

## Review

# Children and Poverty in South Africa: The Right to Social Security

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**Poverty is one of the major threats to the realization of children's rights worldwide and in South Africa. Currently, 66% of South African children live in severe poverty. This places all other rights at risk; the rights guaranteed by the South African Constitution and by the UN Convention. Poverty and inequality in South Africa continue to worsen. These are particularly vulnerable groups of children, such as those infected and affected by HIV/ Aids, those living on the streets, children of farm workers and illegal immigrants. These children face discrimination, isolation and extreme hardship. The article wants to investigate the situation in South Africa and what the outcome is on the right to social security of the child.**

**Key words:** Poverty, rights, social security, HIV/AIDS, street children,

## INTRODUCTION

Poverty and inequality have a devastating impact on the lives of children in South Africa. Infant mortality rates are rising, the prevalence of preventable illnesses and malnutrition in children is increasing and structural unemployment has become chronic. It is estimated that 22 million people (over 50%) of the population live in poverty, that is, on an income of less than R160 per month. Children are recognized to be among the most poor and vulnerable in society in South Africa.

Among these children in poverty are particularly vulnerable groups of children including those infected and affected by HIV/AIDS; children with disabilities and chronic illnesses; those living on the streets; in urban informal settlements and in rural areas. These children face discrimination, isolation and extreme hardship. Every child has the right to benefit from social security, including social assistance. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant (Convention on the Rights of the Child (CRC) Article 26:1,2)

The current social security system is fragmented and

non-comprehensive, with many children not being able to access grants for which they are clearly eligible and many more not qualifying for social security despite clearly needing it. The response to poverty requires a multi-sectoral, multi-faceted approach, which relies heavily on social policies and incorporates poverty alleviating programmes, integrated development plans, capacity development of communities, service delivering, and not least, social security or "safety needs". Schools must act as a community watchdog against any form of abuse and to secure social security for its learners. Schools must work closely with the community on child rights related issues so that they can protect and promote the interests of the learners in their care.

Social policy should aim to create a fair and equitable society, correcting for poverty amidst plenty, and where all get a fair share of the benefits of social co-operation. Given how long it has taken to replace the 1983 children's Act which everybody agrees was a disaster, which is how long it would take to undo the damage done by an ill-considered new Children's Bill. The South African Law Commission, spent seven years preparing its Draft children's Bill. The end result was not perfect, but it is difficult to understand how all that knowledge and experience can simply be cast aside by bureaucrats and politicians who, while claiming to be concerned with "the best interests of the child" and doubtless believing that they are – have no real understanding of what those interests are. Children

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may come first in principle but in practice money does. Tax cuts buy votes; spending money on children doesn't.

It is widely acknowledged that our social security system is non-comprehensive, fragmented and inefficient. Many children fall through the gaps of existing provision. In response to the shortcomings in the system, Cabinet appointed the committee of Inquiry into a Comprehensive Social Security System for South Africa in 2000. The Committee of Inquiry was tasked with investigating and making recommendations for a new, improved and comprehensive social security system for South Africa.

## Background and context

An estimated 22 million people live in poverty in South Africa and survive on an income of less than R144 per month. Structural unemployment has become chronic and has contributed to the estimated 38% of the population who live in 'workerless' households (containing no employed people). Infant mortality rates are rising, and of the approximately 717 000 live births in 1999, about 176 000 took place in households with monthly expenditure of less than R400, while a further 321 000 babies were born into households with monthly expenditure of less than R800.

Almost everyone has an intuitive understanding of what child poverty is. A situation where children do not have enough resources to grow healthy and strong, to get an education, to live in a good and safe environment, and to fulfil their potential. Where children are deprived of the resources needed to grow and develop, they are living in poverty. In order to work out where resources should be allocated and to see where the poverty situation is changing over time, it is necessary to create some definition that will clearly distinguish between children who are poor and those who are not. Once poverty is defined, it needs to be measured regularly to quantify how many children are living in poverty, how deep the poverty is, and what areas of their lives are impoverished. Noble, Wright and Cluver outline the different ways on which child poverty can be thought about, measured and enumerated. They consider child poverty and its consequences as having both an intrinsic and instrumental value. Intrinsically, the experiences of children are important. Allowing children to live in poverty is not right. The instrumental value of child poverty is linked to the fact that children will grow up to be the adults of tomorrow. For this reason, a long-term investment of resources and care in the lives of children is essential for the future. When we think about poverty in this way, it is obvious that children and their caregivers need more than just money. A definition of child poverty should therefore include what children need. Yet, many definitions of child poverty are based on income and expenditure in households because, in the society we live in, money gives power to purchase many of the things that are needed.

