to study conditional child grants. An interviewee suggested that the country had an interesting mix of social and support services, and also did not have "stringent" conditions for its Programme of Advancement through Health and Education (PATH) grant.

PATH is a family grant which is paid every two months. Beneficiaries are exempted from school fees and fees at health centres. Students can also request free lunches. The programme reaches 80 000 families, about half of all families below the poverty line.

The report on the study visit (Child, Youth, Family & Social Development, 2006) notes that case files are opened for each PATH beneficiary family at parish level, and a social worker is supposed to visit each family at least twice per year. The visits are intended to ensure

compliance with the conditions as well as to provide referrals to other forms of social services and assistance. Social workers are also meant to visit health centres and schools to check on monitoring of compliance.

Practice is not, however, aligned with theory in that there is only one social worker for every 1 200 beneficiary households, whereas the target ratio is 1: 50-100. Further, the 70 social workers who work on the programme also have a range of other tasks.

Overall, then, the lessons from the Jamaican example seem to be about what to avoid, such as the labour-intensive work associated with monitoring compliance, and the reliance on high-skilled staff.

4 Number of children in different categories

This section of the report draws on various sources to provide estimates of the number of children in categories currently eligible for various grants or who would be eligible with proposed changes to grants. These numbers are then used as the basis for assumptions in the later modeling section.

The estimates are derived from the National Income Dynamics Study, the ASSA2008 AIDS and Demographic Model, Statistics South Africa's General Household Surveys and the social pensions data base (SOCPEN). Full details of all the derivations are not given here, but can be found in other documents (Children's Institute, 2011; Hall and Proudlock, 2011b; Hall & Wright, 2009; Budlender, 2009).

In some cases where new data have become available, earlier estimates have been updated. The updates generally confirm the earlier patterns, thus giving confidence in our use of the earlier estimates in our modelling. Further boosting our confidence is the match between patterns revealed by different datasets. For example, the patterns found in the National Income Dynamics Study (NIDS) and General Household Surveys are very similar in respect of co-residence of children with parents. Further, data on grant receipt in the General Households shows a closer match each year with data from SOCPEN.

4.1 Orphanhood and living arrangements

The GHS 2010 produces an estimate of 18,5 million children in South Africa, of whom 79% (14,6 million) have both parents known to be alive, 12% (2,3 million) have mother alive but father deceased or unknown, 4% (0,7 million) have father alive, but mother deceased or unknown, and 5% (0,9 million) have both parents either deceased or unknown. This pattern is very similar to that produced by NIDS for 2008, although the total number of children with father deceased or unknown (i.e. maternal and double orphans) is 1,5 million in NIDS and 1,6 million in GHS 2010. (Parents whose details are unknown are treated as deceased as they are unlikely to play any role in caregiving.) According to the AIDS Demographic model of the Actuarial Society of South Africa, this number could be expected to peak at 1,8 million by 2015 as AIDS-related deaths are expected to increase over this period.

GHS, similar to NIDS but with a bigger sample, suggests that double orphanhood is more common in ex-homeland areas (6% of children) and least common in urban formal areas (4%). Conversely, children in ex-homeland areas are least likely to have both parents living (75%) while those in urban formal areas are most likely to be in this position (82%).

In considering kinship and fostering, it is not only orphanhood that is important, but also living arrangements i.e. with whom children – whether orphaned or not – are living. GHS 2010 suggests that only 32% (6,0 million) of children under 18 years were living with both their mother and father. A larger number (39%, or 7,2 million) were living with their mother but not their father, while 0,6 million (4%) were recorded as living with their father but not their mother, and 4,6 million (24%) were with neither parent.

Co-residence with parents is least likely for African children, for children living in ex-homeland areas, and for children from the poorer households. NIDS suggests that in 2008 fewer than a quarter (22%) of children in ex-homeland areas lived with both parents, and 30% were not co-resident with either of their biological parents.

Combining orphanhood, co-residence and poverty measurements, the Children's Institute's analysis of the General Household Survey data for 2009, finds that 1,1 million of the estimated 1,6 million maternal and double orphans at that time were living in households below the poverty line of R522 per person per month.

There is a range of further factors – including in particular migrant labour and other aspects of apartheid – that help to explain the patterns of large numbers of non-orphans living apart from parents (Budlender and Lund, 2011). Not all of these factors are necessarily negative. Thus a description of the situation in Namibia notes that placement of children with kin "often involves long-term arrangements amongst extended family members – not only to cater for a child in need of care, but sometimes as a mechanism to improve the child's life opportunities such as access to education, or in situations where the child's parents live apart from the child: they might be involved in migrant labour or trying to access improved job opportunities in urban areas" (Ministry of Welfare and Gender Equality, 2009).

The Lund Committee report notes evidence from South Africa that this pattern of children living apart from parents had existed for some time, and from before the HIV and AIDS pandemic had resulted in a substantial increase in the number of orphans. The Lund Committee report notes that already in 1993 20% of South African children were not living with either of their parents (Department of Welfare, 1998: 17). This situation was common enough, and the likelihood that the children were living in poverty high enough, for several of the then homeland administrations to create a "granny grant" equivalent to the child allowance part of the state maintenance grant. This grant was available to grandmothers, aunts and other guardians (Department of Welfare, 1998: 79). The Lund Committee report notes further that, on the urging of child welfare organisations, many children cared for by relatives also benefitted from the higher-value foster child grant rather than the lower-value state maintenance grant because state maintenance grants had a much lower value.

We must also not assume that orphaned children, or those living away from parents, tend to be poorer than other categories of children. Table 2 shows median per capita income in the households of African children with different living arrangements. The table shows that the households of children who live with both parents have a much higher median income than other categories. The differences between the other categories are smaller, but the median for

double orphans living with relatives is, if anything, higher than those for other categories of children. The median is lowest for children living with their mother but not with their father.

Table 2. Per capita household income of children by living arrangements

Living arrangements	Number of children	Median income
Live with both parents	6 009 000	R 734
Live with relatives – double orphan	930 000	R 381
Live with relatives – mother deceased	1 537 000	R 368
Live with relatives – mother alive	4 066 000	R 335
Live with mother (not with father)	6 875 000	R 288

4.2 Caregivers and contact with parents

While the GHS questionnaire does not include a question about the child's caregiver, other data sources can provide information on this aspect.

The SOCPEN data suggest that 76% of children benefiting from the CSG have their mother as primary caregiver recipient of the grant. This is a very similar percentage to that found in NIDS. Also similar to the pattern revealed by survey data is that 14% of the CSG children have their grandmother as the primary caregiver i.e. these are children who have kin caregivers but are not accessing the FCG. Only 0.2% of CSG beneficiary children have non-family as primary caregiver.

De Koker et al (2006), using panel data from a survey of beneficiaries commissioned by DSD, found that the grandmother was the foster parent for 41% of the FCG children, with a further 30% of children cared for by aunts, and 12% by other relatives. Only 9% of the children had a foster parent who was not also a relative. This latter group could be seen as a reflection of children who were placed because found to be in need of "care and protection" in the narrower understanding of the purpose of foster care.

The NIDS survey found that among the children under 15 years of age who had neither mother nor father living with them, grandparents were the caregiver for 53% with a further 1% reporting a great-grandparent. The next biggest category was uncle or aunt, at 16%. (Primarily adult) brothers and sisters account for 5%, followed by foster parents at 2%. Less than 1% reported non-family, of which close on a third say that the household help is the primary caregiver. These patterns confirm the extent to which kin care for children living away from parents.

For adoption, we need to exclude children living apart from parents who still have ongoing contact with the parents. NIDS includes a question about this. If we exclude these children who see their parents, the number of children living apart from parents who might be eligible for adoption falls to 2,7 million. If we exclude in addition those living with grandparents on the basis that they are unlikely to adopt because of the confusions this would introduce into the relationship, we are left with 954 thousand children eligible for adoption. In addition, there are about 13 thousand children in child and youth care centres, some of whom might be eligible for adoption.

4.3 Grant receipt

The household surveys do not capture children receiving grants with complete accuracy. However, accuracy of recording has improved substantially over the years. We therefore use the GHS 2010 where possible, but also use NIDS where it has questions not included in GHS. The drawbacks of NIDS are that the estimates relate to 2008, that there is not full capture of grants, and that the questions directly related to child grants were asked only in respect of children under 15 years of age. This is especially problematic in relation to the FCG as SOCPEN data reveal that in 2008 44% of FCGs were paid in respect of children (and youth) aged 15 years and older.

With the GHS 2010 and the FCG, part of the mismatch is due to the fact that 2% of the grants are recorded against the adult recipient rather than the beneficiary. A further 10% are recorded against youth aged 18 to 20 years. Foster chid grants are possible for this age group as foster care can be extended to age 21. However, the administrative data show fewer than 10% of the beneficiary children to be in this age group. In August 2011, for example, only 4% of the child beneficiaries were 18 years or older. The analysis that follows is restricted to children aged 0-17 years.

