THE CHILD SUPPORT GRANT IN THE REPUBLIC OF SOUTH AFRICA: DOES IT COMPLY WITH THE ILO SOCIAL PROTECTION FLOORS RECOMMENDATION 202 OF 2012*

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‘There can be no keener revelation of a society's soul than the way in which it treats its children.’

1 Introduction

The Republic of South Africa (hereinafter ‘South Africa’) has three children’s grants, namely: the Child Support Grant (hereinafter ‘the CSG’), the Forster Child Grant (hereinafter ‘the FCG’) and the Care Dependency Grant (hereinafter ‘the CDG’). All these grants are part of the social assistance programme and, thus, non-contributory based. The CSG and CDG are means-tested. Unlike the other two children’s grants, FCG is exempt from the means test. The CSG, which is the primary focus of this lecture, is payable once per month per eligible child and its value is ZAR 380.00 (approximately USD 26.83).3

The CSG succeeded the State Maintenance Grant in 1998.4 Thus, the CSG predates the International Labour Organization (hereinafter ‘the ILO’) Social Protection Floors Recommendation 202 of 2012 (hereinafter ‘the Recommendation’). Needless to say, the CSG, in combination with the other children’s grants, plays an important role in South Africa’s quest to fulfil the Recommendation’s obligations. It should be recalled that the Recommendation directs that social protection floors should comprise, amongst other guarantees, basic income security for children.5

The Recommendation points out further that: ‘[s]ubject to their existing international obligations, Members should provide basic social security guarantees referred to in …

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2. The children’s grants are flanked by other social grants, namely: the disability grant, grants for older persons and the war veteran’s grant. All these grants are part of the South African social grant scheme and are administered by the South African Social Security Agency (hereinafter ‘SASSA’) (see s. 4 of the Social Assistance Act 13 of 2004 (hereinafter the Social Assistance Act). The total cost of the social grant system as percentage of Gross Domestic Product (GDP) is 3.2% (National Treasury (Republic of South Africa), Budget Review 2017, 59 (National Treasury (Republic of South Africa) 2017) and the total number of the social grant beneficiaries in South Africa stood at 17,241,409 as of 31 May 2017 (South African Social Security Agency (SASSA), Fact Sheet: Issue no 5 of 2017 – 31 May 2017, http://www.sassa.gov.za/index.php/knowledge-centre/statistical-reports (accessed 17 Nov. 2017)).


5. Article 5(b) of Social Protection Floors Recommendation 202 of 2012 (hereinafter the Recommendation).
[the] Recommendation to at least all residents and children, as defined in national laws and regulations. Interestingly, the Recommendation does not define a child and passes that task on to national laws and regulations. The question to be asked is who is a ‘child’ in terms of the relevant South African laws? Section 28(3) of the Constitution of the Republic of South Africa, 1996 (hereinafter ‘the Constitution’) defines a child as ‘… a person below the age of 18 years’. It is, therefore, not surprising that the CSG is provided, subject to other qualifying conditions, to children from birth up to the age of 18 years.

This lecture provides a critical review of the CSG as provided in the South African social assistance system. It assesses the CSG on the basis of the following principles contained in the Recommendation: (a) state responsibility, (b) universality of protection, (c) entitlement based on law, (d) adequacy and predictability of benefits, (e) non-discrimination, (f) financial solidarity, (g) good governance, (h) coherence of policies, and (i) social participation. This is followed by a discussion on legislative deficits and implementation failures pertaining to the CSG. Last but not least, the lecture closes with some concluding observations.

2 Assessment of the Scheme on the Basis of the Principles

2.1 State Responsibility

The responsibility of the state as regards its social protection endeavours, including the provision of the children grants, is regulated by law. The Constitution, which is the supreme law of the country, sets out a number of pertinent obligations with which the state must comply. First, the state has an obligation to, subject to the limitations contained in the Bill of Rights, respect, protect, promote and fulfil the rights in the Bill of Rights. Second, the Bill of Rights recognizes every person’s ‘right to have access to (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.’

The state has a constitutional duty to take reasonable legislative and other measures to achieve the progressive realization of each of these rights. This obligation is subject to the availability of resources. In addition, every child in South Africa has a constitutional right to ‘basic nutrition, shelter, basic health care services and social services’. The realization of the foregoing children’s rights is – unlike the right of access to health care, food, water and social security – not restricted by the availability

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6. Article 6 of the Recommendation.
8. Sections 1(c) and 2 of the Constitution of the Republic of South Africa, 1996 (hereinafter the Constitution).
9. Section 7(2)-(3) of the Constitution.
10. Section 27(1)(a)-(c) of the Constitution.
11. Section 27(2) of the Constitution.
12. Ibid.
13. Section 28(1)(c) of the Constitution.
of resources. In line with the supremacy of the Constitution principle,\textsuperscript{14} law or conduct inconsistent with the Constitution is invalid and the obligations imposed by the Constitution must be fulfilled.\textsuperscript{15}

Based on the preceding pronouncements, the state has a positive duty to act, i.e., to ensure that the legislative and other measures (such as an appropriate policy framework) are put in place to make certain that the relevant rights (e.g., right to social security) are realized. Furthermore, the state has a negative duty to comply with. That is, it must avoid or refrain from undermining the relevant rights entrenched in the Bill of Rights. These rights go beyond the right of access to social security and include fundamental rights such as the right to equality,\textsuperscript{16} the right to human dignity,\textsuperscript{17} the right to life,\textsuperscript{18} the right to privacy,\textsuperscript{19} the right of access to information,\textsuperscript{20} the right to just administrative action\textsuperscript{21} and the right of access to courts.\textsuperscript{22} It should be recalled, as acknowledged by the Constitutional Court, that the socio-economic rights contained in the Bill of Rights are intertwined and they reinforce one another.\textsuperscript{23} In addition, the socio-economic rights are closely linked to the founding values of the Constitution, namely: human dignity, equality and freedom.\textsuperscript{24}