Children are recognized to be among the most poor and vulnerable in society in South Africa, and in 1999 11% of households with children under 7 went hungry due to lack of money to buy food. Preventable illnesses like malnutrition remain one of the biggest contributors to child morbidity and mortality in South Africa, and nearly 25% of children are stunted due to malnutrition. These children face shortages of food, clothing, shelter and access to basic services. In addition there are particularly vulnerable groups of children, such as those infected and affected by HIV/AIDS; children with disabilities and chronic illnesses; those living on the streets, in urban informal settlements and in rural areas; and children of farm workers, refugees and illegal immigrants. These children face discrimination, isolation and extreme hardship.

Poverty has been defined as "*the inability of individuals, households or entire communities to command sufficient resources to satisfy a socially acceptable minimum standard of living.*" Poverty is a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economical, political and social rights.

Although much research work has been undertaken on the nature, causes and impact of poverty, not much of this research is focused on documenting the actual voices of those in poverty, especially the most vulnerable sectors of society for whom the impact of poverty is even more brutal and harsh, our children.

There are two main reasons for the state of child poverty in South Africa. The first being the legacy of apartheid. Racially discrimination policy has resulted in very high levels of inequality, with many of today's black children inheriting the inequalities and omissions of the previous government. On the whole, schools, primary health care services and infrastructure are poor and historically black areas. In addition, large rural areas were declared homelands and subjected to systematic degradation, overgrowing and under-development. The poorest population still live in these areas, where woman and children are over-represented, and where there are huge backlogs and services and infrastructure. At the same time, the productive resources of the country, farms, factories and financial capital, continue to be in the hands of mostly white minority. The BEE policies have somewhat impacted on the racial distribution of resources, but recourse and asset distribution remain very similar to what they were in the beginning of the last decade.

The second reason for child poverty is the very high level of unemployment in the country. South Africa emerged from the sanctions and a protected economy into the rush of globalization in the early 1990's. It sought to make itself attractive to foreign investment and to expand trade by opening markets and reducing trade barriers. These approaches deepened the already high levels of unemployment as the country lost jobs in sectors that struggled to compete in the global market, such

as the agricultural and manufacturing sectors.

Then of course there is a third element at play here that cannot be underestimated, the HIV/ AIDS pandemic. Poor communities and households are most heavily affected by the spread of HIV/ AIDS. Families living with this disease are likely to lose wage or self employment income if an earner gets sick, while having to spend large portions of income on health care and funeral expenses. This situation, in turn, deepens poverty. Families in communities heavily burdened by HIV/ AIDS are also likely to take in children and adults affected by the pandemic, which increases the dependency on the limited income and asset of such households. Children in households affected by HIV/ AIDS risk missing school, either to care for sick household or to try and earn money to supplement the household income, thereby increasing the likelihood that perpetuated into their generation.

Twelve years after the coming of democracy, we can rule out either right-wing coups or hyperinflation as the cause for the non-materialisation at an economic level of the hard-won political gains mentioned above. That the poor remain as large a group as ever and that their experience of poverty is as suffused with suffering as in the past, seems to be an intractable feature of post-liberation South Africa. The United Nations Development (UNDP) revealed in its 2004 report that the poverty rate in South Africa stood at 48%. The Taylor Commission reported a poverty rate between 45 and 55%. Charles Meth holds that there were some 19.5 million people living below the poverty line in 2002, up from the 1997 figure of 17.2 million. Of these people somewhere between 7 and 15 million are living in utter destitution. A government agency Statistics South Africa reports that households with less than R670 a month increased from 20% of the population of 1995 to 28% in 2000.

Given the above one would expect a vibrant and insightful debate to be taking place within various academic disciplines on how to tackle and eradicate poverty. Instead, with a few notable exceptions there exists a relative paucity to the depth on literature on poverty in South Africa. This is surprising given the scale of the problem this literature identifies as well as the fact that addressing poverty and inequality, though coded in nationalist terms, forms the very basis that the government's claims to moral, political and electoral standing. The literature that does exist is marked by repetition, with chunks of articles published elsewhere often regurgitated in other journals; the same few primary sources of data tabulated over and over and the same hobby-horses taken out for a trot. The academic work on poverty is further largely descriptive, easy points being scored in decrying the apartheid and colonial era causes and state of poverty – but with precious little in-depth critique or conceptual engagement with present government policy. It is not usual for an article to be so qualified and technocratic that, after ten pages of analysis, a conclusion as vague and timid as the following is reached: On the balance, it is

likely that the poverty has worsened as well”.

### **Legislative reform of the social security system**

The current social security system for children in South Africa is clearly inadequate in its capacity to address the socio-economic realities highlighted above. It is governed piecemeal in various acts, including the Social Assistance Act 59 of 1992, the South African Schools Act 84 of 1996, the Child Care Act 74 of 1983 and various other Acts, and is by no means comprehensive. A noble attempt was made in the SALRC Children's Bill to present a variety of provisions to create a basic social security scheme for children, which took account of the dire poverty in South Africa and the needs of the most vulnerable children. Most of these provisions, however, have been removed from the current Children's Bill. The Department has said that these provisions are better placed within the Social Assistance Act. The Social Assistance Bill that was tabled in Parliament in early September 2003, however, does not incorporate the provision left out of the Children's Bill.