A somewhat more serious problem is that the total number of FCG beneficiaries/recipients recorded in the GHS for July 2010 is 424 thousand, against the 489 thousand reported by SASSA for March 2010 (National Treasury, 2011: 404), i.e. the survey captures only 87% of the total grants. Part of this shortfall could be explained by some of the adult beneficiaries receiving grants in respect of more than one child.

For the CSG, the GHS records 9,9 million beneficiaries, more than the 9,4 million recorded by SASSA for March 2010, but matching the 9,9 million beneficiaries recorded on SOCPEN for July 2010.

Table 3 shows – for each of the CSG and FCG – firstly (in columns A and C), the percentage of children in a particular category who benefit from the given grant and, secondly (in columns B and D), the percentage of all children receiving that grant accounted for by the category of children. The table shows substantial percentages of children receiving the CSG across all co-residence categories, with the percentage highest among those living only with their mother. As expected, for the FCG, the percentage is less than 1% for all categories except children living with neither parent. (The 1% living with both parents presumably reflects errors in coding or reporting.) Among children living with neither parent, 8% are recorded as receiving the FCG, while 51% receive the CSG. This points to the inequity of the current situation in which some children in a particular situation (living apart from parents) benefit from a far more substantial grant than others in the same situation. Further, the fact that a much larger percentage receive the lower-value CSG than the FCG suggests the large amount of money that would be needed if all children in this situation, including those who are currently benefiting from neither of the two grants, were to receive the higher-valued FCG.

Table 3. Grant receipt and living arrangements, 2010

	CSG		FCG	
	A	B	C	D
Residence	% of category receiving	% of total CSG beneficiaries	% of category receiving	% of total FCG beneficiaries
With both parents	42%	25%	0%	1%
With father only	40%	3%	0%	0%
With mother only	66%	48%	0%	1%
With neither parent	51%	24%	8%	98%
Total	54%	100%	2%	100%

Source: GHS 2010

Table 4 reveals that double orphans are far less likely than other children to receive the CSG. Nevertheless, more than a quarter of double orphans are recorded as receiving the grant. In contrast, while only slightly more (30%) of double orphans are recorded as receiving the FCG, these children account for almost three-quarters (74%) of children recorded as receiving the FCG. At the other end of the spectrum, less than 1% of non-orphans are receiving the grant, with these children accounting for 6% of all FCG child beneficiaries.

In absolute terms, 267 thousand double orphans are recorded in the GHS as receiving the CSG as against 273 thousand receiving the FCG. (Given under-recording of FCGs, this small difference may not be reliable.) Again, the table reveals the inequity of some children in a particular situation (for example, double orphanhood) benefiting from the higher-value grant, while others receive the lower-value CSG (and some receive no grant at all).

Table 4. Grant receipt and orphanhood status, 2010

	CSG		FCG	
	A	B	C	D
Orphanhood status	% of category receiving	% of total CSG beneficiaries	% of category receiving	% of total FCG beneficiaries
Non-orphan	54%	80%	0%	6%
Maternal orphan	46%	3%	8%	15%
Paternal orphan	61%	14%	1%	5%
Double orphan	29%	3%	30%	74%
Total	54%	100%	2%	100%

Source: GHS 2010

The percentages receiving the FCG within each category are very similar to those found with the NIDS data in respect of children under 15 years. The biggest difference is found for maternal orphans, where NIDS gives 11% against the GHS 8%. The differences are larger in respect of the CSG, where NIDS records a lower percentage for maternal orphans, but higher percentages for paternal and double orphans. The comparison is complicated by the fact that the age group covered by the CSG expanded between 2008 and 2010 into the age group not covered by NIDS, as well as by the fact that NIDS tended to have more fathers with status unknown, thus increasing the proportion of paternal orphans.

Using NIDS data for children under 15 years, and considering maternal and double orphans 290 thousand orphans living with relatives were receiving the CSG as against 166 thousand living with relatives who were receiving the FCG. Using GHS data that cover children of all

ages, and considering all children not living with at least one biological parent, 504 thousand were receiving the CSG and 327 thousand were receiving the FCG two years later.

4.4 Child-headed households

There is a lot of uncertainty, and different perceptions, about the number of child-headed households among researchers, child advocates and policy makers. Some feel that the numbers emerging from surveys and modelling are too low as they do not correspond with what they see "in field". Others feel that the numbers from the surveys and modelling overstate the problem. At least part of the problem arises from the transient nature of many child-headed households. Thus, for example, a household may be child-headed immediately after the death of an adult caregiver, but other arrangements may be made for the children within a period of a few months.

Based on analysis of the GHS 2006, Meintjes et al (2009) found that over 90% of the children living in child-only households had a living parent, and over 60% had both parents living. Analysis based on the General Household Survey of 2010 confirms this, finding that 88% of the total of approximately 90 000 children who live in child-only households have a living parent, and only 12% of the children are double orphans. This implies, among others, that at many of the already small number of children living in child-only households would not be appropriate for classic foster care placements.

Analysis of the GHS 2010 also reveals that only 1% of all orphans lived in child-only households in 2010. This implies that a "solution" in respect of child-only households will not constitute a "solution" for the majority of orphans.

One reason for differing perceptions of the extent of child-headed households is, as noted above, that the Children's Act defines child-headed households to include those in which an adult is present in the household, but has a chronic and/or terminal illness. It is further complicated by the fact that some commentators expand the definition to include households headed by youth 18 years or older who are thus not child heads, but are caring for their younger siblings.

However, as also noted above, for the purposes of this investigation, we were asked to use a purely age-based definition that excludes households in which adults are ill and also excludes non-child sibling heads. This is not to deny that the situation of the broader groups should be addressed, but social security is not the main concern in respect of the broader groupings. Given the small numbers, we do not provide explicitly for children in child-headed households in the modelling of numbers and costs below.

4.5 Adopted children

Section 230(3) of the Children's Act defines a child as being "adoptable" if

- the child is an orphan and has no guardian or care-giver who is willing to adopt the child;
- the whereabouts of the child's parent or guardian cannot be established;
- the child has been abandoned;

- the child's parent or guardian has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected; or
- the child is in need of permanent alternative placement.

Business Enterprises and Centre for Child Law (2009) note that this list omits two categories, namely children who are adoptable because their biological parents have consented to the adoption, and children adopted by step-parents.

Budlender (2009) discusses the contradictions in the statistics on adoption available from different sources. After taking all available sources into account, the paper arrives at an estimate of 28 333 currently adopted children in 2009. While there seems to be widespread agreement that an increased number of adoptions is desirable because it creates more permanency for children, it is unlikely that the total number of adoptions has changed or will change substantially. The number of adopted children will thus remain very small relative to the number of children in the care of family.

For modelling purposes, we use an estimate of 40 000 adopted children.

5 Principles

When asked what principles should inform this study, the most common responses from interviewees were to refer to the Constitution and to highlight the need for equity. Other considerations mentioned were the right to access grants and services, the principles of rationality and reasonableness, affirmative action (for example, in favour of children with disabilities and younger children), family values and social cohesion alongside individual rights, and minimum bureaucracy.

The Constitution contains a number of founding values and rights that need to be considered when making policy choices that affect children. These include:

- the founding values and rights of equality and dignity (preamble, s1, s7(1), s9 and s10)
- the principle and right that the best interests of the child must be considered of paramount importance in any matter concerning the child (s28(2))
- everyone's right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance (s27(1)(c))
- children's rights to family care or parental care, or to appropriate alternative care when removed from the family environment (s28(1)(b))
- children's rights to basic nutrition, shelter, basic health care services and social services (s28(1)(c))
- children's rights to be protected from maltreatment, neglect, abuse or degradation (s28(1)(d)).

In *Government of the Republic of South Africa v Grootboom and Others*[1], a case which dealt with the rights to shelter and housing, the Constitutional Court provided the first interpretation of government's duty of care towards children. The Court concluded that s28(1)(b) and (c) needed to be understood together. Sub-section (b) outlines who has the

[1] 2000 (11) BCLR 1169 (CC)

responsibility for the care of children (parents, family or the state) while sub-section (c) outlines the essential elements of that care (basic nutrition, shelter, basic health care services and social services). Thus if the child is in the care of the parents or family, then they have the primary responsibility to provide for the basic needs of the child. If the child is removed from the parents or family and placed in alternative state care (for example in foster care or in a children's home) then government bears the primary responsibility to provide for the basic needs of the child.