It can thus be observed that the state has two key roles. First, the state is a \textit{regulator} and an \textit{administrator} in the sense that it has to ensure that the requisite social protection regulatory framework (i.e., social assistance law, regulations and policies) and administrative institutions are in place and functional. Second, the state functions as a \textit{provider}. This role stems from the fact that the state has to appropriate requisite financial resources through the budgetary process\textsuperscript{25} and avail them for the payment of social assistance benefits, including the CSG. It should be recalled that social assistance benefits are paid as a matter of right to qualifying beneficiaries. The state has to ensure that all qualifying beneficiaries who apply for the grant receive the grant. As a result, it could be said that the state guarantees the actual payment of the CSG.

Although the state does function as a regulator, administrator and provider, there are private actors involved in the social assistance administration process. This is particularly pronounced in the disbursement of social grants. The South African Social Security Agency (hereinafter ‘SASSA’) has, in the past partnered, with private providers such as the South African Post Office, private commercial banks, welfare organizations and private contractors, in its effort to ensure that the right social grant is paid to the right person at the right time and place. It is after all empowered by Regulation 21(1) of the Regulations Relating to the Application for and Payment of

\begin{itemize}
\item \textsuperscript{14} For further reading on this principle, see: J. Limbach, \textit{The Concept of the Supremacy of the Constitution}, 64 The Modern Law Review, 1 (2001).
\item \textsuperscript{15} Section 2 of the Constitution.
\item \textsuperscript{16} Section 9 of the Constitution.
\item \textsuperscript{17} Section 10 of the Constitution.
\item \textsuperscript{18} Section 11 of the Constitution.
\item \textsuperscript{19} Section 14 of the Constitution.
\item \textsuperscript{20} Section 32 of the Constitution.
\item \textsuperscript{21} Section 33 of the Constitution.
\item \textsuperscript{22} Section 34 of the Constitution.
\item \textsuperscript{23} \textit{Khosa and Others v. Minister of Social Development and Others, Mahlaule and Another v. Minister of Social Development}, 2004 (6) SA 505 (CC) at para. 41.
\item \textsuperscript{24} Section 1(a) of the Constitution.
\item \textsuperscript{25} Section 9(1)(a) of the South African Social Security Agency Act 9 of 2004 (hereinafter ‘the South African Social Security Agency Act’).
\end{itemize}
Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance\(^26\) (hereinafter ‘the Regulations’) to pay a social grant into a bank account of the beneficiary or institution where the beneficiary resides, or to use any payment method it deems appropriate. Another important point to note is that SASSA is an organ of state.\(^27\) In line with this status, it can, within the confines of the law,\(^28\) contract for goods and services.\(^29\) At the moment, the disbursement of social grants has been outsourced to Net1. Net1 has been described as a private entity ‘…which owns the companies that pay out the grants (Cash Paymaster Services), facilitate grant payments through retailers (Easypay) and provide loans targeted at grant recipients (Moneyline)’.\(^30\) Nonetheless, it should be noted that there are discussions underway towards the insourcing of the social grant payment function.\(^31\)

### 2.2 Universality of Protection

The CSG is a targeted benefit in the sense that it is provided subject to a means test.\(^32\) The Minister of Social Development is empowered by law to prescribe an income threshold that would assist in determining eligibility for social assistance in South Africa.\(^33\) The income threshold for 2016 was set as follows:

<table>
<thead>
<tr>
<th>Child Grants</th>
<th>1 April 2014</th>
<th>1 October 2014</th>
<th>1 April 2015</th>
<th>1 October 2015</th>
<th>1 April 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Support Grant</td>
<td>Single person</td>
<td>ZAR 37,200</td>
<td>ZAR 38,400 (3,200)</td>
<td>ZAR 39,600 (3,300)</td>
<td>-</td>
</tr>
</tbody>
</table>

27. An ‘organ of state’ is defined by s. 239 of the Constitution as ‘(a) any department of state or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution – (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer’.
28. For instance, as required by s. 217(1) of the Constitution, it must procure services goods and services ‘in accordance with a system which is fair, equitable, transparent, competitive and cost-effective’.
29. SASSA has discretion to ‘with the concurrence of the Minister enter into an agreement with any person to ensure effective payments to beneficiaries’ (s. 4(2)(a) of the South African Social Security Act 9 of 2004). Such an agreement is required to include provisions to ensure: ‘(a) the effective, efficient and economical use of funds designated for payment to beneficiaries of social security; (b) the promotion and protection of the human dignity of applicants for and beneficiaries of social security; (c) the protection of confidential information held by the Agency …; (d) honest, impartial, fair and equitable service delivery; (e) mechanisms to regulate community participation and consultation; and (f) financial penalties for non-compliance with the provisions of the agreement’ (s. 4(3) of the South African Social Security Act 9 of 2004).
32. See, for an interesting discussion on targeting, S. Devereux, *Is Targeting Ethical?* 16 Global Social Policy, 166 (2016).
33. Section 5(2)(a) of the Social Assistance Act.
The CSG covers qualifying indigent children from birth up to the age of 18 years.\textsuperscript{34} In addition, a person is eligible for the CSG if he or she is the primary caregiver (hereinafter ‘the PCG’)\textsuperscript{35} and must be a South African citizen,\textsuperscript{36} a permanent resident\textsuperscript{37} or a refugee.\textsuperscript{38} Furthermore, the PCG qualifies for the CSG if, amongst other eligibility requirements, ‘he or she is not formally or informally employed to take care of the child, the child in question is not resident in an institution funded by the state and he or she or any other person is not already in receipt of a social grant in respect of that child’.\textsuperscript{39} In the final analysis, it should be pointed out that the CSG is needs based. Thus, the PCGs engaged in the informal sector are eligible for the grant if they comply with the prescribed requirements and conditions.