The Social Assistance Act currently makes provision for three main grants for the benefit of children, namely the child support grant, the care dependency grant and the foster care grant. There are many shortcomings to this social assistance scheme for children, including: the limited eligibility of children for the child support grant due to age and caregiver income restrictions; difficulties in accessing the foster care grant due to cumbersome court procedures; and the fact that the care dependency grant is only for those children who suffer from severe disabilities and require permanent home-based care.

The result of these shortcomings is that groups of vulnerable children have no access to social assistance, despite clearly being vulnerable and in dire need of support. Poor children between the ages of 9 and 18 years, who are cared for by their biological or other caregivers. In the context of the HIV/AIDS pandemic, increasing number of children is likely to be in the care of people other than their biological parents. Many poor children between the ages of 0 and 18 years whose caregivers do not pass the means test. The means test does not take account of the number of people living off the income or the extra vulnerabilities faced by the family, such as HIV/AIDS. Furthermore, the means test threshold has not increased since 1998, despite increases in inflation and the cost of living. Children without adult caregivers (children living in child-headed households and street children). Children with moderate disabilities and chronic illnesses who need assistance. Children living with HIV and AIDS.

These shortcomings need to be addressed through legislative amendments to ensure that the government fulfils its obligations to children under the Constitution. The SALRC Children's Bill proposed a social security sc-

heme that included the introduction of various new grants. The SALRC was of the view that there are currently inadequate prevention and early intervention strategies in our children's legislation, as the present Child Care Act is completely weighted towards taking children away from parents into one or other form of alternative care.

The Commission stated that:

*'Submission received and sources consulted by the omission revealed not only the strong links between poverty and neglect, but also the apparent rising incidence of extreme forms of poverty – and consequent neglect – among children...'*

The Commission therefore recommended provision of 'a concrete legislative framework for preventive and early intervention strategies to combat abuse and neglect', in addition to tertiary intervention strategies, such as removal of children in need of care into formal alternative care. It further recommended that social security for children be regulated by the Children's Bill that a universal child support grant; a foster and court-ordered kinship care grant; an informal kinship care grant; an adoption grant; an emergency court grant; a supplementary special needs grant; a subsidy to enable children with disabilities to obtain assistive devices; fees to non-governmental organizations contracted to the State who, in terms of this Act, carry out services on behalf of the State; subsidies to non-governmental organizations performing activities to implement programs and projects giving affect to this Act; a subsidy to encourage the provision of early childhood development services and access to free and subsidized state basic services for children in alternative care and impoverished children, are included in the Children's Bill.

### **Social security provisioning for children in South Africa**

There are three grants for children in the current social security system: The Child Support Grant (CSG), the Foster Child Grant and the Care Dependency Grant. The current social security system is considered by a wide range of stakeholders, including the State as being non-comprehensive and fragmented, resulting in many children receiving no assistance at all. The majority of children in need of the grant, and a great proportion of those who also qualify for grants, do not receive grants due to policy, budgetary, legislative and service delivery problems. The current social security system is non-comprehensive and fragmented, with many needing children receiving no assistance. Although there are the three grants mentioned above, the majority of children in need are not able to access the system due to policy, legislative, budgetary and service delivery problems. The response to poverty requires a multi-sectoral, multi-faceted

approach, which relies heavily on social policies and incorporates poverty alleviation programmes, integrated development plans, capacity-development of communities, service-delivery, and not least, social security, or "safety nets".

Social policy should aim to create a fair and equal society, correcting for poverty amidst plenty and where all get a fair share of the benefits of social co-operation (Solow, 2001). Redistribution of income through social assistance programmes is an affective poverty alleviation strategy, and in case children in dire need, essential to meet their basic needs. It must create an environment that enables all children to enjoy their Constitutional rights, especially the rights to equality, dignity, health, education, participation and protection from abuse and neglect. The government has focused its poverty alleviation efforts on extending the child support grants to a greater number of recipients.

### **The child support grant**

Covers children aged 0 – 7, but only reaches 7% of those in need and 33% of those targeted for the grant. The grant (R130 per child) is paid to the maximum of six children) per household. It requires birth certificate, but less than 50% of children have birth certificates. Children in the age group 8 – 18 years are not covered. There is a lack of awareness of grants, hence small take-up.

### **The care dependency grant**

The Care Dependency Grant covers children aged 1-18 with 'severe' mental or physical disability requiring permanent home care. This grant is for the income group below R48 000 p.a. or R620 per month. There is only a 26% take up. The problem here is the lack of clear definitions and eligibility criteria.

