

# Social Security in South Africa – a Gender and Human Rights Analysis

By *Beth Goldblatt\**

**Abstract:** *South Africa has a large social assistance programme that plays a critical role in addressing extreme poverty. The strong constitutional rights framework, including a right to social security, underpins the development of this programme. Women are the major recipients of social assistance grants but in most cases collect grants for the benefit of their children (in the form of Child Support Grants). Working age people who are able-bodied are not provided with social assistance despite the high levels of unemployment in the country. Women, who are poorer with less access to paid work, are most disadvantaged by this gap. A recent move to attach conditions to the Child Support Grant is analysed from a gender and human rights perspective. The article considers some of the arguments relating to ‘conditionality’ in social security and finds that this move is unnecessary, impractical and a possible violation of human rights as well as a worrying trend in a system that has previously made little use of conditions. The article concludes by proposing a deliberative process of ensuring that the social security right becomes a gender-responsive vehicle for fundamental social change.*

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## A. Introduction

South Africa, with a population of 51 million, is an upper middle income developing country with very high levels of inequality of income and wealth. Structural unemployment is extensive with government figures putting the rate of unemployment at 23.9%,<sup>1</sup> affecting approximately 4.5 million people.<sup>2</sup> The bulk of employment is in the formal sector with a smaller

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1 Statistics South Africa, Quarterly Labour Force Survey: Quarter 4 (October to December), 2012 <http://www.statssa.gov.za/publications/P0211/P02114thQuarter2012.pdf>, p. v, (last accessed on 23 November 2013).

2 Statistics South Africa, note 1, p. xiv. If a broader definition of unemployment including discouraged jobseekers is used this figure would be 36.6%: *Avinash Govindjee and Ockert Dupper*, Constitutional Perspectives on Unemployment Security and a Right to Work in South Africa, Stellenbosch Law Review 23 (2011), p. 775.

informal and agricultural sector and a domestic workforce employed in private households. Women dominate in domestic work but have a smaller share of the other types of work in the South African economy. Women in South Africa earn less than men, have fewer employment opportunities and are poorer than men.<sup>3</sup> They assume the bulk of the care-giving functions in a society that has been deeply affected by Apartheid and its legacy of internal labour migration and consequent family breakdown.<sup>4</sup> A minority of children lives in the same household as their fathers (35%), while a slightly larger amount lives only with their mothers (40%), and almost a quarter lives without either parent (23%), usually cared for by other female relatives, mostly grandmothers.<sup>5</sup> The HIV/AIDS epidemic has also had a major impact on family and community with 11.4% of the population or 5.5 million people infected in 2007.<sup>6</sup> Women are infected at a higher rate than men. Gender-based-violence is a severe problem in South Africa as is safety more generally. Race and culture intersect with gender and class to contribute to the burdens that the majority of South African women and girls face through the different stages of their lives.

South Africa's relatively extensive social assistance programme is a critical but inadequate poverty alleviation mechanism. This article begins by briefly setting out the history and nature of South Africa's social security system (B.). It then considers the human rights framework in South Africa with a focus on the rights to social security and equality within the South African Constitution (C.). Thereafter it examines the social security system from a gender perspective (D.). The article explores a major social assistance payment, the *Child Support Grant*, and assesses it from a gender and human rights perspective (E.). It criticises the recent inclusion of conditions into this previously unconditional grant. In doing so, it discusses the concept of conditionality in social assistance programmes from a range of critical perspectives. In identifying the limitations of the *Child Support Grant* and the broader package of social assistance, the article concludes with a consideration of what might be required to more fully realise the right to social security from a gender perspective in South Africa today (F.).

## B. South Africa's Social Security System

South Africa was a Dutch and British colony until 1910 when white settlers were given control of the unified country. English welfare policy strongly influenced the emerging social assistance laws<sup>7</sup> which were a response to growing poverty amongst whites following industrial-

3 *Debbie Budlender*, *Women and Poverty*, Agenda 64 (2005), pp. 30-36.

4 *Debbie Budlender and Francie Lund*, *South Africa: A Legacy of Family Disruption, Development and Change* 42 (2011), p. 925.

5 *Budlender and Lund*, note 4, p. 929.

6 *Ibid.*, p. 932.