According to the SASSA, South Africa had slightly over 12 million CSG recipients as of 31 May 2017.\textsuperscript{40} This makes the CSG the largest social grant in the country in terms of the number of beneficiaries it covers. As noble as this may be, the CSG is not universal in nature. There have been calls for scrapping of the means test in the case of the CSG.\textsuperscript{41} These stem from concerns pertaining to the cost of administering and

\begin{tabular}{|c|c|c|c|c|}
\hline
 & Married & Person & ZAR & 74,400 & ZAR 76,800 & ZAR 79,200 \\
\hline
\textbf{Forster} & Child & No means test & & & & \\
\textbf{Child Grant} & & & & & & & \\
\hline
\textbf{Care-} & Parent/PCG: & ZAR & - & ZAR & ZAR & ZAR \\
\textbf{Dependency} & Single & 162,000 & & 169,200 & 170,400 & 180,000 \\
\textbf{Grant} & Married & 324,000 & & 338,400 & 340,800 & 360,000 \\
\textbf{Child} & No means test & & & & & \\
\hline
\end{tabular}

\textsuperscript{34}. Reg. 9(2) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Condition in Respect of Eligibility for Social Assistance, Government Notice R898 in Government Gazette 313 of 22 Aug. 2008 (as amended) (hereinafter the Regulations). It should be noted that there are plans to extend the age of eligibility for the CSG from 18 to 21 years of age. The aim is, among others, to align the CSG with the Forster Care Grant which continues up to the age of 21 years if the child continues with their studies.

\textsuperscript{35}. Section 6 of the Social Assistance Act. The primary caregiver may apply for a CSG in respect of his or her biological or legally adopted child. However, a caregiver can apply for the CSG for a maximum of six legally adopted children (reg. 9(2)(b) of the Regulations).

\textsuperscript{36}. Section 5(1)(c) of the Social Assistance Act.

\textsuperscript{37}. Section 5(1)(b) of the Social Assistance Act. The inclusion of persons with a permanent residence status is with effect from 16 Sep. 2010 when the Social Assistance Act was amended by the Social Assistance Amendment Act 4 of 2010 following the seminal Constitutional Court decision of Khosa and Others v. Minister of Social Development and Others, Mahlaule and Another v. Minister of Social Development, 2004 (6) SA 505 (CC). See, for further reading, L.G. Mpedi, Charity Begins – but does not End – at Home: Khosa v Minister of Social Development; Mahlaule v Minister of Social Development 2004 6 BCLR 569 (CC), 26 Obiter 173, (2005); and L. Jansen van Rensburg, The Khosa Case – Opening the Door for the Inclusion of All Children in the Child Support Grant?, 20 South African Public Law 102, (2005).

\textsuperscript{38}. Reg. 6(1)(g) of the Regulations.

\textsuperscript{39}. Reg. 6(1)(d)-(f) of the Regulations.


effectiveness of the means test in the South African social grant system. It is correctly argued that: 'The means test...assumes that incomes are stable, whereas earnings are often erratic, and poor households may fall in and out of “poverty” as defined by the poverty line.'\textsuperscript{42} Second, it has been argued that means testing has cost implications on both the CSG applicant (e.g., travel costs) and the government (i.e., administrative costs).\textsuperscript{43} It is, therefore, pleasing to note that there are serious considerations to universalize the CSG.\textsuperscript{44}

2.3 Entitlements Based on Law

The CSG is rooted in law. Entitlement to the CSG is regulated by the Social Assistance Act 13 of 2004 (hereinafter ‘the Social Assistance Act’) and the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance.\textsuperscript{45} The Social Assistance Act and Regulations have been enacted and promulgated respectively to give effect to the right of access to social security which is contained in the Constitution.\textsuperscript{46}

The social assistance institutional and administrative framework, which is also applicable to the CSG, is set out in the SASSA Act 9 of 2004. The South African Social Security Agency Act has been enacted solely to 'provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto; and to provide for matters connected thereto'.\textsuperscript{47}

The fact that entitlement to the CSG is based in law entails that the right to the CSG is to be respected, protected, promoted and fulfilled by, among others, the state and persons.\textsuperscript{48} Alongside the aforementioned right, there are duties which must be


\textsuperscript{45} Published under Government Notice R898 in Government Gazette 31356 of 22 Aug. 2008.

\textsuperscript{46} Section 27(1)(c) of the Constitution.


\textsuperscript{48} ‘Persons’ in this case refers to both natural and juristic persons.
complied with. Such duties may be in the form of an act\textsuperscript{49} or an omission.\textsuperscript{50} By virtue of the fact that the entitlement to the CSG is set in law, failure to respect and comply with the relevant rights and duties could result in a ‘sanction imposed by a competent authority and in a fair manner’.\textsuperscript{51}

2.4 Adequacy and Predictability of Benefits

The value of the CSG was ZAR 100 (about USD 7.06) at the inception of the grant in 1998. This has been adjusted annually and its value as of 1 April 2017 is, as noted earlier, ZAR 380 (about USD 26.83). Despite the aforementioned inflation motivated adjustments, the question that begs attention is whether the grant is adequate. An answer to this question depends on the angle from which one looks at the value of the grant. On the one hand, the grant is provided to qualifying individuals in need. Thus, it is income which would have not been available to the targeted recipients otherwise.