### **The foster child grant**

The Foster Child Grant is for children legally placed in a foster home. The grant is R450 per month. The problem for taking up this grant is the lengthy court procedure to foster and many children in extended family care are not covered. The grants are also not accessible to child-headed households. It further creates perverse incentives because children are given away to be 'fostered'.

### **Problems with all the grants**

Further problems of the grants are that children aged 7-18, children who are HIV positive and street children are excluded from the grants. Inadequate budgets to cater for these grants create big problems. These are also inter provincial discrepancies and different mean tests are used for each grant. People do not know to use the mean

test and a delay in processing grants create big administrative problems.

### **The rights of the child**

Today, children are growing up with a progressive rights framework based on the United Nations Convention on the Rights of the Child. While recognizing that much progress has been made by governments in the past decade, there are still many challenges to tackle to ensure that all children's rights are realized. Children's institute play a key role in monitoring the realization of children's rights and informing the prioritization of children's well being by government decision-makers and civil society role-players there various measures that are crucial to the task of making children's rights real. Among these are three that need to be emphasized. First: a national information system can provide reliable and timely child-centred data, which is crucial to planning, is an imperative. Second: collaboration between all government departments that impact on child well-being is required to ensure integrated development and service delivery. And third: applying the principle of the 'best interest of the child' in all decision that affects children's lives. The realization of children's rights is not only up to the government and dedicated role-player whether as individuals or as role-players in our various sectors, we can all work toward putting the best interest of children first. It is imperative that these various interventions, however big or small, allow children to share in the wealth of their countries, and to get the rights they are entitled to.

When it comes to conceptualizing and measuring poverty and taking action to combat it in the world, the human rights approach (and in particular the economic, social and cultural rights approach) is useful in that it sheds light on some dimensions of the problem that are usually overlooked.

The rights-based approach marks a shift away from the earlier development focus on meeting basic needs, which relied on charity or good will. A rights-based approach, in contrast, recognised individuals as "rights-holder", which implies that others are "duty-bearers". Needs, on the other hand, have no object – there is no person or mechanism dedicated to meet them. Under a human rights framework, governments are the primary duty-bearers. Among their duties are the establishment of equitable laws and systems that enables individuals to exercise and enjoy their rights, and to seek judicial recourses for violations under the rule of law. As rights-holders, people can claim their legitimate entitlements. In the Universal Declaration of Human Rights it claims the promotion of universal respect for and observance of human right and fundamental freedom. Article 3 of the Universal Declaration of Human Rights states "Everyone has the right to life, liberty and security of person". Article 22 of the Universal Declaration of Human Rights states "...Everyone, as a member of society, has the right of social security..."

Article 25 of the Universal Declaration of Human Rights states "Everyone has the right to a standard of living, adequate for the health and well being of himself..." This is important that everybody understands the rights and freedoms to promote social progress and better standards of life for everybody.

### **The rights of children in South Africa**

- Every child has the right to benefit from social security including social assistance. The benefits should, where appropriate, be granted, taking into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant. (Convention on the Rights of the Children (CRC). Article 26:1,2)
  - Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (CRC. 27:1)
  - The child has the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health. State parties shall take appropriate measures to achieve the implementation of this right. (CRC 24:1)
  - A child with mental or physical disabilities should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (CRC. 23:1)
  - Everyone has the right to access to social security and where appropriate, to social assistance. SA Constitution section 27(1) (c).
  - Every child has the right to basic nutrition, shelter, basic health care services and social services. SA Constitution Section 28(1) (c).
- A child's best interests are of paramount importance in every matter concerning the child. SA Constitution Section 28(2).

### **Child protection, prevention and early intervention**

The Children's Bill prepared by the Commission (the SA Law Reform Commission) made provision for:

- A level of primary preventive and promotional measures, addressed to the broad population of children, with the aim of promoting their well-being and reducing their vulnerability to maltreatment;
- Where children become vulnerable in spite of these measures, a second level of early intervention mechanisms aimed at supporting them and their families and preventing the need for statutory interventions;
- and finally A substantially improved system of formal protective services for those children who; despite action taken at the above levels, are actively maltreated.

The Bill further envisaged an inter-sectoral approach,

involving collaboration between all government structures with core responsibilities towards children, along with civil society, at all three of these levels.

### A balance approach

South Africa is characterised by extremes of wealth and inequality. Classified as a middle – income developing country, it has ‘two nation’ within it : small number of very unequal society security system can play a stabilising role, and is also a mechanism for distribution, Social welfare policies and programmes that provide for cash transfers, Social relief, and enabling and developmental services ensure that people have adequate economic and social protection during times of unemployment, ill health, maternity, child rearing, widowhood, disability, old age and so on. Social welfare programmes of their nature contribute to human resource development by enabling impoverished households to care for their members, especially children and those who are vulnerable. When such programmes are combined with capacity building, people can be released from the poverty trap.