7 *Leila Patel*, *Race, inequality and social welfare: South Africa's imperial legacy*, in: James Midgley/ David Piachaud (eds.), *Colonialism and Welfare: Social Policy and the British Imperial Legacy*, Cheltenham 2011, p. 71.

isation and amongst Africans due to coerced labour migration.<sup>8</sup> A national old age pension was introduced for whites in 1928 and then extended to other race groups. Maintenance grants to single parent families were introduced in 1937 and some (urban) African children were allowed access to these.<sup>9</sup> Parent allowances and child grants as well as grants for people with disabilities were also established. However, the introduction of Apartheid after the National Party came to power in 1948 saw the increasing racialisation of the welfare system. Pension levels were much lower for Africans, means-tests were more stringent and welfare administration was separated according to race groups.<sup>10</sup> In 1994 when democracy was finally achieved in South Africa, the new government faced the challenge of deracialising the welfare system and reforming it to meet the policy objectives of what was termed ‘developmental social welfare’.<sup>11</sup> That process has led to a significant expansion of social assistance from three million beneficiaries in 1995 to sixteen million people in 2013.<sup>12</sup> This has been a somewhat contested process spanning tensions between neo-liberal economic efforts to control social spending and the need to address widespread poverty.<sup>13</sup>

The social security system contains a small social insurance component and a large social assistance programme. The main grants are the *Older Persons Grant* (OPG), the *Disability Support Grant* (DG) and the *Child Support Grant* (CSG) with other grants for foster carers, carers of children with disabilities, and veterans.<sup>14</sup> The bulk of the grants are CSG’s reaching more than 11 million beneficiaries, with the OPG reaching 2,8 million and the DG reaching 1,1 million.<sup>15</sup> The OPG and the DG are provided in the monthly amount of R1270 (approximately Euro 85) while the CSG is R300 (approximately Euro 20) per month. The grants are means-tested but are otherwise generally unconditional. The OPG is provided to people aged 60 years and older with people of 75 and older receiving a slightly higher amount. The DG requires medical testing to qualify. The CSG is provided to the primary caregiver of children

8 Note that the accepted terms used to describe the various ‘race’ groups in South Africa are ‘white, coloured, Asian and African’. The African group accounts for almost 80% of the population: *International Social Security Association*, Social security coverage extension in the BRICS: A comparative study on the extension of coverage in Brazil, the Russian Federation, India, China and South Africa: International Social Security Association, Geneva, 2013.

9 Patel, note 7, p. 75.

10 Shireen Hassim, Gender Equality and Developmental Social Welfare in South Africa in: Shahra Razavi/ Shireen Hassim (eds.), *Gender and Social Policy in a Global Context: uncovering the gendered structure of ‘the social*, Geneva 2006, p. 111.

11 Ibid, p.114.

12 South African Social Security Agency, Fact sheet: Issue no 2 of 2013 – 28 February 2013: A statistical summary of social grants in South Africa ' <http://www.sassa.gov.za/Portals/1/Documents/fb6278e9-4e00-4a94-a317-701b79a8ac08.pdf> (last accessed on 23 November 2013).

13 Beth Goldblatt and Solange Rosa, Social Security Rights – Campaigns and Courts, in: Malcolm Langford, Ben Cousins, Jackie Dugard, and Tshepo Madlingozi (eds.), *Socio-Economic Rights in South Africa: symbols or substance?*, Cambridge, 2014, p. 253.

14 Social Assistance Act 13 of 2004.

15 South African Social Security Agency, note 12.

under the age of 18. Contributory social insurance provides those in formal employment with limited unemployment, maternity, sickness, adoption and survivor's benefits for a short period of time.<sup>16</sup> There is tax support for employees to privately fund voluntary health and retirement insurance but these tend to reach those who are better off.<sup>17</sup> The public health system is poorly funded and inadequate while the private health system is beyond the reach of the vast majority of South Africans,<sup>18</sup> including most employed workers. The social assistance programme has a significant impact on poverty alleviation, nutritional status, access to health, education and employment.<sup>19</sup> Despite these benefits, the system is residual 'reacting only to the worst effects of market or family failures and providing assistance to social groups seen as "deserving"'.<sup>20</sup> There is no assistance for the millions of working age unemployed people.