This is along the viewpoint that the glass is ‘half full’ and not ‘half empty’, or ‘half a loaf is better than nothing’. Accordingly, the grant is a poverty alleviation scheme.\textsuperscript{52}

On the other hand, it should be recalled that the grant is a human right which is meant to provide a dignified existence. Viewed from a variety of determining factors such as the cost of living, the CSG stands accused of being insufficient to meet the daily needs of the child.\textsuperscript{53} The CSG falls short of the national poverty line proposed by Statistics South Africa of ZAR 1,077 (about USD 76.07) per month.\textsuperscript{54} This buttresses the conclusion reached by some academics that the value of the CSG does not appear to be set with the actual needs of children in mind,\textsuperscript{55} and should thus be increased.\textsuperscript{56}

\textsuperscript{49} For example, reg. 6(5) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance published under Government Notice R898 in Government Gazette 31356 of 22 Aug. 2008 (hereinafter the ‘Regulations’) requires the primary caregiver to ensure that a child between the ages of 7 and 18 in his or her care is enrolled at, and attends, school.

\textsuperscript{50} For instance, the CSG recipient should refrain from defrauding the South Africa Social Security Agency.

\textsuperscript{51} L.G. Mpedi, \textit{Pertinent Social Security Issues in South Africa}, 9 (Community Law Centre (University of the Western Cape) 2008).


grant is largely criticized on the basis that it is spread thinly. In other words, it is so little, yet it is expected to do so much for the child. For instance, in reality, it is expected to meet the child’s other needs that are meant to be free of charge, such as education and primary health care.

Notwithstanding the debates around the (in)adequacy of the grant, it must be acknowledged that the CSG is predictable. This is informed by the fact that it is paid on a monthly basis as an entitlement and not a privilege. Furthermore, the CSG is paid in a manner determined by the beneficiary in accordance with the applicable regulations and policies. Moreover, any increase in the value of the social grants, inclusive of the CSG, is publicized in a Government Gazette with an implementation date.

2.5 Non-discrimination

Unfair discrimination is legally prohibited in South Africa. Every person in South Africa is equal before the law and has the right to equal protection and benefit of the law. The state may not, in its social assistance provisioning endeavours, ‘unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth’. In respect of children and access to the CSG, it has been acknowledged in Khosa and Others v. Minister of Social Development and Others, Mahlaule and Another v. Minister of Social Development that: ‘...as a matter of law, children who are South African citizens should not be denied access to child-support grants and that a provision in legislation which denies such children access because their primary caregiver or their parents are not South African citizens would be unconstitutional’.


57. In accordance with reg. 21(1) of the Regulations: ‘The [South African Social Security] Agency shall pay a social grant – (a) into a bank account of the beneficiary or institution where the beneficiary resides; provided that, (i) the beneficiary of the social grant consents to payment in accordance with subregulation 21(1) (a) in writing and has submitted such consent in person to the Agency; (ii) where a beneficiary is unable to submit the consent contemplated in subparagraph (i) in person, alternative arrangements must be made with the Agency; or (b) by the payment method determined by the Agency.’


59. Section 9(3) of the Constitution.

60. Section 9(3) of the Constitution. It should be noted that the right to equality is not absolute and can be limited in accordance with s. 36 of the Constitution. Section 36 of the Constitution provides for the limitation of fundamental rights, including the right to equality as follows: ‘(1) The rights in the Bill of Rights may be limited only terms of law of general application to the extent the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including – (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.’ It should mentioned that the state’s duty to achieve the progressive realization of the right of access to social security is subject to the availability of resources (s. 27(2) of the Constitution).

61. 2004 (6) SA 505 (CC) at para. 33.
The Social Assistance Act, which was enacted to give effect to the right of access to social security in the Constitution, specifically social assistance, does not distinguish between men and women when it comes to the provision of the CSG. The CSG is provided to the PCG. The PCG refers to ‘a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily care needs of that child’.\(^\text{62}\) The PCG concept, as defined in the Social Assistance Act, is gender neutral. Nonetheless, in practice, women are the main recipients of the CSG.\(^\text{63}\) This may, it is opined, underscore the role of women in the society as caregivers. Furthermore, it has been established that a majority of men tend to pursue a solitary existence pursuant to the breakdown of a relationship.\(^\text{64}\) Women, unlike men, have been found to be generally inclined to live with children following the collapse of a relationship.\(^\text{65}\)

2.6 Financial Solidarity

The CSG is financed through general taxation on year-by-year basis.\(^\text{66}\) General taxation is the main source of government revenue.\(^\text{67}\) It largely comprises company income tax, personal income tax, and value-added tax.\(^\text{68}\) The funds used by the SASSA to pay social grants are appropriated by Parliament for that purpose.\(^\text{69}\) In light of the preceding pronouncements, it is observed that the financing of the CSG is in line with the financial solidarity rule. It must be remembered that in accordance with this rule ‘...taxes for the financing of benefits are charged on the basis of the members’ ability to pay, regardless of their risks or circumstances...’\(^\text{70}\) In conclusion, it can be argued that the CSG plays a role in redistributing income from the wealthy to the needy.\(^\text{71}\)

2.7 Good Governance

The SASSA falls under the policy and regulatory jurisdiction of the Department of Social Development. It is, as an organ of state, subject to the Constitution. The Bill of

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62. Section 1 of the Social Assistance Act.
65. *Ibid*.
68. *Ibid*.
Rights has a number of rights germane to good governance with which SASSA must comply. These rights include the right to equality, the right to privacy, the right of access to information, the right to just administrative action, the right of access to courts and the enforcement of rights. The Constitution makes provision for basic values and principles governing public administration which public social security institutions should respect and uphold. In accordance with section 195(1) of the Constitution:

Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: A high standard of professional ethics must be promoted and maintained. Efficient, economic and effective use of resources must be promoted. Public service must be development-oriented. Services must be provided impartially, fairly, equitably and without bias. People’s needs must be responded to, and the public must be encouraged to participate in policy-making. Public administration must be accountable. Transparency must be fostered by providing the public with timely, accessible and accurate information. Good-humane asset management and career-development practices, to maximise human potential, must be cultivated. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

72. The concept of good governance, within the social protection framework, has been elucidated by McKinnon (R. McKinnon, Good Governance in Social Security Administration, 64 International Social Security Review, 3, 5-6 (2011)) as follows: ‘Most commonly, the concept of governance as it is practiced in many national social security systems speaks to efforts geared to support and foster improvements in all aspects of the internal management of social security administrations. However, it may relate also to grass-roots/civic-society action to monitor social security rights and entitlements. It may cover formalized and inclusive processes of tripartite social dialogue – legitimizing processes that seek to build and maintain broad-based consensus in support of social security programmes and regulatory frameworks with the strategic objective of satisfying the needs of citizens and residents may contribute to strengthening existing systems of national governance and, furthermore, support the process of democratization and nation building. This perspective encapsulates notions of trusteeship or stewardship, to protect and advance common interest. At a higher level, in support of global governance agendas, national social security systems represent integral institutional mechanisms for rights-based and inclusive approaches to social and economic development and, thus, are essential for well-being, stability and cohesion.’ See, for further reading, on the concept ‘good governance’, S. de la Harpe, C. Rijken & R. Roos, Good Governance, 2 Potchefstroom Electronic Law Journal, 1 (2008); and M.H. Kanyane, Exploring and Developing a Culture of a Good Governance, in Norms and Institutional Design: Social Security in Norway and South Africa, 95 (M. Olivier & S. Kuhnle eds., Sun Press 2008).

73. Section 9 of the Constitution.
74. Section 14 of the Constitution.
75. Section 32 of the Constitution.
76. Section 33 of the Constitution. The Promotion of Access to Justice Act 3 of 2000 (hereinafter ‘PAJA’) was enacted to give effect to the provision of this section of the Constitution. PAJA, together with the Promotion of Access to Information Act 2 of 2000, is geared at the promotion of efficient administration and good governance, as well as the creation of accountability, openness and transparency in the public administration or in the exercise of a public power or performance of a public function… (italics in the original) (L.G. Mpedi, Administration and Institutional Framework, in Social Security: A Legal Analysis, 149, 152 (M.P. Olivier, N. Smit & E.R. Kalula eds., LexisNexis Butterworths 2003).

77. Section 34 of the Constitution.
78. Section 38 of the Constitution.
The preceding principles apply to administration in every sphere of government, organs of state and public enterprises. Accordingly, SASSA has a duty to abide by these principles in the administration of social grants.

Second, SASSA is subject to the Public Finance Management Act 1 of 1999. Chapter 6 of the Public Finance Management Act, which deals with public entities, makes provision for the accounting authorities, the fiduciary duty of accounting authorities, the general responsibilities of accounting authorities, the annual budget and corporate plan, information to be submitted by accounting authorities, and the annual report and financial statements. Furthermore, SASSA is bound by pertinent provisions contained in the SASSA Act.

In addition, the South African Social Security Act has been enacted so as to ‘assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent governance in respect of social security for the Republic as a whole’. It provides for the appointment of the Chief Executive Officer of SASSA who is responsible for the management of the Agency, subject to the direction of the Minister of Social Development and the compilation of a business plan and reports in terms of the Public Finance Management Act. The Chief Executive Officer of SASSA has a duty to ‘ensure that the Agency’s annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act’. In addition, SASSA has a duty to submit an annual report on its activities and a statement of income and estimated expenditure for the following financial year to the Minister of Social Development for approval. SASSA’s books, records of account and financial statements must be audited annually by the Auditor-General.

2.8 Coherence in Policies

As pointed out earlier, the CSG falls under the policy domain of the Department of Social Development. However, there are other policies that intersect with the provisioning of the CSG which fall under the regulatory framework of other government departments. These policies concern pertinent social protection matters such as access to primary education and access to primary health services. There is a lack

80. Section 10(2) of the South African Social Security Agency Act.
82. Section 11(2) of the South African Social Security Agency Act.
83. This challenge has been succinctly outlined by Sadan (M. Sadan, Social Assistance for Children: Looking Back, Thinking Forward, in South African Child Gauge 2016, 99, 100 (A Delany, S. Jehoma & L. Lake eds., Children’s Institute, University of Cape Town 2016)) as follows: ‘Social grants support multiple positive outcomes for children’s development they need to be integrated with other services and interventions. This includes accessible, high quality education and healthcare, and responsive social welfare services; as well as other policies aimed at supporting vulnerable children and families such as free schooling and health care, nutrition programmes, and access to subsidised housing and basic services, amongst others. An ongoing challenge is that programmes and services tend to operate in isolation. Greater effort is needed to increase coordination and synergies between social grants and other services to reinforce and strengthen their positive impacts on children. Access to social grants from birth; adequate nutrition; quality learning opportunities and health care from a young age; and community-based support for vulnerable families and care givers will go some way to addressing childhood disadvantage and the poverty and inequality it perpetuates.’
of collaboration between departments, and this results in disjointed policy-making which invariably undermines the government’s capacity and efforts to deliver an integrated and effective social protection service. The ineffective implementation of applicable laws and policies has been identified by the Committee on the Rights of the Child as one of the areas of concern in South Africa. Another crucial point, which requires attention, is that the current social protection policy framework pertaining to children, which involves the CSG, is mainly focussed on the awarding of a cash benefit. In so doing, it neglects measures aimed at the prevention of destitution and the (re-)integration of caregivers into the labour market. It is therefore crucial that the social protection policy loop be closed by striking an appropriate balance between policy measures aimed at compensation, prevention and integration in South Africa.