Social security payments play an important role in the household income of many of South Africa’s poor. The government is committed to providing a comprehensive national security system, and its Growth, Employment and Redistribution Strategy (GEAR) recognises the importance of a broad social security net social development programmes are investments which lead to tangible economic gains, and in turn to economic growth. Without such social investments, economic growth is compromised.

Social security in South Africa is right upheld by the constitution. The bill of right (Chapter 2) notes in section 27:

*‘Everyone has the right to have access to ... (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance, and “2) The state must take reasonable legislative and other measures, its available resources, to achieve the progressive realisation of each of these rights.”*

Many South African are unaware of their right to social security. As a result, the Black Sash, in collaboration with the Department of Welfare, recently published an easy to read booklet entitled ‘you and social grand’: the social assistance regulations. The Social Assistance Act (no 59 of 1992), which deals with pensions and grants, sets out how these may be accessed, and regulations under this act have the potential to resolve past problem; however, in the light of the report of the Lund committee on child and family support, further changes to the welfare system are likely. The implementation of these new regulations has been delayed by problems experiences with combining the information from the separate welfare administr-

rations of the past into one central database. This issue is dealt in detail in the next section.

Until recently, the welfare system was administered by 14 departments created for different population groups and homelands. This resulted in fragmentation, duplication, ineffectiveness. Each of these departments had its own procedure, style of work, approach and priorities. The white paper of social welfare notes that the welfare system is faced by the challenge of devising appropriate and integrated strategies to address the alienation and economic and social marginalisation of vast sectors of the population which are living in poverty, are vulnerable, and have special needs. A further challenge, it states, is to address past disparities and the fragmentation of institutional delivery of welfare service.

The establishment of one national department and nine provincial departments for social welfare means that the opportunity now exists to build and sustain a uniform and integrated institutional framework. Roles and responsibilities are being clarified, and mechanisms put into place to ensure harmonious and effective working relationship.

Welfare is a concurrent national and provincial function; provinces have some discretion as long as they operate within the framework of national norms and standards (Which are far from fully developed as yet). It seems almost certain that provinces will soon no longer be responsible for grants, which will become a national competence. This is certain to lead to more equitable distribution of benefits nationwide.

### Children’s problems in the context of social security issues

The children’s problems have given a window into their lives and the difficulties they experiencing in living in a society which does not provide a social security safety net.

*The majority of South African children (60-70%) live in poverty. IDASA calculated that this equates to 3.2 million 0-5 year olds, and 10.2 million 0-18 year olds*

Poverty appeared to be a key characteristic of many children. It is given as the main reason why children ended up on the street. Poverty also characterized the lives of at least half of the children with disabilities. Many children are living in poverty. About half of them lived in what we have called ‘deep poverty’. We have used this term when children tell us that they have so little that they often go to bed hungry at night. With the exception of the Stellenbosch children and some of the children in the Northern Province group, all the children lived in informal housing with access to few services. The children in the Northern Province group were the poorest children. They all lived in deep poverty characterized by a lack of access to food on a regular basis. These children were orphans, and this made them even more vulnerable. This deeper

vulnerability was confirmed by other groups of children as well.

Schooling and education related problems appeared to be the most common problem mentioned. Children reported not being able to access schooling because of poverty. Children described how they could not afford to pay school fees or to buy uniforms or stationary. Children described how they were turned away from school because they could not pay fees and of having their reports withheld because they had not paid fees. Children shared anecdotes of the stigma, discrimination and abuse they suffered at the hand of educators. These included being beaten or refused entry to school because they did not have school uniforms. If they were allowed into school they were further victimized by being made to sit on the floor rather than at a desk in view of their failure to pay fees. If they did not have the correct stationary they were told they could not write tests.

The South African Schools Act states "No learner may be refused admission..." (Section 5, Admission to Public Schools). The policy also states that parents who cannot afford fees should apply to the principal and governing body for exemption (Norms and Standards for School Funding (Section 125-140). Payment of school fees appeared to be the biggest problem. Children are dropping out of school because of the abuse to pay school fees.

Children cannot afford school uniforms and school shoes. Children are refused access to school because they could not afford uniforms. In many instances they had managed to get a school jersey but schools demanded a special customized tracksuit top or jersey. This is clearly out of the children's reach. For children living in more rural settlements travelling to schools is a problem. Children walked daily to get to school. This resulted in many children often arriving late to school. Routes to school are not safe as well. Children are concerned about their safety and cannot walk long distances to school.