The Court further elaborated that while the parents and family may bear the primary duty of care for children in their care, this does not remove government's constitutional obligation to assist parents and families to provide for the basic needs of their children. Government is obliged to assist by providing families with:

> *access to land in terms of section 25, access to adequate housing in terms of section 26 as well as access to health care, food, water and social security in terms of s27. One of the ways in which the state would meet its s27 obligations would be through a social welfare programme providing maintenance grants and other material assistance to families in need in defined circumstances*.[2]

The Court's example mirrors article 27(3) of the UN Convention on the Rights of the Child which provides that states, within their means, must take appropriate measures to assist parents to provide for their child's needs and "shall in cases of need provide material assistance and support programmes particularly with regard to nutrition, clothing and housing."

In a later judgment, *Minister of Health and Others v Treatment Action Campaign and Others*[3], a case concerned with the right to health care services, the Court developed its interpretation further. It recognised that for services such as health (and by analogy also social services in s28(1)(c)), where parents and families are dependent on others (private and the state) to provide, government bears an obligation to assist families in need to provide these services to their children. The Court said that government bears a duty to provide the s28(1)(c) entitlements to children not only when children are physically separated from their family (i.e. "removed") but also when "the implementation of the right to parental care is lacking" (i.e. if the family lacks the financial resources to pay for the services).

The High Court has re-iterated that children in alternative care (i.e. "wards of the state") have a directly enforceable entitlement to have their basic care needs met by the state. Relevant cases include *Centre for Child Law and Another v Minister of Home Affairs and Others*[4] (which concerned the rights of foreign unaccompanied children in state deportation centres), *Centre for Child Law and Others v MEC for Education and Others*[5] (where government was ordered to provide basic care entitlements and social services to children in a state child and youth care centre).

In summary, the jurisprudence of both the Constitutional Court and High Court is clear in relation to the state's obligation to children *in alternative care*, namely that government bears a direct and immediately enforceable duty to provide for the basic care needs of the children.

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[2] Grootboom para [78]
[3] 2002 (10) BCLR 1033 (CC)
[4] 2005 (6) SA 50 (T).
[5] 2008 (1) SA 223 (T).

For children in the care of parents or family, the Constitutional Court has interpreted s26, 27 and s28 together to place an obligation on government to support parents and families to provide for the basic care needs of their children and specified that this obligation can be realised by the provision of social grants and other material assistance for those in need. The obligation to support parents and families has been found to be subject to the concepts of progressive realisation and "within available resources".

The stipulation that there should be progressive realisation means that access to the right to social assistance should improve over time and that there should not be any regressive (backward) steps in support from the state.

The Constitutional Court has developed the "reasonableness test" for assessing the constitutionality of government laws, policies and programmes that are aimed at progressively realising socio-economic rights. This test involves the following questions:

- Is the programme reasonably conceptualised? Is its design capable of achieving eventual full realisation of the right?
- Is the programme comprehensive, coherent and co-ordinated?
- Have appropriate financial and human resources been allocated for the implementation of the programme?
- Is the programme being reasonably implemented?
- Is the programme transparent and have its contents been made known effectively to the public?
- Is the programme balanced and flexible and does it make provision for short, medium and long-term needs? In particular the programme should not exclude a significant segment of the population – especially those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril.

The South African Constitution and the Children's Act both say that the best interests of the child "are of paramount importance" in all matters affecting the child. The best interests principle applies both to matters that affect individual children as well as to those that children as a body.

The best interests of children as a group (present and future) need to be worked out for each of the scenarios proposed. For individual children affected by the policy choices (for example those already in receipt of one of the grants, or those not yet in receipt of any of the grants) the situation of each child needs to be considered. Chapter 7 of the Children's Act lists the factors that should be taken into consideration where relevant in applying the standard of the best interests of the child. Of particular interest for our purposes are the following clauses which state a preference for children to remain with parents or other family:

> *7(1)(c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs…*
> *(f) the need for the child-*
> *(i) to remain in the care of his or her parent, family and extended family; and*
> *(ii) to maintain a connection with his or her family, extended family, culture or tradition…*
> *(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment.*

A further principle that needs to be considered is *the obligation not to take regressive action* – these are actions that reduce people's existing benefits and rights. If government decides to reduce a current benefit to an individual child or group of children this action stands the risk of being found to be regressive and therefore unconstitutional. However, if government can show that overall the policy change will provide a different but appropriate benefit to the affected group, have the net effect of reaching more vulnerable children and promoting equality, and that all efforts have been made to minimise harm to group whose current benefits are being changed, regressive actions can be justified. When the CSG was introduced in 1998 its value was smaller than that of the state maintenance grant that it replaced, but the new grant would reach many more, and previously excluded, children. The net effect was therefore considered constitutional.

In looking for further principles, we can also look at the issues covered by other studies. The proposal for an adoption grant was based on the following principles, all of which seem relevant for our purposes:

- Non-discrimination and equity, and in particular that children should not be penalised because of the nature of their living arrangements.
- Within available resources i.e. that introduction of the grant must not threaten the financial situation of the country.
- Focus on the most needy, given limited resources, and progressively extend benefits to those who are less disadvantaged.
- Simplicity, so as (a) to keep to a minimum the bureaucratic burdens placed on government, non-government agencies and practitioners, or beneficiaries, (b) to facilitate understanding of the system for those who implement it and for those who might benefit, and (c) avoidance of unnecessary new elements that might pose challenges during implementation.

The need for simplicity is also in line with a growing recognition internationally that one should not have a separate grant and provisions for each category of children. Such separate provision is complicated. It also does not acknowledge that many children are found in overlapping categories.

The "strategic aims" for a social security system proposed by Olivier et al (2008, drawing on Barr, 2004) provide a further set of principles which overlap but also expand those discussed above, namely:

- Efficiency: which would include avoidance of perverse incentives
- Supporting living standards: which would include poverty alleviation
- The reduction of inequality: which would align with equity and affirmative action
- Social inclusion: which aligns with ensuring wide access and some redistribution
- Administrative feasibility: which requires a system that is difficult to abuse, administratively simple, and simple to understand
- A rights-based framework: which entails recognising social security as a right rather than a privilege subject to the discretion of officials.

A final principle is that policies and programmes should not be subject to unnecessary change, especially where the policy or programme involves large numbers of people. The rationale for this principle is that grants in South Africa affect large numbers of both officials and current and potential beneficiaries. Many of the latter, in particular, may have limited

education and limited access to information about government. Unnecessary changes to aspects of the policy that are, on the whole, "working" will reduce the extent to which beneficiaries are aware of their rights and officials are aware of their responsibilities. Most changes also bring with them challenges related to changing procedures. These challenges take time to address especially where, as with the grants, the policies are implemented by many different actors spread across all parts of the country. Small changes with substantial impact are therefore recommended.

Below we use a combination of these principles to assess the three options that are modelled.

6 The three scenarios to be modelled

The discussion above will have made it clear that change is needed in the grant system for children as well as in the related processes and policies. Change has, indeed, been needed for over a decade. Both the Lund Committee and SALC recognised the problems. The Lund committee did not tackle the foster problem at all. The SALC recommendations attempted to tackle at least part of the problem, but acknowledged that it was leaving one of the major challenges – the gap between the CSG and FCG amount – untouched.

Recent developments have substantially increased the need for urgent action. Indeed, several interviewees felt that the entire welfare system was under threat if substantial changes were not introduced soon. Very specifically, the current system is:

- Not sustainable. In particular, the financial cost and human resources required for the foster care system would not be available if the more than one million children who would currently qualify if all family caregivers were eligible for the foster child grant. The ongoing crisis of lapsed foster child grants points to this problem.
- Not equitable. The current position where some orphaned children living with relatives benefit from the CSG while others benefits from the much larger FCG is not equitable. Further, it is not equitable that children living only with their mother, who are likely to be poorer, access a smaller grant than those who live with relatives.
- Not reasonable. The design of the foster care system is not capable of eventually reaching over a million orphaned children with the much-needed social grants. The system does not have sufficient human and financial resources and will not have such resources in the foreseeable future. The system has not been reasonably implemented as is demonstrated by the long waiting periods for orphaned children and well as the lapsing of foster child grants. The foster care system is also not co-ordinated as is apparent from the contradictions in the Children's Act, and the lack of agreement and co-operation between the various departments, agencies and magistrates with regards to implementing the system. The system also does not cater adequately for groups of children who are potentially very vulnerable, namely orphans and children in child-headed households.

The options proposed below are offered with full acknowledgement that changing the grants will not solve all the problems. In particular, it is important that welfare services be expanded. Expansion of prevention and early intervention services could reduce the number of children who need foster care in the strong sense of needing "care and protection".