2.9 Social Participation

The apartheid era social protection legislative process was characterized by a lack of consultation. As summarized by the White Paper for Social Welfare, 1997:

“legislation was seldom developed in an inclusive, consultative process and there was no mandatory involvement of stakeholders in either the evaluation of legislative needs or the drafting process. It is therefore based to a great extent on the preferences and values of an elite group of politicians, public servants and opinion makers. Some aspects of the laws consequently do not have the support of the public as a whole. Their appropriateness for the South African context can rightly be questioned. The lack of consultation also applies intersectorally. Legislation was generally drafted in isolation, by the welfare sector alone, without taking sufficient cognisance of broader issues in the socio-economic environment, dealt with by other departments or sectors. This, together with the lack of trust between departments, and vested interests, arrested the potential to develop a meaningfully integrated approach which in turn could consolidate efforts towards self-reliance in communities. Legislation was not effectively co-ordinated at the inter-departmental level, which caused legislation which impacted on welfare issues to be relatively unsympathetic to welfare causes, hindering rather than promoting services.”

The current set-up is different in the sense that the basis for social participation in the social protection legislative process can be found in the Constitution. Section 59 of the Constitution makes provision for public access to, and involvement in, National Assembly as follows:

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“(1) The National Assembly must – (a) facilitate public involvement in the legislative and other processes of the Assembly and its committee; and (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken – (i) to regulate public access, including access of the media, to the Assembly and its committees …(2) The national Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.”

In addition, section 72 of the Constitution regulates public access to, and involvement in, National Council in a similar manner to that of the National Assembly as outlined above. It is a common practice in South Africa for Bills to be publicized with a request for comments from the general public and any other interested stakeholders. In addition, as the CSG falls within the regulatory purview of the Departments of Social Development, the Minister of Social Development publicizes regulations for comments and input from the public before such regulations are adopted. Another important point to note is that draft social policy documents are generally shared with the public and interested organizations for input before adoption. Furthermore, committees and commissions are duly established to investigate and/or review any aspects of the social protection system to encourage social participation by soliciting submission by the general public. In addition, such committees and commissions hold the so-called stakeholder engagements or public hearings at which the public can make verbal submissions.

At an institutional level, the National Economic Development and Labour Council (hereinafter ‘NADLEC’) is one of the key institutions through which social participation is fostered in South Africa. NADLEC is a legal person established in terms of the National Economic, Development and Labour Council Act. NADLEC comprises members who represent organized business, organized labour organizations and development interests, and the State. It is required to ‘(a) strive to promote the goals of economic growth, participation in economic decision-making and social equity; (b) seek to reach consensus and conclude agreements on matters pertaining to social and economic policy; (c) consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament; (d) consider all significant changes to social and economic policy before it is implemented or introduced in Parliament; (e) encourage and promote the formulation of co-ordinated policy on social and economic matters’.

It should also be noted that the Advisory Board on Social Development Act 3 of 2001 was assented to on 16 May 2001. The purpose of the Advisory Board on Social Development Act is ‘[t]o provide for a national advisory structure in the social development sectors with the aim of building and consolidating partnership between government and civil society...’ The objectives of the Advisory Board on Social Development envisaged by the Act are as follows:

93. Preamble of the Advisory Board on Social Development Act 3 of 2001.
“(a) to advise the Minister on – (i) measures to promote the transformation and continuous improvement of (ii) measures to promote social development initiatives; (iii) measures to include local government in the provision of integrated (iv) proposals for new legislative frameworks for the social development (v) the introduction of local and international best practices in social (b) to act as a consultative forum for the Minister to discuss social development matters, including– (i) improving the quality of provincial and national social development; (ii) the introduction of new policy and successful policy implementation in the government and non-governmental environment; (iii) facilitating consultation between stakeholders and government regarding the implementation of social development; (iv) ensuring effective review of formulation, implementation and evaluation of social development policies, programmes and legislation, as informed by the needs and priorities of society; (v) inputs from the social development sector to international forums and protocols. Although the Advisory Board on Social Development Act has been assented to by the President over 15 years ago, it is regrettable that the Act has not yet been put into operation.”

The consultative process, which was ushered in by the new constitutional dispensation, has yielded some positive results. For instance, meaningful and effective participation in the social protection policy and legislative making process has increased significantly in South Africa. As a result, it is foreseen that this consultative approach will yield social protection legislation and policy that is appropriate and embraced by the affected stakeholders than was previously the situation under the apartheid regime. This should not be construed to imply that the resultant policy or legislation is welcomed by all South Africans. As can be expected in any democracy, not all members of the population can be consulted. Furthermore, not all those that have been consulted will agree with the final legislation and/or policy. As appositely explicated by the Department of Social Development:

The consultative process typically involves consultation in all provinces, as well as with representatives of all relevant government and related agencies. With a diverse population of about 55 million people, and the attendant diverse interests; needs and opinions, any legislation or policy will inevitably not satisfy everyone. Further, those who are less ‘connected’ are less likely to be reached by consultations. In addition, realistically, many people may not have the knowledge, inclination or time necessary for meaningful participation.