### C. South Africa's Human Rights Framework and the Right to Social Security

The end of Apartheid in 1994 saw the introduction of a new constitution and a far-reaching *Bill of Rights* which contains justiciable social and economic rights.<sup>21</sup> The guarantee in section 27(1)(b) of the Constitution provides that 'Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance'.<sup>22</sup> The section requires the state to 'take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation' of the right.<sup>23</sup> The Constitution contains a strong equality right including grounds of race and gender

16 Department of Social Development South Africa, *An Overview of South Africa's Social Security System* (2010), <http://www.issa.int/Recursos/Informes-de-conferencias/Panorama-General-del-Sistema-de-Seguridad-Social-de-Sudafrica>, p. 8. See arguments for the extension of unemployment insurance: *Ockert Dupper, Marius Olivier and Avinash Govindjee*, *Extending Coverage of the Unemployment Insurance-System in South Africa*, *Stellenbosch Law Review* 21 (2010), p. 438; *Avinash Govindjee, Marius Olivier and Ockert Dupper*, *Activation in the Context of the Unemployment Insurance System in South Africa*, *Stellenbosch Law Review* 22 (2011), p. 205; *Marius Olivier, Ockert Dupper and Avinash Govindjee*, *Redesigning the South African Unemployment Insurance Fund: Selected Key Policy and Legal Perspectives*, *Stellenbosch Law Review* 22 (2011), at p. 396; *Govindjee and Dupper*, note 2.

17 Department of Social Development South Africa, note 15, pp. 9-10.

18 Approximately 16,2% of the population are covered by the private health system (SouthAfrica.Info, *Health care in South Africa* <http://www.southafrica.info/about/health/health.htm#UpAsFiehtQ4> (last accessed on 23 November 2013).

19 *Budlender and Lund*, note 4, pp. 940-942.

20 *Hassim*, note 10, p. 126.

21 For discussion and an overview of these rights see *Sandra Liebenberg*, *Socio-Economic Rights adjudication under a transformative constitution*, Cape Town 2010; *David Bilchitz*, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*, Oxford 2007.

22 Constitution of the Republic of South Africa Act 108 of 1996, s. 27(1)(b).

23 *Ibid*, s 27(2).

in the listed grounds of discrimination.<sup>24</sup> Non-sexism is one of the founding values of the Constitution.<sup>25</sup> The Preamble to the Constitution lists one of the goals of the Constitution as being ‘to improve the quality of life of all citizens and free the potential of each person’.<sup>26</sup> Equality and social and economic rights are linked in a constitutional project aimed at addressing both material and status based disadvantage.<sup>27</sup> In addition to the right to social security, other social and economic guarantees include housing, health care, food, water and education.

At the international level, South Africa is a party to a number of human rights treaties and has signed but, curiously, only recently indicated its intention to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>28</sup> At the regional level, South Africa is party to the African Charter on Human and Peoples’ Rights,<sup>29</sup> the African Charter on the Rights and Welfare of the Child,<sup>30</sup> and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa,<sup>31</sup> which has strong gendered social security provisions. At the sub-regional level South Africa is part of the Southern African Development Community (SADC) which has a Charter of Fundamental Social Rights (2003), a Code on Social Security (2007) and a Gender Protocol.<sup>32</sup> South Africa has ratified a number of ILO conventions<sup>33</sup> but these do not include any of the major social security conventions.

- 24 Ibid, s 9. There is a well-developed equality jurisprudence containing some strong statements about women’s substantive equality rights: *Catherine Albertyn and Beth Goldblatt*, Equality, in: Stuart Woolman et al (eds.), *Constitutional Law of South Africa*, 2nd ed, Cape Town 2007, pp. 58-1-85; *Catherine Albertyn*, Gendered Transformation in South African Jurisprudence: Poor Women and the Constitutional Court, *Stellenbosch Law Review* 3 (2011), p. 591.
- 25 Constitution of the Republic of South Africa, note 22, s. 1(b).
- 26 Ibid, Preamble.
- 27 *Sandra Liebenberg and Beth Goldblatt*, The Interrelationship between Equality and Socio-Economic Rights in South Africa’s Transformative Constitution: *South African Journal on Human Rights* 23 (2007), p. 335.
- 28 *Marius Olivier*, *Social Security: Framework*, The Law of South Africa (2nd ed), Durban 2012, para. 118, fn 2.
- 29 <http://www.achpr.org/instruments/achpr/> (last accessed on 23 November 2013).
- 30 <http://www.achpr.org/instruments/child/> (last accessed on 23 November 2013).
- 31 <http://www.achpr.org/instruments/women-protocol/> (last accessed on 23 November 2013).
- 32 [www.sadc.int/documents-publications/charters/](http://www.sadc.int/documents-publications/charters/) (last accessed on 23 November 2013); for discussion of the gender dimensions of the SADC conventions see *Kitty Malherbe and Lorenzo Wakefield*, The effect of women’s care-giving role on their social security rights: *Law, Democracy and Development* 2 (2009), at p. 62.
- 33 See list of ratifications at [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102888](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102888) (accessed on 10 October 2013).