6.1 Theoretical basis and logic of the proposed scenarios

One of the interviewees noted that the current system lacked a theoretical basis and logic. Others noted the need for clarity as to the nature of the FCG – is it a poverty grant or a specialised protection grant? The court will during 2012 have to interpret the meaning of section 150(1)(a). The court judgment could itself provide a final answer or could, instead, allow government a specified period in which to amend the Act to provide the answer. If the Department already has some reform options on the table and shows these to the court, the court is more likely to give the Department and Parliament time to make the necessary amendments.

The evidence suggests that, regardless of the original intention, the foster care system and the associated FCG in practice currently serve both purposes – poverty and specialised protection. The SALC recommendation provided a way of separating the two purposes, with the court-ordered foster and kinship care grants reserved for children in need of "care and protection", and the informal kinship care grant for the purposes of poverty alleviation for other children. Explicit provision for informal kinship care and an associated grant would build on what is already incorporated in the Act, where kinship placements can be made permanent, and without supervision. However, the current system does not distinguish between grants for kinship care where there is no special need for "care and protection" and grants for placements (whether with family or others) that provide "care and protection", only between the renewal and supervision requirements.

6.2 Distinguishing kinship care

There seems to be widespread support for distinguishing kinship care from full foster care. There is some concern about how the well-being of children in kinship care would be monitored, and a feeling that children in this situation are more vulnerable than those living with parents. It could be argued that the lack of adequate money is among the strongest factors that would encourage the frustration, anger and resentment that could result in abuse. There is also the problem that at present the requirement that all kinship-placed children be monitored is preventing social welfare services being delivered to the higher-priority children who are in need of "care and protection" because the human resources to do both tasks are not available. What is needed is enhanced prevention and early intervention services as part of a system that can monitor all children and pick up indicators of potential abuse. Given high school enrolment rates in South Africa, this could happen for the majority of children if schools functioned as effective "nodes" of care. But that is beyond the scope of this paper.

All three scenarios below assume recognition of informal kinship care along the lines suggested by the SALC and incorporated in the Namibian bill. This form of care would be used where the child is not in need of special care and is already living (or can live) with relatives. It would be used only for maternal (including double) orphans, as providing this possibility for children whose parents are alive and able to care for them could create a perverse incentive for the parent/s and family to place the child with other family rather than the parent/s. The placement would happen through a simple administrative process that would not involve the courts and would not require follow-up beyond the welfare services (including monitoring and early intervention) available to all children. The kin caregiver would be made aware of the full range of services at the time the administrative process was effected. Take-up of these and other services would be voluntary rather than imposed as a

condition. Where children are deemed to be in need of special care, placements with kin would be treated like any other full fostering arrangement, including placement by the court and ongoing supervision. Whether extension of the foster grants is done through the court or through an administrative process is beyond the scope of the paper. However, we note that the evidence suggested that there is little to be gained – and a lot to be lost – by insisting on court-based extension for stable placements with family members.

The SALC came out in favour of a single grant amount for a basic grant, with a higher amount for the formal FCG in recognition of the extra and/or specialised care needed for such children. An additional amount would be added to the basic grant for children with disabilities or chronic illness. This approach would remove the need for the CDG, and would apply in respect of all child placements, whether for the basic child grant (i.e. CSG) or the FCG.

The SALC did not tackle head-on the question of the amount that should be provided for the informal kinship care grant. On the one hand, it could be argued that a higher amount would encourage more kin to take on these children, and thus avoid institutionalisation of the child – an alternative that is usually not in a child's best interest and is also most expensive. On the other hand, it could be argued that it is inequitable to provide a higher amount if the main aim of the grant is poverty alleviation and if this category of children, as shown above, is not poorer than other categories of children. Some people argue that an extra amount is needed because kin do not have a duty of care. However, case law in respect of private maintenance (Petersen v The Maintenance Officer, Simonstown Maintenance Court and Others) suggests that grandparents – who constitute the majority of current kin carers – do have a duty of care. If this argument is followed, we would revert to the Lund Committee's vision, which saw either all grandparent caregivers, or all primary caregivers, receiving the standard CSG amount.

The problem with distinguishing between grandparents and other kin caregivers is that this could discourage grandparents from caring for children. From a gender perspective one could also argue that the grandmothers (who account for the overwhelming majority of grandparent caregivers) have already done their share of unpaid care work in caring for their own children. The fact that the majority of current recipients of the FCG who would be affected by a new dispensation that lowered their benefit would be grandmothers also suggests the need for caution in too harsh a change. The options below thus assume that all kin caregivers would receive the same size kinship care (or kinship child support) grant.

6.3 Inequities associated with the difference in size of grants

Above we saw that the difference between the CSG and FCG has been slightly reduced over time. However, as from April 2012 the FCG will still be 2,8 times the CSG, and the gap will remain large if the reduction in the gap continues at the current slow pace. The current problems do not allow us to wait that long.

The current situation is inequitable in several respects. One of these relates to geographical disparities. As noted, some kin caregivers receive the CSG while others receive the FCG. The relative numbers in urban versus rural areas suggest that children benefiting from grant in urban areas – who are already advantaged in a range of other ways relative to their rural

counterparts – are more likely than children in rural areas to have the FCG rather than the CSG.

Thus Table 5 below shows the percentage of children under 18 years recorded in GHS 2010 as receiving the FCG and the CSG, followed by the number of CSG recipients for every one FCG recipient. The table shows that the rates for both grants are higher in ex-homeland areas than in the other three types of areas. Thus, for example, 2,1% of ex-homeland children benefit from the FCG, compared to 1,9% or fewer in the three other geographical areas, and 66,2% of ex-homeland children benefit from the CSG compared to fewer than 62% in the three other geographical areas. This pattern is expected given higher rates of poverty in these areas as well as higher rates of orphanhood and children living apart from their parents.

Nevertheless, despite these higher take-up rates in ex-homeland areas, the table reveals that among those receiving grants, children in urban formal areas are most likely to get the FCG rather than the CSG, while those in ex-homeland areas are least likely to get the FCG rather than the CSG. Thus there are 21 urban formal children receiving the CSG for every urban formal child receiving the FCG, compared to 31 ex-homeland children receiving the CSG for every ex-homeland child receiving the FCG. This disparity would be caused, at least in part, by the paucity of social workers, courts and related services in the ex-homeland areas. The lack of social workers and related services would mean that those who access grants are also less likely than their urban counterparts to access the needed other services.

Table 5. Receipt of CSG and FCG by geographical area, 2020

	Urban formal	Urban informal	Ex-homeland	Rural formal	Total
% FCG	1.9%	1.8%	2.1%	1.8%	2.0%
% CSG	39.9%	61.9%	66.2%	58.8%	53.6%
CSG: FCG ratio	21: 1	34: 1	31: 1	32: 1	27: 1

Source: GHS 2010

In terms of level of the various grants, ideally these should be based on an objective measure. The original CSG, for example, was based on the amount needed, according to the regular surveys conducted at that point by the University of Port Elizabeth, to provide food for a young child of the age covered by the initial grant. The Lund Committee noted the small amount of the grant, but opted for this in light of both the relatively small amount of money that was likely to be available for this new grant as well as the undertaking by government that the grant would form only one part of a suite of services and support for children.

In the absence of an objective measure, we use the FCG amount as the basis for determining grant amounts going forward. In doing so, we assume that unless otherwise stated, amounts would increase by at least inflation each year. We nevertheless note the much larger amounts that are provided for subsidisation of child and youth care homes, yet still considered inadequate to cover the costs of institutionalising a child. Thus, in late 2009/early 2010 the mean monthly subsidy from provincial government reported by children's homes was R1 764 per month, with the reported mean ranging from R1 631 in Gauteng to R2 500 in Limpopo (Community Agency for Social Enquiry, 2010).

We propose that the CSG would need to be more than half the size of the FCG to have any chance of removing perverse incentives. Unless it reaches this size, psychologically the CSG will continue to be perceived as substantially inferior to the FCG by both officials advising potential beneficiaries and the beneficiaries themselves. In this situation, the extra effort

involved in applying for the FCG will continue to seem worth it i.e. the incentive to apply for the FCG will remain strong.

This broad proposition does not, however, solve the problem of the exact level at which the CSG should be set. Ideally, we need the grant to be set at a level that has some objective base. At the same time, the level must be financially affordable.

The Lund Committee offered two alternatives for the original CSG. Firstly, it proposed the lower amount of R70, which represented the additional expense that a household would incur for a very young child according to the then Household Subsistence Level calculated by the University of Port Elizabeth. The expense for a very young child was used because at that point the CSG was intended only for very young children. Secondly, it proposed an amount of R125, which was the level of the child allowance component of the then state maintenance grant (Department of Welfare, 1996: 95).