Altogether, approximately 5.4 million children in South Africa aged between 5 and 17 years were regularly spending at least some time during the week fetching wood and/or water for the household. School labour and improvement activities show a similar pattern to household chores. Ten percent of children were found to be spending five hours or more per week on school labour activities namely fetching water for schools and cleaning toilets and classrooms. Many children experienced problems with school attendance or attending to homework and other learning activities due to the responsibilities they had to undertake within the home such as caring for younger siblings, fetching fuel, wood and water. A big problem under children living in poverty was hunger. One in five youth in South Africa suffers from malnutrition. Sometimes girls go to shebeens, look for people that they think have got money and go away with them. No one talks to the girl and the mother does not stop her. As long as the girl brings shopping bags along when she comes back.

Access to water and toilet facilities are another problem. It is R5 a pail (about 20 litres). Some people get water from a crèche or a school. Children are faced with many social problems which affect their households, including alcohol, drug abuse, crime and violence. Recreational resources are things that would help children resist the social problems they saw other children experiencing.

Dysfunctional family life appeared to be a serious problem resulting in the breakdown of the family. In many cases this breakdown led to children moving from one area to another and this affected their schooling. The mobility between rural and urban areas was high and many of the children lived only with their mothers or grannies. Children recounted stories of family conflict usually between parents. Lack of support from absent fathers is a further problem. Children described mobility associated with family conflict. Mobility was also associated with poverty. Family conflict is one of the reasons why many children lived only with their mothers. The difficulty that many of the families face with only one breadwinner who has a precarious income is making it difficult for children to stay at home.

### **Child labour**

Sometimes one child supports the whole family. Both parents are dead. They never received any benefits from the places where the parents worked. The total South African population is estimated at 43 million. There are 14.4 million children age 5-17 living in South Africa. At least 3.3 million working children are split across the different economic activities in the following manner (Table 1).

Six percent of boys and 1% of girls were working in 1999 – that is, 17 353 children aged 5-17 said that the work they do keeps them out of school. The children engaged in work, in the sense that he/she spends more than three hours a week working, is likely to be African and living in a rural part of the country. 1.85% of children aged 5-17 years, or 247 900 children, were engaged in exploitative child labour in mid – 1999.

Figure 1 is considered to be a gross underestimation, because the Survey of Activities of Young People concentrated only on children within households; this excludes a large number of children labourers who live and work on the streets and are engaged in the worst forms of child labour, such as commercial sexual exploitation.

### **Child labour issues in the bill**

Child Labour issues were originally covered in depth in Chapter 16, 'Children in especially difficult circumstances' in the SALRC Draft. This Draft was welcomed by the NACL as a progressive piece of legislation, in that it not only outlawed child labour (like the Basic Conditions of Employment Act, 1998) but also made real provisions for

**Table 1.** Number of working children split across different economic activities

Industry	Number of working children
Commercial Agriculture	188 000
Subsistence farming	2 294 000
Manufacturing	48 000
Construction	3 000
Trade	718 000
Transport	9 000
Informal finance	15 000
Services	103 000
<b>Total</b>	<b>3 378 000</b>

assisting children engaged in child labour and preventing such children from becoming involved in exploitative labour. The Bill explains what constitutes child labour and prohibits the worst forms of child labour but removes any real commitment to providing the necessary resources, financial and human, needed to deal with the problem. The removal of the social security provisions and the National Policy Framework is particularly significant for the Child Labour sector. Chapter 16 was deleted and Child Labour issues were then incorporated under Chapter 8 'Protection of Children', Section 141 'Worst Forms of Child Labour prohibited'. This Section, however, no longer includes a prohibition of Child Labour that is age inappropriate.

An important change is that children's rights to social security and education have been removed. Education is the key to breaking the cycle of poverty that forces

<b>43 million total population</b>
<b>14.4 million children aged 5-17</b>
<b>3.3 million working children</b>
<b>247 900 children in exploitative labour</b>

**Figure 1.** Survey of activities of young children.

children into child labour. In the original SALC draft, there was a call for each metropolitan and local municipality to play a monitoring role regarding child labourers and other children in especially difficult circumstances. This would entail keeping statistics, monitoring their socio-economic conditions, compiling needs analysis every three years and using the statistics and needs analysis as a guide to develop a budget for providing services like shelter, health care, nutrition and social services.

The SALC draft also proposed that school teachers and principals should be obliged to identify children who are regularly absent from school, investigate the cause and try to assist such children to return to school, and report

children in need to the Department of Social Development. This section has been removed. Systems for provincial monitoring including an annual survey, plans and resource allocation to remove children from exploitative labour situations, have also been deleted.

### Basic principles to combat child labour

1. Enforcement of existing child labour legislation and awareness-raising.
2. Enforcement of children's rights, including the right not to be exploited and the right to basic education, health and services.
3. Access to Social Security.
4. A national policy framework/interdepartmental strategic plan and necessary resource allocation.
5. Mechanisms to research and monitor the extent of the problem.
6. Periodic monitoring of identified culprit sectors such as agriculture to ensure that they desist from flouting the laws.

