It has become increasingly clear that the way that the social assistance grants programme is currently administered effectively excludes many children living without adult care givers, particularly children living in child-headed households. The Alliance for Children’s Entitlement to Social Security (ACCESS), and the Children’s Institute in collaboration with Black Sash, the Gender Advocacy Programme and the Community Law Centre (UWC) hosted a workshop on 20–21 August 2003 aimed at finding feasible solutions to allow this particularly vulnerable group of children to access social grants, particularly the child support grant. The presenters and participants in this workshop represented a broad spectrum of non-governmental organisations, research-based and academic institutions as well as representatives from government, the Human Rights Commission and the South African Law Reform Commission, with expertise and experience in the area of children’s rights and socio-economic rights.

**Follow the child**

In terms of the Social Assistance Act 59 of 1992, the child support grant is paid to the primary care giver of a child. The child support grant is aimed at ensuring that children living in poverty receive the basic necessities of life. The Act defines the “primary care giver” as “a person, whether or not related to the child, who takes primary responsibility for meeting the daily care needs of the child”.

This is based on the underlying philosophy in the Lund Committee’s Report, which recommended the introduction of the child support grant, that the grant should “follow the child” and not depend on formal definitions of the family and legally recognised duties of support.

Although this Act and the regulations promulgated thereunder do not specify a particular age for the primary care giver, in practice the Department of Social Development only accepts applications from primary care givers of 16 years and older.

This is based on the eligibility requirement in the regulations that the primary care giver must produce an identity document. It is evident that this practice excludes many children younger than 16 years who have themselves assumed the role of primary care giver both in respect of themselves and either their own biological children or younger siblings. Government intends to introduce an amended Social Assistance Bill in Parliament which will expressly state that the primary care giver must be 16 years or older.

The consensus of the workshop was that the social reality of child-headed households must be acknowledged. The South African Law Reform Commission has already taken this step in its discussion paper and report on the Review of the Child Care Act, and this has been taken up in recent drafts of the Children’s Bill. Further, the constitutional rights of equality and access to social assistance for people living in poverty make it imperative that legislative changes are made to ensure that children living in child-headed households can receive the benefit of the child support grant.
Direct access and mentorship

Most workshop participants agreed that where children in fact perform the functions of a primary care giver, they should be able to access the child support grant on behalf of both themselves and the children in their care. In cases where the children concerned were too young or immature to perform the functions of a primary care giver, or where for any other reason it is not in the best interests of the children concerned that they access the child support grant directly, the grant should be paid to a ‘household mentor’ as proposed by the South African Law Reform Commission. The mentor would also be able to provide the household with emotional support in addition to ensuring that their material needs are met.

It was agreed that a combined strategy of advocacy in relation to both the Children’s Bill and amendments to the Social Assistance Act, as well as possible test case litigation, should be embarked upon to ensure that this particularly vulnerable group of children are not deprived of a crucial state benefit.

The SAHRC releases its Fourth Annual Economic and Social Rights Report

Sandy Liebenberg

In April 2003, the South African Human Rights Commission (SAHRC) released its Fourth Annual Economic and Social Rights Report (hereafter the Report) based on its mandate in terms of section 184(3) of the Constitution. The Report covers two financial years: 2000–01 and 2001–02. As in previous years, it is compiled on the basis of responses from relevant organs of state to a comprehensive questionnaire (protocol) sent out by the Commission. The protocols are designed to provide the Commission with information on policy, legislative, budgetary and other measures adopted by the organ of state during the reporting cycle toward realising socio-economic rights. They have been developed to also include questions relating to vulnerable groups, the problems encountered by state departments in giving effect to socio-economic rights and the measures undertaken to address such problems, indicators of progress and budgetary measures. The principles established by the Constitutional Court for the interpretation of socio-economic rights in the landmark Grootboom decision informed the design of the protocols.

The Report is a summary of key measures instituted by relevant organs of state, and identifies some of the shortcomings of these measures. A key feature is the section in each chapter containing a summary of recommendations and conclusions reached by the Commission on these measures.

The release of this Report attracted substantial press interest, more so than in previous years. This is undoubtedly because the Commission has tried to identify key barriers to poor peoples access to socio-economic rights: policy and legislative gaps, the implementation of government programmes (e.g. complex regulations and administrative procedures), a lack of capacity in the public service, and budgetary allocations and spending. The Report’s key recommendations are outlined on the following page.

Challenges

The Commission’s recommendations are far reaching and seek to ensure that human rights principles are infused in the process of socio-economic development. The Report has been tabled in Parliament and sections of it have been referred to relevant Portfolio Committees. It is hoped that members of Parliament will use the Report as a valuable source of information and guidance in exercising their oversight function.

A challenge for the Commission is to enhance knowledge and participation by a wide range of civil society organisations in the monitoring process. Further, the Commission should be involved in following up its recommendations through tracking legislative and policy developments, gathering information concerning the implementation of programmes, making submissions to relevant organs of state, and where appropriate, supporting litigation around socio-economic rights.