3 Legislative Deficits

The inequitable apartheid social protection laws and policies had to be repealed or amended so as to streamline them with democratic dispensation which is characterized by constitutional supremacy, the rule of law and a human rights-based approach to social security provisioning. In addition, the social protection legislation


95. As rightly pointed out by Kumitz (D. Kumitz, Nothing About Us Without Us: Self-representation in Social Protection in Southern Africa, 16 Global Social Policy, 215, 217 (2016)): ‘When those who are affected by decisions are actively engaged in the negotiation of policy, the outcomes will actively belong to them as citizens with the right and duty to participate in the policy process. Then, they are able to formulate and advocate positions, organise themselves (in non-discriminatory ways that protect minority concerns) and provide oversight and monitoring – in short to articulate a voice, the voice of those policy interventions are about’ (italics in the original).

that existed during the apartheid era had to be reviewed so as to craft a comprehensive and coherent legislative framework. New social protection laws were enacted. These laws include the Social Assistance Act 13 of 2004 which repealed the Social Assistance Act 59 of 1992.\(^97\)

Despite the much-needed repeal and/or amendment of apartheid social protection laws, which is to be welcomed, it is regrettable to point out that a few challenges have emerged. First, there is a proliferation of laws and regulations and as a result, it is generally difficult to know with great certainty which version of the law is in force.\(^98\) This problem was alluded to by the Court in *Cele v. South African Security Agency and 22 Related Cases*\(^99\) as follows:

> "in the field of social assistance in South Africa the primary and secondary legislation is as labyrinthine as it apparently is in the United Kingdom and the entitlement of any applicant to relief flowing from a failure on the part of the Minister of Social Development or SASSA may well be complex. All this can only serve to emphasise the necessity for those lawyers who practise in this area of the law to be thoroughly familiar with the applicable legislation, both primary and secondary, and to ensure that it is properly placed before the Court in a coherent form when the need for litigation arises."

The social security laws, inclusive of social assistance laws, are not consolidated. Furthermore, each social protection statute in South Africa makes provision for the dispute resolution mechanisms applicable to its provisions. This has resulted in a plethora of dispute resolution mechanisms that can be invoked to resolve a social protection dispute. There is a dire need for the systematization of the various laws regulating social security in South Africa.\(^100\) This should be accompanied by efforts to develop a coherent social protection system for the country.\(^101\)

Another challenge that can be distilled from the current social protection legislative framework is that it is not accessible to the general public. There are a variety of reasons for this state of affairs. Chief amongst them is that the social protection laws are legalistic for lay persons and not published in all the official languages.\(^102\) Furthermore, there is not direct legal duty to inform the public about social protection rights imposed on the South Africa Social Security Agency and department of Social Development.

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99. 2008 (7) BCLR 734 (D) at para. 11.
102. South Africa has thirteen official languages, namely: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, IsiXhosa and isiZulu (s. 6(1) of the Constitution).
Implementation Failures

The CSG covers the largest number of social grant beneficiaries in South Africa. However, it is characterized by the so-called exclusion errors.\(^\text{103}\) That is to say, there are persons who do not draw the grant to which they are in effect entitled.\(^\text{104}\) It is estimated that there are 2.1 million eligible children who are not in receipt of the CSG.\(^\text{105}\) There is a multiplicity of factors which contribute to this situation and they include the following: supporting documents, the urban-rural divide, minor PCGs, children living on the streets and other impediments to access to the CSG.

4.1 Supporting Documents

The Regulations require that an application for a social grant be accompanied by original documents or certified copies of an identity document of the applicant and his or her spouse, and an identity document or a valid birth certificate of each child in respect of whom an application for a social grant is made.\(^\text{106}\) They prescribe that an application for a CSG must be made on the relevant form and, in addition to the aforementioned documents, must be accompanied by the following documents:

“(a) a sworn statement or an affidavit in a format prescribed by the Agency, indicating the income of the applicant, together with any supporting documents that may be deemed necessary and in the case of a spousal relationship, that of his or her spouse. In the absence of supporting documents an applicant may submit a sworn statement or an affidavit in a format prescribed by the Agency, stating that the applicant does not have supporting documents; (b) proof that the applicant is the primary care-giver of the child, which may take the form of any of the following- (i) an affidavit from a police official; (ii) a report from a social worker; (iii) an affidavit from a biological parent of the child; or (iv) a letter from the principal of the school attended by the child”.\(^\text{107}\)

In practice, the requisite supporting documents have proved to be problematical for some potential beneficiaries. Acquiring the required documentation is a burden for many indigent South Africans.\(^\text{108}\) The Committee on the Rights of the Child has recently expressed its concerns on this matter as follows:

(a) administrative and practical obstacles in obtaining birth registration, including punitive measures for late registration under the Births and Deaths Registrations Act (Act No. 51 of 1992), may have negative and discriminatory impacts; (b) The South African Citizenship Act (Act No. 88 of 1995) sets disproportionately strict conditions for granting the nationality of the State party to certain groups of children, and also allows for deprivation of nationality from


\(^{105}\) Ibid.

\(^{106}\) Reg. 11(1) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance, Published under Government Notice R898 in Government Gazette 31356 of 22 Aug. 2008.

\(^{107}\) Reg. 11(3) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance, Published under Government Notice R898 in Government Gazette 31356 of 22 Aug. 2008.

children on the basis of the loss of nationality of their parents; (c) There are reportedly many children, who either migrated to or were born in the State Party, in child and youth care centres who are undocumented and/or whose births have not been registered; (d) Possession of one’s birth certificate is a rigid requirement for accessing social and child protection services.\textsuperscript{109}

It recommended, amongst others, that South Africa should ‘[e]nsure that a lack of birth registration does not hinder access to child protection services and basic social services, while enhancing its efforts for universal birth registration’.\textsuperscript{110}

Delay in the processing of the applications for the prescribed documentation has the propensity of indirectly impeding access to the grant. It is true that, pursuant to the \textit{Alliance for Children’s Entitlement to Social Security (ACCESS) v. Minister of Social Development},\textsuperscript{111} the CSG applicant experiencing delays in obtaining the required official documents is empowered to produce alternative forms of identification.\textsuperscript{112} As helpful as this may be, it has the disadvantage of opening the CSG up to abuse by charlatans. To address this problem, it is proposed that the CSG be universalized.\textsuperscript{113}