The implementation of these basic principles demands the return of all the rights of children originally outlined in the SALC draft, especially the right to social security, education, support services and medical care after being exploited or maltreated.

### Children affected by HIV/AIDS or orphans

It is estimated that by end of 2006 at least 1 million children will be orphaned by HIV/AIDS. Many children are looked after by grannies and extended family members. One of the greatest threats to the realization of child rights in South Africa and, more broadly, in Sub Sahara Africa is the HIV/AIDS pandemic. Of direct significance to children is the fact that in South Africa an estimated 3.2 million women of childbearing age (15-49) were living with HIV/AIDS in July 2002. As a result, between 1<sup>st</sup> January and 31<sup>st</sup> December 2002, 89 000 children (around 7% of the total number of children born during this period) were infected with HIV, either at birth or through breastfeeding, and 150 000 children lost their mother to AIDS. As of July 2002, an estimated total of 885 000 children in South Africa had lost a mother; without the effective implementation of any major new health interventions, this figure is expected to double by 2010.

We know that in case of a terminal illness such as HIV/AIDS, the impact of orphanhood on children begins long before the death of a caregiver. Hundreds of thousands of children are currently living with, and frequently caring for, sick and dying parents. The impact of HIV/AIDS on children is typically felt through the manner in which it exacerbates existing individual and household vulnerabilities such as poverty, abuse, and poor access to schooling. As such, every section of the Bill is relevant



to children who may be infected or otherwise affected by HIV/AIDS.

If the child is over the age of 12 years, or under the age of 12 years but of sufficient maturity, the child may consent to HIV testing. Otherwise, consent may be given by the child's caregiver, a designated child protection organization arranging the placement of the child, the superintendent or person in charge of a hospital, or (under certain conditions) a children's court. Informed consent for disclosure is based on the same principles. A child may only be tested if proper pre- and post-test counselling is provided by an appropriately trained person. Contraceptives may be provided for children over the age of 12 years on request and other forms of contraceptives, without the consent of the parent or caregivers, provided the child is at least 12 years of age, has received the necessary medical examination.

Health workers need adequate training and support in order to provide age appropriate counselling and in order to determine a child's capacity to consent to HIV testing. A few health workers feel that they have the skills (or the time) to counsel children around HIV. Many health workers are unwilling to treat children who arrive at clinics unaccompanied, a situation that is likely to arise more and more frequently. Health workers therefore need clear policy guidelines on when and how to treat unaccompanied minors.

Some orphan children are living alone. In some cases the older child carries the burden of caring for their younger siblings. The recognition of child-headed households as a family form in South Africa is an important step, which are supported. The current provisions, however, raise a question:

- It is unclear whether the provisions for CHH are only applicable for those households recognized as such by 'a provincial head of social development'. The procedures for 'recognition' a household as child-headed would need to be clearly spelled out so as to ensure that this provision does not create an additional barrier to children attempting to access support.
- The Bill recommended that a CHH should function under the older children in these households.

### **Children on the street**

Although sources place 10 000 to 12 000 children as living on the streets of South Africa, this is widely considered to be an underestimation. Children are living in a shelter when they leave the house.

Reasons for leaving the house are poverty, family breakdown, abuse at home and conflict with parents. The Children's Bill defines shelters as facilities that provide services to children, "including street children". Shelters are especially designed and run to meet the needs of street children. One of the shortcomings of the Bill is that

it fails to recognize that there are services besides shelters or drop-in centres that are currently being offered to street children by a number of organizations in all the provinces. These include prevention centres, income generating projects for families, after school – clubs, children's homes, alternative education programmes, skills training, and family mediation initiatives. The Bill states "The MEC (member of the executive council in the province) may provide facilities and services and may subsidise facilities and services.

Children are very vulnerable to sexual offences, including prostitution. The vulnerability of children should entitle them to speedy and special protection. The age of consent to sexual intercourse remains 16 years, except where there is a consenting sexual relationship, between two children aged between 12 and 15 who are less than three years apart. The Children's Bill contains strong and comprehensive provisions to protect children from engaging in prostitution. Persons who involve themselves in any form of child sexual exploitation are criminalized.

The Bill makes provision for persons who commit sexual offences against children to be declared dangerous sexual offenders (Section 8 of the Sexual Offences Bill).

Section 15 provides that children who give evidence in criminal cases must be declared vulnerable witnesses by the Court. The Court is then obliged to ensure that the child is protected while testifying, through the use of closed circuit television, holding the trial in camera, prohibiting the disclosure of the identity of the child and other measure that the Court sees as appropriate. One of the problems that causes immeasurable secondary trauma to children is the uncoordinated activity of the criminal justice system and the lack of expertise of the various role players as they manage sexual abuse of children. The lack of sensitive and competent management of sexual abuse of children not only contributes to the continued trauma of the child and family/caretaker, but also contributes to the poor conviction rate for cases of child sexual abuse.