The University of Port Elizabeth and University of South Africa no longer calculate periodic poverty datum lines. South Africa also does not as yet have an agreed official poverty line. We can, however, turn to the summary of the debate on a poverty line published by National Treasury and Statistics South Africa in 2007. This document includes a table that compares the per capita rand values, in 2000 rands, of seven alternative poverty lines for South Africa.

The levels for the poverty lines range from R81 per capita in 2000 rands for the international "dollar a day" line to R593 per capita for what is named as Statistics South Africa's "upper bound" estimate. Statistics South Africa's estimates can be argued to be more evidence-based measures of need than, for example, the international measures (such as the US$ 2 per day referred to by the National Planning Commission) or the one set at the 40th percentile of the distribution. Thus Statistics South Africa's "lower bound" estimate was R322 per capita for 2000, of which R211 was calculated as the cost of essential foods. The difference between the lower and upper bounds is explained by the fact that while R211 was, in theory, needed for foods essential for basic well-being, in reality households would only spend at this level when their per capita income reached the upper bound level. Thus in households below the upper bound individuals would suffer from nutritional deprivation.

Adjustment of the estimates for inflation results in estimates for 2012 that are just over double those for 2000. Adjustment for 2013 onwards, the years covered by the modelling, further increases the estimates. Such adjustments result in even Statistics South Africa's lower-bound exceeding the current value of the FCG. It is highly unlikely that a proposal at this level would be considered seriously at this point and we must therefore search for lower alternatives. However, in line with the doctrine of progressive realisation, an amount of at least the lower bound estimate (i.e. approximately R650 per month in 2013 rands) needs to be seen as the minimum goal for the future.

For the interim, an alternative objective basis for the CSG is the R211 per capita calculated as the cost of essential foods in 2000. This translates into R426 in January 2012, and is likely to be around R458 in April 2013. This amounts to 59% of the FCG amount set for April 2012 to March 2013, which satisfies the requirement that the CSG be more than half the value of the FCG. We round up the estimate to 60%.

The focus on the food component is in line with articles 40, 41 and 42 of International Labour Organisation Convention 102 of 1952 on social security, which stipulate the need for a

"family benefit" that provides for maintenance of children as an especially vulnerable group. Article 42 names, in particular, the need to ensure provision for children of food, clothing, housing, holidays or domestic (work) help. The fact that food is placed first emphasises the importance of this component. However, the naming of other components highlights that the proposed level for the CSG must be seen as only a step towards meeting the needs of these children.

On the basis of the above, we therefore model a CSG at 60% of the FCG. We provide for a slightly higher informal kinship child support grant on the basis that the biological mother is no longer alive. Again, even the lower level estimate of Statistics South Africa's poverty line seems unsustainable. We therefore place the level of the kinship child support grant halfway between that of the CSG and FCG at 80% of the FCG.

6.4 Phasing in the change

There are different ways in which this significant change in the ratios of the grants could be achieved. One way would be to keep the FCG (at R770 in 2012) constant in nominal terms (i.e. keeping the rand amount the same without adjusting for inflation) for a period of about three years, set the kinship child support grant (KCSG) at 80% of the FCG (i.e. at R616), and "grow" the CSG to be 60% of the FCG value of R770 by year three. In the modelling below we increase the 2012 value of the CSG of R280 to R339 in year 1, to R400 in year 2 and R462 in year 3. After three years, all the grants would increase each year at least in line with inflation. Another way would be to lower the FCG in nominal terms and set the CSG and KCSG as 60% and 80% of this lower rate. The second option would run the risk of being challenged as regressive and thus unconstitutional.

To counter such a challenge, at the least government would need to show that the gains made by other children outweighed those lost by the children whose grant amounts fell. The challenge would only have a chance of succeeding if government could show that the overall amount allocated to grants had increased. Even that would be difficult, as the fact that kinship carers would get a lower amount under the new dispensation would already introduce an aspect of regression. Further, keeping the FCG constant in nominal terms – as is done in two of the scenarios modelled below – means regression in real terms over the three year phase-in period, although to a lesser extent than a nominal decrease in the amount. The debate in respect of the constant nominal value options would be whether some regression for a small number of children would be outweighed by substantial increases for a much larger number of children.

The previous paragraph discusses regression for the system as a whole. There is a further question as to how one addresses the situation of individual children whose benefits would decrease under the new approach. This would include, in particular, relatively large numbers of children in kinship care but currently accessing the foster child grant. This question is incorporated into a second set of modelled outcomes. One approach could be to wait until the two-year period of their current court-ordered placement has lapsed and then transfer them onto the new KCSG grant at the same time as linking them to prevention and early intervention programmes to balance out the small monetary decrease in social assistance. For the third year, this approach will result in the same total expenditure on the grants as all children are on the "new" system by the third year. However, for the first two years it produces higher estimates than the first set of modelled outcomes.

The approach might need to be different for children who have been placed in permanent foster care of kin. Unfortunately, the number of such permanent family placements is not known and can thus not be modelled. Anecdotal evidence suggests that the number of children in permanent family placements is likely to be small.

6.5 Current and projected numbers with existing grant system

Table 6 shows the number of beneficiaries recorded or projected for each of the three existing child-related grants as at March each year. The 2012 numbers can be used for comparison with the numbers produced by the modelling, on the assumption that reforms will only be introduced for the 2013/14 year. To be noted, however, is that the modelling assumes full take-up by all eligible children.

Table 6. Child grant beneficiaries

	March 2008	March 2009	March 2010	Mar 2011	March 2012 (projection)
Foster child	443 191	476 394	489 322	512 874	612 651
Care dependency	101 836	107 065	118 972	112 185	128 133
Child support	8 195 524	8 765 354	9 380 713	10 371 950	10 976 510

Source: National Treasury, 2011: 404

Table 7 shows the allocations for the three child grants over the period 2010/11. These are also useful for comparison with the results of the modelling described below.

Table 7. Child grant allocations (R million)

	2010/11	2011/12	2012/13	2013/14
Foster child	5 231.7	5 535.7	5 833.1	6 280.7
Care dependency	1 579.8	1 727.1	1 884.7	2 129.2
Child support	30 860.1	35 563.7	38 810.0	41 992.6

Source: National Treasury, 2011: 403

6.6 Adoption grant

The interviews suggested that there is quite widespread support for an adoption grant. The arguments are not very strong in terms of incentives as it is not clear that an adoption grant would result in large numbers of children being shifted from foster care to adoption. It is likely that cultural and other resistances to adoption will outweigh the impact of the grant for many. As noted above, reasons for resistance could include reluctance on the part of the large number of grandmother caregivers to confuse the relationship by adopting and becoming the mother as well as the grandmother. Nevertheless, in terms of equity, it seems that an adoption grant should be provided if a KCSG is available. In line with the equity argument, we model the adoption grant at the same level as the KCSG.

6.7 Child-headed households

Moving to the third explicit target group of this study, as noted above, the modalities through which care is organised for children in child-headed households are beyond the scope of this project. However, different solutions could, if one follows through logically, result in different grants being provided to children in different situations. If the proposals presented below in this paper are adopted, children in child-headed households in the Port St Johns model should for the most part be covered by the kinship grant, on the basis that they are cared for by their siblings, who are kin. One could, in contrast, argue that children in cluster foster care should be covered by the foster child grant. However, provision of differently sized grants to the two groups seems inequitable. In both situations the adult mentor is likely to receive some form of compensation, so this also does not seem to be a reason to discriminate between the two groupings.

Given that a total of only around 90 000 children were recorded in child-headed households in GHS 2010, the choices that will be made about modalities of care for children in child-headed households should not have a noticeable effect on the projected cost of a new grant system. Children in child-headed households are therefore not explicitly included in the modelling. It is, however, worth noting that if an especially large grant is provided for children in child-headed households, this could create a perverse incentive for encouraging this form of household. The incentive would be perverse as there seems to be agreement that child-only households are not ideal.

6.8 Means test

A further consideration is means tests. As noted above, there is a possibility that the CSG will be universalised, so that it is available for all children without a means test. If this happens, the other grants would probably also need to have no means test. If, however, the CSG means test is retained, the question arises as to whether the KCSG should have a means test. (The question would not arise for the FCG as it is not meant to be a poverty-oriented grant and does not currently have a means test.) The modelling below allows for options with and without means tests. For consistent logic, where a means test is used, the same income threshold is used for both the CSG and KCSG.

We use the current level of the CSG means test as the basis for the means test going forward. We do not adjust this to be 10 times the new CSG level going forward, as currently provided for in the regulations. Instead, we use the real value of the current level going forward on the basis that it is more or less equivalent to one of the standard poverty lines of around R2 500 per month for a household with just under five members in 2009 (Children's Institute, 2011).