Despite initial enthusiasm about the potential of social and economic rights litigation in South Africa, and some important decisions,<sup>34</sup> there is a measure of disappointment about the limits of this avenue in achieving far-reaching legal and social change. South Africa's Constitutional Court has resisted allowing direct and broad claims to social provision and has taken a restrained approach to reviewing the reasonableness of government policies.<sup>35</sup> Thus far, constitutional litigation to force government to extend the reach of social security has been based on the relationship between the right to social security and the right to equality.<sup>36</sup> In the *Khosa* case the court found that permanent residents could not be excluded from social assistance grants since the right applied to 'everyone'.<sup>37</sup> The Court said that:<sup>38</sup>

*Sharing responsibility for the problems and consequences of poverty equally as a community represents the extent to which wealthier members of the community view the minimal well-being of the poor as connected with their personal well-being and the well-being of the community as a whole. In other words, decisions about the allocation of public benefits represent the extent to which poor people are treated as equal members of society.*

In two instances gender equality was raised in litigation aimed at extending the coverage of social assistance grants. The first occurred in a case concerning the *Older Persons Grant* (previously the *Old Age Pension*).<sup>39</sup> At the time, the grant was provided to women at the age of 60 and to men at the age of 65, a legacy dating back to the 1930 s. A group of men challenged the constitutionality of the legislation on the basis of the rights to equality and social security. Women's interests were represented by an *amicus curiae*. The *amicus* argued that the court should avoid equalising down (ie: giving women the grants at age 65) as had occurred in

34 The best known cases include *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 and *Minister of Health v Treatment Action Campaign (TAC)* (2002) 5 SA 721 (CC).

35 Sandra Liebenberg, The Judicial Enforcement of Social Security Rights in South Africa: Enhancing Accountability for the Basic Needs of the Poor, in Eibe Riedel (ed.), *Social Security as a Human Right: Drafting a General Comment on Article 9 ICESCR – Some Challenges* (Berlin 2007) p. 69.

36 In the Constitutional Court cases of *Mashava v President of the RSA and Others* 2004 (12) BCLR 1243 (CC) and *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development (Khosa)* 2004 (6) BCLR 569 (CC). Also see the High Court challenges to extend the old age pension and child support grant discussed in *Goldblatt and Rosa*, note 13, and below.

37 Discussed in *Liebenberg and Goldblatt*, note 27. Despite the progressive judgment in this case, the extension of grants to permanent residents left refugees and other legal and illegal migrants outside of the social security system. For discussion of this aspect, see *Lucy Williams*, *Issues and Challenges in Addressing Poverty and Legal Rights: A Comparative United States/South Africa Analysis*, *South African Journal on Human Rights* 21 (2005), p. 436. There have, however, been some positive developments in this area in recent years: See *Olivier*, note 28, paras. 92-94.

38 Note 3636, para 74.

39 *Roberts and Others v Minister of Social Development and Others* (unreported decision of the Transvaal Provincial Division, Case Number 32838/05).

European litigation. Before judgment was given the government amended the legislation to allow for the phased inclusion of men aged 60-64.<sup>40</sup>

Litigation was also used in a challenge to the restricted age range of the *Child Support Grant* (CSG) to ensure that it reached all children under the age of 18.<sup>41</sup> Again, the government introduced reforms before judgment was given and phased in the changes.<sup>42</sup> While this was primarily a challenge on the basis of children's social security rights, the equality rights of the parents who are overwhelmingly women, were also raised in argument.

#### D. Gender in the South African Social Security System

Despite increased labour force participation, women still have less access to formal employment and their access to the social insurance system is accordingly more limited, although the inclusion of domestic workers since 2003 has been a positive step for the majority of women workers who make up this group.<sup>43</sup> Informal sector work, subsistence work and unpaid work in family enterprises and the home, all profoundly gendered, are not recognised in the social insurance system. The social assistance system is the primary vehicle for poverty alleviation with the bulk of the grants reaching women recipients.<sup>44</sup> The overwhelming number of CSG recipients is women, usually the mothers of the children.<sup>45</sup> The OPG also reaches more women than men because of women's longer mortality and because the grant was historically provided to women at an earlier age than men.<sup>46</sup> The huge increase in the reach of the social assistance system since democracy has been positive for women in their support of their households.<sup>47</sup> But it is also limited in that grants can only be accessed by women below pension age through their children and the grant size is very small.<sup>48</sup> Grants are not universal, creating access

40 In terms of amendments to the Social Assistance Act 13 of 2004, s 10. The case and the changes are discussed in *Beth Goldblatt*, *The Right to Social Security – Addressing Women's Poverty and Disadvantage*, in: B Goldblatt/ K McLean (eds.), *Women's Social and Economic Rights*, Cape Town 2011, p. 34, at pp. 51-4. Also see *Malherbe and Wakefield*, note 32.