4.2 The Urban-Rural Divide

Social grants are more accessible for those persons who live in urban areas than those in rural settings.\textsuperscript{114} This is largely due to the fact that services are predominately located in urban areas much to the neglect of those who leave in rural locations.\textsuperscript{115} The problem is aggravated by the high illiteracy rates and poor information sharing mechanisms which are prevalent in rural areas.\textsuperscript{116} The poor rural dwellers are often short of resources to travel to urban areas to apply for the social grants including the CSG.\textsuperscript{117} To address this problem, SASSA has introduced the so-called Integrated Community Registrations Outreach Programme (hereinafter ‘ICROP’). This programme entails reaching out to the rural poor through mobile service units. A total of 570 ICROP interventions were conducted during the 2015/2016 financial year.\textsuperscript{118} ICROP is to be welcomed, particularly when one notes that 320,000 applications for the CSG have been completed since its introduction in 2007.\textsuperscript{119} However, ICROP

\begin{itemize}
\item \textsuperscript{111} Unreported High Court judgment (Case No. 5251/2005).
\item \textsuperscript{112} L.G. Mpedi, \textit{Pertinent Social Security Issues in South Africa}, 25 (Community Law Centre (University of the Western Cape) 2008).
\item \textsuperscript{113} See: the discussion above on the need for the universalization of the CSG.
\item \textsuperscript{114} L.G. Mpedi, \textit{Pertinent Social Security Issues in South Africa}, 25 (Community Law Centre (University of the Western Cape) 2008).
\item \textsuperscript{115} Ibid.
\item \textsuperscript{117} L. Jansen van Rensburg & D. Horsten, \textit{The Inadequacy of the Social Grant System Available to Children in South Africa}, 29 Journal of Juridical Science, 52, 67 (2004).
\item \textsuperscript{118} South African Social Security Agency, \textit{Annual Report 2015/16}, 15 (Department of Social Development (Republic of South Africa) 2016).
\item \textsuperscript{119} International Labour Organization, \textit{ICROP: Reaching Out to Rural Poor through Mobile Service Units}, http://www.social-
should not be romanticized as a panacea for the above-mentioned problem. The point is that it has its own imperfections. For instance, it has been reported that ‘[t]he mobile units and services in farms do not have the same level of automation and sophistication as those offered at regular SASSA offices...’

Furthermore, ICROP is blamed for depleting the human resource capacity at local offices for the reason that existing staff members are deployed to mobile offices. A more permanent solution should be found to ensure easy access to the social grant system by the impoverished rural members of the society. This should include the establishment of permanent offices staffed by well-trained personnel.

4.3 Minor PCGs

As noted earlier, the CSG is provided to PCGs. The fact that the CSG applicant must produce an identity document betrays the fact that the applicant must be 16 years or older. The point is only persons who are South African citizens and persons who are lawfully and permanently resident in the Republic and who are 16 years or older can qualify for an identity document in South Africa. The problem is that these invariably exclude minor PCGs from applying for the CSG for children in their care. The situation is compounded by the prevalence of the child-headed households largely due to the HIV/AIDS pandemic in South Africa. It is highly debatable whether this exclusion will survive a constitutional challenge on the basis that it unfairly discriminates against PCGs on the basis of age. On the other hand, it is undesirable and morally questionable to allow children to raise children. Alternative solutions must be found to address this situation which invariably prevents children from accessing the CSG. Thus, the proposal by the South African Law Commission (hereinafter ‘the SALC’) for legal recognition to be accorded to ‘household mentors’ is to be welcomed. The SALC recommended that ‘legal recognition be given to schemes in terms of which one or more appropriately selected and mandated adults are appointed as “household mentors” over a cluster of child-headed households by the Department of Social Development, a recognized NGO or the court’. The Committee on the Rights of a Child recommended that South Africa should:

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“...while keeping its focus on family-like alternatives care: (a) Expedite actions to resolve systemic challenges in the foster care system and come up with sustainable arrangements for alternative care and for monitoring the arrangements, based on wide consultation with children, parents and extended families as well as with civil society organisations and professionals working on alternative care; [and] Expedite the revision of the Social Assistance Act with the aim of introducing an extended support grant for families caring for orphans while ensuring an adequate and feasible monitoring mechanism.”

4.4 Children Living on the Streets

Children living on the streets are deprived of a family environment. They inevitably lack an adult caregiver. This excludes them from accessing the CSG even if they qualify.

4.5 Other Impediments to Access

Other obstacles to access to the CSG include corruption and fraud, poor levels of service (which at times lead to litigation) and abuse of the social grant payment system by some of the service providers (e.g., illicit deductions from unsuspecting beneficiaries’ social grants).

5 Conclusion

The CSG is one of the key social protection interventions that have been put in place to alleviate child poverty in South Africa. As shown in this lecture, the CSG is built on a strong legal foundation which is spearheaded by the Constitution. The fundamental rights and constitutional values that undergird the CSG unashamedly point towards a rights-based approach towards the provisioning of a tax-financed basic income security for children in South Africa. Benchmarked against the principles contained in the Social Protection Floors Recommendation, it goes without saying that the CSG is an appropriate mechanism through which South Africa can strive towards the realization of its obligations pertaining to children as outlined in the Recommendation. This is the case despite the fact that the CSG was in place long before the Recommendation was adopted. Notwithstanding the foregoing observation, there are a few ‘last mile’ challenges that require attention. These include the implementation failures that have been highlighted in this lecture. In the final analysis, the CSG is one of those success stories of the post-apartheid South African social protection system which carries valuable lessons for other countries, especially in the developing world, that desire to introduce a tax-financed basic income scheme targeted at children.


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