The previous modelling in respect of an adoption grant (Budlender, 2010) assumed that 82.1% of all children would be eligible for a grant that used the CSG means test. Somewhat similarly, the Children's Institute estimates that 1,1 million of the 1,5 million maternal and double orphans recorded in the GHS of 2009 were living under the poverty line, giving a slightly lower eligibility rate of around 73%. For the purposes of the modelling for this paper, we use a rate of 75% where a means test is applied. This is not exact, including because eligibility will vary across the different categories of children. However, a standard eligibility percentage seems adequate for estimates at the macro level required for this paper.

6.9 The three scenarios

We model three scenarios. In each of these scenarios the grants are available for the following categories of children, sometimes with and sometimes without a means test:

- The foster child grant is provided for children found by the court to be in need of "care and protection" and placed with a foster parent/s. The foster parent may or may not be family (kin) of the child.
- The kinship child support grant is provided children who are not found by the court to be in need of "care and protection" but who are living with family as a result of double or maternal orphanhood
- The adoption grant is provided for children who have been formally adopted
- The child support grant is provided to all other categories of children.

The three scenarios are as follows for the three years of phase-in, after which all grants would increase each year at least in line with inflation.

Scenario 1

- Foster child grant at constant nominal value of R770 (the value set for 2012/13)
- Universal child support grant "grown" to 60% of FCG, equivalent to food component of poverty line
- Kinship child support and adoption grants set at 80% of FCG, with no means test

Scenario 2

- Foster child grant at constant nominal value of R770
- Means-tested child support grant "grown" to 60% of FCG, equivalent to food component of poverty line
- Means-tested kinship child support and adoption grants set at 80% of FCG

Scenario 3

- Foster child grant at constant real value (i.e. adjusted with inflation)
- Means-tested child support grant "grown" to 60% of adjusted FCG, equivalent to food component of poverty line
- Means-tested kinship child support grant set at 60% of FCG, equivalent to food component of poverty line
- No adoption grant – these children eligible for CSG

6.10 Excluded costs

The modelling does not cover the cost of staff involved in processing the foster care placement and application for grants. A study some years ago by the Children's Institute and Centre for Actuarial Research (Meintjes et al, 2003) attempted to estimate these costs for the FCG and CSG. The full report on the study includes four diagrams that shows all the steps involved in these process in a "best-case" scenario. The diagrams show the length, complexity and labour intensity of the processes.

The time spent on each step of the process as reported in the research reflected actual practice at that time. Because of the impossible caseloads faced by staff even at that time, interviewees acknowledged that they were not following the letter of the law as they simply

did not have the time to do so. The times reported were thus under-estimates of the time that would be required to do these tasks properly and ensure that the best interests of each of the children were fully considered.

The average reported time spent by DSD staff on effecting placement of a single child was 716 minutes, i.e. approximately twelve hours. Of the 716 minutes, 531 minutes were accounted for by the social worker. Yet this category of worker – as seen above – is in very short supply. The study was done before the Children's Act came into effect. The provisions of the Children's Act would, if anything, increase the costs associated with foster care placement, supervision and renewal. The real cost would have been further increased by the occupation-specific dispensation for social workers, which was not in p lace in the early 2000s when the study was done.

Meintjes et al included most staff costs, the cost of the grant itself, and the administration cost paid to the companies distributing the grants. It excluded the sometimes substantial costs related to, among others, supervisory and support staff, transport costs, messengers and administration. For foster care, the total for both placement and grant application amounted to R666 per child. This is R1 031 in 2011 rands but this is a serious under-estimate of the cost in 2011 because of the introduction of the occupation-specific dispensation. Subtracting the R37 for the social security application, the total was R633 (R980 in 2011 rands). Of the total of R666, R426 was for government or NPO social services costs, and R167 was for court costs. Of the latter, R113 was attributable to the cost of the magistrate. All these costs would fall away or be substantially reduced with informal kinship placements.

An alternative indicator of the substantial costs that could be saved if the onerous process was removed for children in kinship care is the estimate given above of R840,1 million for salaries alone that would be needed to have the required normative number of social workers to deal with the current number of foster children even if employing social workers at the lowest possible government salary.

As for foster care placements, the costing does not include the costs associated with approving an adoption. The main costs are those incurred by Social Development and the Department of Justice and Constitutional Development. For the national DSD the costs include those of the Registrar of Adoptions, while for provinces they include management, recruitment, screening of prospective adoptive parents, approval of children for adoption, court processes, contact and tracing.

6.11 Technical considerations

The scenarios described below are modelled in nominal rather than real values so as to be able to model keeping the nominal value of the FCG constant. An inflation rate of 6% per year is used.

The modelling is done over a period of three years on the basis that the total number of children in the country currently changes very little from year to year. The main annual change that therefore needs to be modelled is the phasing in as the gap between the size of the grants is closed. The predicted fall in the number of orphans after 2015 could result in decreased costs of the various scenarios after the three-year period. The estimates for the third year in this sense represent the upper bound of the cost of the various scenarios.

All calculations are based on 100% take-up by eligible caregivers. The fact that this level of take-up will not occur in reality means that the estimates overstate the financial cost.

6.12 Conditions

The modelling and the proposed change in child grants on which it is based do not envisage that any further conditions would be introduced. Indeed, ideally, it is proposed that the current non-functional soft condition for the CSG be removed.

There are at least three strong arguments for not proposing (additional) conditions.

Firstly, the substantial literature that exists on the impact of the grants in South Africa shows conclusively that unconditional grants have achieved similar impact to the conditional grants in other countries. They have done so without incurring the additional cost and complications of implementing and monitoring conditions. Positive impacts have been found in respect of poverty alleviation, education, health and decision-making power of women. In terms of dependency, the evidence of the grant system encouraging labour force engagement is at least as strong as evidence showing the opposite. These findings suggest that conditions are unnecessary to achieve "externalities" and that grants encourage dependency.

Secondly, the literature on conditions points out that in situations where there are supply-side constraints in the services in respect of which conditions are imposed, compliance is often especially difficult for those most in need of the grants. In these cases the conditions penalise the child and caregiver for a delivery failure on the part of government. Few would deny that South Africa has severe supply-side problems in education (related more to quality than to access), health and employment, especially in rural areas where poverty levels are highest.

Thirdly, since 1994 South Africa's policy approach has been strongly rights-based. Grants are seen as constituting an important element of the rights-based approach, in line with the right to social security granted in the Constitution. In addition, the cash that households access through the grants facilitates their access to a range of other rights, including education and health. A number of court cases have confirmed that the grants are a right that government needs to respect and promote. The right to social security is especially strong in respect of children, and the Social Assistance Act does not give the Executive the authority to limit children's rights.

7 The modelling

7.1 Assumptions

The number of children assumed to be in the different categories is as follows:

- Children in foster care: This number is set at a generous 45 000. This is more than the 42 000 reported to be receiving FCGs in 1995/6, at a time when there were already kin benefiting from this grant. It is 85% of the number receiving FCGs in 2001 at the

time the SALC was developing its recommendations. A further reason why this number is generous is that some of the beneficiaries of the FCG are 18 years or older.

- Adopted children: This number is set at 40 000 on the basis that the number of adopted children is unlikely to change substantially as financial disadvantage is not the only – or even main – reason for reluctance to adopt.
- Children in kinship care: The total number of double and maternal orphans is estimated at around 1,6 million in 2010, and the number is expected to increase until 2015. The number is set at 1,6 million on the basis that some of the double and maternal orphans will be in foster care or adopted.
- Other children: The total number of children was 18,5 million in 2010 according to Statistics South Africa's mid-year population estimates. The 2008 AIDS Demographic model of the Actuarial Society of South Africa suggests that this number will change very little – and will in fact decline slightly to 18,4 million by 2015. The total number of children who are not in the above three categories is thus set at 16,8 million.

The numbers for the CDG are not modelled separately as it is assumed that the grants for these children will not vary across the scenarios. This could happen either through abolishing this grant and instead providing for children with disabilities through top-ups to the existing grants. Alternatively, the CDG could remain as is

7.2 Results

Table 8 shows the first set of results of the modelling exercise for the three scenarios. This set does not make any adjustment allow for children who would fall under informal kinship care with the proposed approach but are currently in foster care to continue to receive the full FCG for two years. The second to fourth numeric columns give the amount of each of the grants over the three-year phase-in period. The last three columns give the cost of each of the grants over the period. The "Total" row for each scenario shows the total cost for each of the three years.

Scenario 2, with means testing of all grants except the FCG and a constant nominal value for the FCG, is the least expensive of the three options. Scenario 1, with constant nominal FCG but no means testing for any of the grants, is the most expensive. Scenario 3, with constant real value for the FCG, but the kinship child support grant set at 60% of the FCG value, has a cost that is closer to scenario 2 than to scenario 1. The main cost driver for the higher cost of Scenario 1 is the lack of a means test for the CSG. If a means test was introduced into this scenario for the CSG (but not for any of the other grants), the cost would fall to R82 455,5 million in 2015, only marginally more than the lowest-cost Scenario 2.