### **The child protector**

Legislation that is progressive, comprehensive and attends to the holistic needs of children is not sufficient in itself. Making it a living reality in the lives of South Africa's children, requires the monitoring of implementation of legislation and policy and its impact on effective service delivery to children. Appropriate and independent monitoring of the implementation of laws relating to children is essential as it assists in evaluating the gaps in the legislative provisions and implementation, what accounts for gaps and what can be done to address the issues. Monitoring can also inform legislators as to the need for further law reform – either as a result of the legislation being unworkable or as new problems and challenges arise.

Monitoring systems need to be independent of the structures that are being monitored. At the Parliamentary Hearings into the sexual abuse of children held in March 2003, it was clear that government departments' sometimes had different perceptions of their own, versus the outside, view of their service provision.

### International comparisons

The concept of a children's legislation monitoring mechanism or Children's Protector is not unique to South Africa. For example:

- Australia has established a Children's Ombudsman to promote and defend children's rights.
- Canada has established a Children's Commission to ensure that key aspects of government services to children are monitored, and their work assessed and reported on publicly.
- Kenya, has established a National Council of Children's Services that exercises general supervision and control over the planning, financing and coordination of child welfare activities, and advises government.

In some countries, for example, Sweden and Philippines, children's rights are monitored by NGO (non government organizations) or NGO coalitions.

### The South African situation

In South Africa there is no comprehensive and independent monitoring system that focuses exclusively on the rights of children and the implementation of legislation and policies that impact on the lives of children.

### SA law reform commission's recommendations

The SA Law Reform Commission's Children's Bill contains a Chapter (22) for the Development of an Office of the Children's Protector. The Bill provides for the establishment of this office as a body operating independently of the Department of Social Development. The main function of the Children's Protector as envisaged in the Children's Bill is 'without fear, favour or prejudice to monitor the implementation of this act by –

- a) Organs of state in all spheres of government
- b) Persons and non-government organizations involved in the protection and well-being of children.

The powers and functions of the Office of the Children's Protector are summarized as:

- Receiving investigating and resolving complaints regarding any matter relating to the Children's Stature

- Having the power to take legal action on behalf of a child
- Authorizing and/or conducting inspections of children's facilities
- Receiving and investigating reports of children's deaths in alternate care.

It is clear that the Bill intended the Children's Protector to monitor both state and civil society in order to ensure implementation of a comprehensive, holistic and children's rights based children's Act. This submission supports the creation of a Children's Protector to monitor implementation of the Children's Bill, as well as to monitor and bring to government's attention any deficiencies in law, policy and implementation of law and policy that compromises the rights of children, as subscribed to South Africa's commitment to international Conventions and Protocols, the Constitution and domestic legislation relating to children.

### Conclusion

Poverty and inequality have a devastating impact on the lives of children in South Africa. Children face shortages of food, clothing, shelter and access to basic services. The response to poverty requires a multi-sectoral, multi-faceted approach which relies heavily on social policies and incorporates poverty alleviating programmes, social security or safety nets.

Social policy should aim to create a fair and equitable society, correcting for poverty amidst plenty, and where all get a fair share of the benefits of social co-operation.

Unless the cycle is broken, generation after generation will continue to struggle without hope of sharing in what the country has to offer. In this second decade of democracy, combating poverty needs to be a priority of government, business, civil society, and indeed every individual. In South Africa, most children live in under-developed rural areas where there is a lack of access to services, infrastructure and opportunities. In this regard, poverty needs to be understood as multi-dimensional, and encompassing not only a lack of money or material resources, but also various other deprivations such as access to schooling, health care and a conducive living environment. Poverty impacts on children's rights in a variety of ways. For South Africa's children, poverty means growing up without sufficient and nutritious food, which impacts on health, growth and development. It means that many children live in inadequate or overcrowded housing. It means a lack of access to safe drinking water and sanitation for nearly half of the country's children, which also causes health problems. A lack of access to electricity adds further to health and safety hazards, as many families have to use paraffin or coal fires for cooking and heating. In addition, poverty for many of South Africa's children means a long walk to reach school, often on an empty stomach.

These experiences of poverty or compounded by the HIV/AIDS pandemic which adversely affects families' resources in many different ways. The agency and the resilience of the millions of children and their caregivers who live in poverty in this time of HIV/AIDS are remarkable. There are many who triumph daily against extreme conditions and who are creative and purposeful in finding ways to survive and to celebrate life. Indeed, in implementing a national response to this situation, the importance to strengthening and supporting families as the optimum place for children to grow up and develop must not be lost.

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