Table 9 shows the results of the modelling exercise for the three scenarios as adjusted to allow for children who would fall under informal kinship care with the proposed approach but are currently in foster care to continue to receive the full FCG for two years. The rows labelled "foster care 1" provide for children who need placements for care and protection. The rows labelled "foster care 2" represent children who have been placed by the courts in foster care but who in the proposed approach would instead be in informal kinships care. The tables use an estimate of a total of 700 000 in foster care in 2013, between the estimates for foster care placements forecast in the 2012 Estimates of National Expenditure (National Treasury, 2012: 422). The second to fourth numeric columns again give the amount of each of the grants over the three-year phase-in period. The last three columns give the cost of each

of the grants over the period. The “Total” row for each scenario shows the total cost for each of the three years.

Table 8. Results of modelling of three scenarios without allowance for phasing out of existing two-year placements in kinship care

Scenario 1									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care	45 000	770	770	770	100	415.8	415.8	415.8	45 000
Adoption	40 000	616	616	616	100	295.68	295.68	295.68	40 000
Kinship care	1 600 000	616	616	616	100	11 827.2	11 827.2	11 827.2	1600 000
Child support	16 815 000	339	400	462	100	68 363.1	80 792.7	93 222.4	16 815 000
Total						80 901.7	93 331.4	105 761.0	18 500 000
Scenario 2									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care	45 000	770	770	770	100	415.8	415.8	415.8	45 000
Adoption	40 000	616	616	616	75	221.8	221.8	221.8	30 000
Kinship care	1 600 000	616	616	616	75	8 870.4	8 870.4	8 870.4	1 200 000
Child support	16 815 000	339	400	462	75	51 272.3	60 594.5	69 916.8	12 611 250
Total						60 780.3	70 102.5	79 424.7	13 886 250
Scenario 3									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care	45 000	816	865	917	100	440.7	467.2	495.2	45 000
Adoption	0	0	0	0	75	0.0	0.0	0.0	0
Kinship care	1 600 000	490	519	550	75	7 052.0	7 475.1	7 923.6	1 200 000
Child support	16 855 000	359	450	550	75	54 477.9	68 246.0	83 470.1	12 641 250
Total						61 970.6	76 188.3	91 888.9	13 886 250

Table 9. Results of modelling of three scenarios allowing for phasing out of existing two-year placements in kinship care

Scenario 1									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care 1	45 000	770	770	770	1	415.8	415.8	415.8	45 000
Foster care 2	655 000	770	770		1	6 052.2	6 052.2		655 000
Adoption	40 000	616	616	616	1	295.7	295.7	295.7	40 000
Kinship care	945 000	616	616	616	1	6 985.4	6 985.4	11 827.2	945 000
Child support	16 815 000	339	400	462	1	68 363.1	80 792.7	93 222.4	16 815 000
Total						82 112.2	94 541.8	105 761.0	18 500 000
Scenario 2									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care 1	45 000	770	770	770	1	415.8	415.8	415.8	45 000
Foster care 2	655 000	770	770		1	6 052.2	6 052.2		655 000
Adoption	40 000	616	616	616	0.75	221.8	221.8	221.8	30 000
Kinship care	945 000	616	616	616	0.75	5 239.1	5 239.1	8 870.4	708 750
Child support	16 815 000	339	400	462	0.75	51 272.3	60 594.5	69 916.8	12 611 250
Total						63 201.1	72 523.4	79 424.7	14 050 000
Scenario 3									
	Children	**Amount 2013**	**Amount 2014**	**Amount 2015**	**% eligible**	**Total 2013**	**Total 2014**	**Total 2015**	**Covered**
Foster care 1	45 000	816	865	917	1	440.7	467.2	495.2	45 000
Foster care 2	655 000	816	865		1	6 415.3	6 800.3		655 000
Adoption	0	0	0	0	0.75	0.0	0.0	0.0	0
Kinship care	945 000	490	519	550	0.75	4 165.1	4 415.0	7 923.6	708 750
Child support	17 510 000	359	450	550	0.75	56 595.0	70 898.1	86 713.8	13 132 500
Total						67 616.1	82 580.5	95 132.6	14 541 250

How do these estimates compare to current expenditure on child grants? Simple calculation based on Table 6 above gives a total for the CSG and FCG combined of R48 273.3 million for 2013/14. For scenario 2, the least costly option, the estimate for the same year is R60 780,3 million without allowing for the current two-year placements to continue, and R63 201,1 million if allowance is made for the current two-year placements.

While these estimates are noticeably higher than the expenditure projected with the current scenario, the comparison is not exact in that the scenario costing in Table 8 and Table 9 assumes that all children who are eligible receive grants. Thus the assumption is that all 18,5 children are reached in scenario 1, while scenarios 2 and 3 each reach 13,9 million children. In contrast, Table 6 shows 11,6 million children being covered by the CSG and FCG. Expressed differently, while the cost of scenario 2 is 29% higher than the National Treasury's estimate for 2014, the number of children covered by scenario 2 is 20% higher than the number projected to be covered in 2012. In other words, grant allocations in the budget are based on an assumption that grants will not reach all eligible children. Ideally, this would not be the case, but if the take-up rate used by National Treasury is reflected in reality, actual expenditure under all three scenarios above would be considerably lower than the estimates shown above.

This suggests a relatively minor increase in cost for a system that is more logical and equitable, and will also be more sustainable in terms of human resource requirements.

Another angle from which to consider the cost is to compare the costs of the three scenarios with the cost of the current scenarios, where those who might otherwise access the kinship child support or adoption grants instead receive a foster child grant, and where the amounts for the FCG and CSG increase each year in line with inflation. Table 10 gives the cost of this scenario as R69,0 million by 2015, which is relatively close to the cost of the modelled alternative scenario 2, at R79,4 million. This exercise suggests that there could be far less caution about taking bolder steps to close the gap between the FCG and CSG amounts.

Table 10. Results of modelling status quo

	Amount 2013	**Amount 2014**	**Amount 2015**	**Total 2013**	**Total 2014**	**Total 2015**
Foster care	837	888	941	16 932.2	17 948.2	19 025.1
Adoption	0	0	0	0.0	0.0	0.0
Kinship care	0	0	0	0.0	0.0	0.0
Child support	297	315	333	44 916.2	47 611.2	50 467.9
				61 419.8	65 105.0	69 011.3

A final comparison is one where adopted children and maternal and double orphans in family care receive the CSG (i.e. there is no adoption or kinship care grant), the FCG is held constant in nominal terms for three years, and the CSG is increased as in the scenarios above so that (a) it is based on a more objective measure of need and (b) the very large gap between the CSG and FCG is removed. This additional scenario is in line with the original vision of the Lund Committee which stated that there should be no discrimination on the basis of the family form in which the child lived.

The simple version of the costing for this final scenario gives a total amount of R55 688,8m in 2013, increasing to R77 151,7m in 2015. If allowance is made for orphans currently

receiving foster child grants to do so for the first two years until their placements lapse, the total for 2013 is R60 784m, increasing to R77 158m in 2015.

7.3 Assessment against principles

Table 11 provides a summary assessment of the three scenarios against the key considerations discussed above. For several principles there is little difference across the scenarios. This reflects the fact that each of the three scenarios was designed to accommodate the basic key principles on the understanding that solutions that did not observe these principles were not worth considering. The comparison in the table thus reflects the extent to which some scenarios go further than others in addressing these principles.

The principles addressed by all options include the following:

- *Progressive realisation of rights*: All options see an increase in the number of children benefiting from a more substantial CSG. All options should result in the system working far more efficiently because of the decreases in bureaucracy for what are now foster placements but will become kinship placements. This will result in children accessing the benefits quicker and with less expenditure of time, effort and money on the part of caregivers. The fact that all options provide for a grant of lesser value for children in family care than the foster child grant that some children in family care are currently accessing could be seen as a step "backwards". For this to be acceptable in terms of the principle of progressive realisation, government would need to show that the benefits outweigh the harm suffered by the children in family care currently benefiting from the foster child grant. The higher benefits could be argued on the basis of the increased realisation of rights in respect of the larger number of children who access grants more readily. It could also be argued on the basis of the greater equity in the system and overall opportunity for realisation of rights in the broader system, When the child support grant replaced the state maintenance grant there was a similar trade-off, in that children benefiting from the state maintenance grant faced a marked reduction in the size of the grant for themselves and their caregivers. In that case the introduction of the CSG was considered as conforming with the principle of progressive realisation of rights because the CSG would reach a far larger number of children, most of whom were more disadvantaged than the children reached by the state maintenance grant. Similarly, the current proposal would reach more children because of the removal of administrative hurdles. It would also free up financial and human resources for a broader range of prevention, early intervention as well as focused protection services for children needing such services. Further, it would increase equity by reducing the gap between the grants received by what are, in fact, likely to be the poorest children (those in the care of their mother) and the children in family care. Overall, the proposal thus would likely pass the test of progressive realisation – especially if children currently in family placements continued to receive the higher grant for the duration of the current court order.
- *Within available resources*: All options will radically decrease the workload of social workers and the courts by simplifying the process required for informal kinship care placements. This should free up social workers for delivery of other services for both children and other vulnerable groups. It should also free up the resources that were to be spent on employing additional social workers for employment of other staff, such as child care workers.

- *Efficiency*: The shift of large numbers of children from foster care to a simpler process for informal kinship care also increases efficiency.
- *Equity*: The reduction in the gap between the size of the various grants reduces a current serious inequity, including the urban/rural disparity in access to the different grants shown above.
- *Logic*: All options distinguish more clearly between the social security-oriented grants and the specialised protection services-oriented FCG. That said, the option in which the CSG is universalised obscures the poverty alleviation orientation of the CSG. The impact would go beyond the CSG itself as currently receipt of the CSG entitles the child and caregiver to other benefits, such as automatic exemption from payment of school fees and hospital fees.
- *Ease of introduction*: The kinship child support grant would not necessarily require a change to the Social Assistance Act. It could instead be introduced as a supplement to the already existing CSG through an amendment to the regulations that govern the amount of the CSG. The CSG increase could also be effected via a notice published in the government gazette. Both these amendments would require the approval of the Minister of Social Development and Finance.

Table 11. Summary assessment of scenarios against key considerations

	Scenario 1	Scenario 2	Scenario 3
Constitution	Constant nominal value of FCG for 3 years could be interpreted as regressive but can be justified by increases for other vulnerable children and a net overall increase for vulnerable children as a group	Constant nominal value of FCG for 3 years could be interpreted as regressive but can be justified by increases for other vulnerable children and a net overall increase for vulnerable children as a group	Lower value for kinship and adoption grants could be seen as providing insufficient encouragement for kinship care
Equity	Single approach for kinship care removes current inequity Potential inequity for poor biological parents in receipt of a lower-value CSG.	Single approach for kinship care removes current inequity Potential inequity for poor biological parents in receipt of a lower-value CSG	Single approach for kinship care removes current inequity Potential inequity for poor biological parents in receipt of a lower-value CSG
Affirmative action	Access to CSG by non-poor detracts from the focus on the most needy		
Minimum bureaucracy	Informal kinship care reduces bureaucracy. Abolition of CSG means test reduces bureaucracy but tax route could introduce new bureaucratic challenges	Informal kinship care reduces bureaucracy	Informal kinship care reduces bureaucracy
Financial sustainability	Higher cost makes this option the most challenging in terms of sustainability. Retaining means test for CSG would help to address this.	Lower cost makes this option the most sustainable	Less financially sustainable than scenario 2 but more sustainable than option 1
Efficiency	Lower value for adoption than FCG could create perverse incentives, but only in respect of adoption of children in need of "care and protection"	Lower value for adoption than FCG could create perverse incentives, but only in respect of adoption of children in need of "care and protection"	Lower value for adoption than FCG could create perverse incentives, but only in respect of adoption of children in need of "care and protection"
Poverty alleviation	Access to CSG by non-poor detracts from the grant's nature as an anti-poverty measure. At 60% of FCG amount, CSG is still far below the real cost of raising a child.	At 60% of FCG amount, CSG is still far below the real cost of raising a child.	At 60% of FCG amount, CSG is still far below the real cost of raising a child.

8 Conclusion

The challenges that prompted the commissioning of this study have existed for some time. The seeds of virtually all aspects of the problem were, for example, recognised by the Lund Committee in the late 1990s. As partly foreseen by both the Lund Committee and the SALC, the challenges have deepened over the years to the point where there is a crisis that must be addressed.

The discussion above suggests that the challenges can be solved. This study focused on the social assistance aspect, and came up with three scenarios. All three scenarios in broad terms pass the test of a range of principles, including principles of financial sustainability and rationality. The choice between the scenarios, or between modifications of the scenarios, is thus at the margins.

The challenges will, however, not be solved if it is only social assistance that is addressed. The scenarios are based on the assumption that a range of other reforms will happen. These reforms are not discussed in any detail in this paper, although they are referred to in passing. The reforms include:

- Introducing informal kinship care without requirement for court involvement
- Expanding the roles of cadres other than social workers and providing the funding for this to happen
- Expanding and funding provision of prevention and early intervention services
- Removing barriers to courts for kin applying for formal legal recognition of their de facto parenting rights and responsibilities (including devolving power to hear and consider guardianship applications to the Children's Court).

These reforms will help in addressing the current impossible workloads of social workers and the courts. They will also reduce some of the non-social assistance costs. This is true even of the third and fourth elements. For example, use of other cadres will save on salaries for social workers. Further, increased service provision by the other cadres and increased provision of prevention and early intervention services will reduce the number of children who need full foster care, and also reduce the number of children needing institutionalisation in child and youth care centres.

Increased provision of prevention and early intervention services would also provide a more solid basis for government to claim that social grants are part of a package of services delivered to children rather than a solution on their own. As one interviewee noted, referring to children who receive the grants as being "covered" by grants is misleading and incorrect. Children are "reached" by grants, but will only be "covered" if they have access to a range of other services. The expansion of prevention and early intervention services will also serve to balance out the small monetary reduction as kin caring for orphans are moved off the FCG and onto the KCSG.

8.1 Beyond the scope of this study

In addition to not covering the allied reforms that are needed, this study also does not cover several other issues that arose in the interviews or that could be seen as relevant to the discussion.

- The CDG is not covered. It is assumed that carers of children with disabilities should receive more money than those of other children given the costs associated with caring and providing for these children. Above we suggest, in line with the suggestion of both the SALC and Namibia's bill, that monetary support could be provided as a top-up to other grants. However, this will not solve all the problems associated with the current CDG. For one thing, qualification requirements for the current grant are far too restrictive. The amount provided is also insufficient to provide for the needs of many of these children.
- Social relief of distress is not covered. Two interviewees suggested social relief as an option to cover children in emergency situations. However, our view is that this option is too short-term to address the challenges in the current system, where the "emergencies" tend to continue for much longer than three months. We also worry that the extent of discretion allowed for in respect of social relief of distress could run counter to a rights-based approach where both beneficiaries and officials are clear about entitlements.
- Possible solutions in respect of child-headed households, including cluster foster care, are not considered in any detail. Such solutions are being investigated through other initiatives. From the social security side, the kinship child support grant would be preferable to the foster child grant for child heads of households as a foster parent takes on more adult responsibilities than a primary or kinship caregiver. Further, government should not be "appointing" children as foster parents as children can, in law, generally only bear rights and not responsibilities.
- It is difficult to know whether the CSG, kinship child support or foster child grants will be most appropriate without having more clarity on which of the approaches will be favoured. The fact that the scenarios reduce the difference between the various grants will make the grant aspect less of a deciding factor.
- The ways in which paraprofessionals could be utilised in child protection and are not discussed in any detail. An interviewee suggested, for example, that child care workers could have three roles in foster care. Firstly, they could assist in fast-tracking grants including because of their availability after-hours. Secondly, they could assist, once trained for this purpose, in writing the monitoring reports. Thirdly, they could attend court with the child and afterwards supervise the child. If child care workers were more widely available, they could also assist in allaying the concerns of those who favour increased monitoring of children placed in care of kin.

9 Persons interviewed and consulted

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Andrew Donaldson, National Treasury – 11 December 2011
Valeria Esquivel, Instituto de Ciencias, Universidad Nacional de General Sarmiento, Buenos Aires, Argentina – December 2011
Dianne Hubbard, Legal Assistance Centre, Namibia - 14 December 2011
Selwyn Jehoma, Department of Social Development – 13 December 2011
Heidi Loening, UNICEF – 15 December 2011
Jackie Loffell, Johannesburg Child Welfare – 13 December 2011
Francie Lund, University of KwaZulu-Natal/WIEGO – 8 December 2011
Maureen Motepe, Department of Social Development – 14 December 2011
Pritima Osman, Department of Justice and Constitutional Development – 14 March 2012
Ann Skelton, Child Law Centre, University of Pretoria – 8 December 2011
Julia Sloth-Nielsen, University of Western Cape – 9 December 2011
Zeni Thumbadoo, National Association of Child Care Workers – 13 December 2011

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