41 *Mahlangu v Minister of Social Development and Others* (case in the Transvaal Provincial Division, Case Number 25754/05).

42 In terms of amendments to the Social Assistance Act 13 of 2004: S. 1 defines a child as under 18 years of age. See *Goldblatt and Rosa*, note 13, pp. 258-261.

43 Sectoral Determination 7 (Domestic Workers) in terms of the Basic Conditions of Employment Act 75 of 1997. The Unemployment Insurance Fund has included domestic and seasonal workers since 2003 in terms of the Unemployment Insurance Act (Act No. 63 of 2001).

44 *Goldblatt*, note 40, p. 35.

45 *Leila Patel and Tessa Hochfeld*, *It buys food but does it change gender relations? Child Support Grants in Soweto, South Africa*, *Gender and Development* 19 (2011), p. 229, at p. 231.

46 *Budlender and Lund*, note 4, at p. 940. The grant age has now been equalised. See above.

47 *Patel and Hochfeld*, note 45.

48 The CSG amount is not linked to increases in inflation and is not set according to a clear assessment of need: *Ockie Dupper, Kitty Malherbe, Barry Shipman and Ethel Bolani*, *The case for increased reform of South African family and maternity benefits: Law, Democracy and Development* 4 (2000) p. 27, at p. 35.

difficulties for women in relation to means-testing. There are other access barriers including those related to poverty, illiteracy, hostile officials, lack of identification documents, disempowerment, care responsibilities and safety concerns.<sup>49</sup> The disproportionate care burden carried by women in South Africa for children, the elderly, people with disabilities and illnesses is not adequately addressed through the social security system or through other forms of social provision. Child care provision by the state and private sector is very limited in addressing the ‘care crisis’ caused by AIDS and family fragmentation.<sup>50</sup>

A feature of the roll out of the CSG to predominantly young women has been an accompanying negative discourse about grant abuse. Recipients have been accused of falling pregnant to access the grant and of misusing the grants for their own benefit rather than in support of their children.<sup>51</sup> Mothers are also accused of leaving children with grandmothers and not providing them with the grant money. Government commissioned research has refuted these claims.<sup>52</sup> This discourse is common to many countries where welfare mothers have been labelled ‘scroungers’ and ‘undeserving’.<sup>53</sup> The grant provided to carers of children with severe disabilities has also been the subject of recent discussion with the allegation that women deliberately abuse alcohol while pregnant in order to bear children with Foetal Alcohol Syndrome.<sup>54</sup> This grant is paid at a higher amount than the CSG hence the supposed incentive. Again, this type of unfounded speculation reinforces stereotypes about young women as irresponsible and criminal. A recent study of CSG recipients found that many saw the grant as positive in alleviating poverty but also believed it led to perverse incentives and abuse, and worried about grants being withdrawn.<sup>55</sup> The negative perceptions are persistent despite the lack of evidence of abuse. This may indicate that despite the strong rights framework in South

- 49 *Beth Goldblatt*, Gender and Social Assistance in the First Decade of Democracy: A Case Study of South Africa's Child Support Grant: *Politikon* 32 (2005), p. 239; *Beth Goldblatt*, Gender, rights and the disability grant in South Africa, *Development Southern Africa* 26 (2009), p. 369.
- 50 For a discussion of the crisis in care see *Lisa Dancaster*, State and Employer Involvement in Work-Care Integration in South Africa (PhD Thesis), Sydney 2012, pp. 34-40.
- 51 *Beth Goldblatt*, Teen Pregnancy and Abuse of the Child Support Grant: Addressing the Myths and Stereotypes, *Agenda: Empowering women for gender equity* 17 (2003), p. 79.
- 52 *Mark Steele*, Report on Incentive Structures of Social Assistance Grants in South Africa (Kesho Consulting and Business Solutions and Department of Social Development, South Africa, 2006); *Monde Makiwane, Chris Desmond, Linda Richter and Eric Udjo*, Is the Child Support Grant associated with an increase in teenage fertility in South Africa? Evidence from national surveys and administrative data, Human Sciences Research Council, Pretoria 2006.
- 53 *Nancy Fraser and Linda Gordon*, A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State, *Signs: Journal of Women in Culture and Society* 19 (1994), p. 309; *Lucy Williams*, Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate, *Fordham Urban Law Journal* 22 (1994) p.1159.
- 54 Rebecca Davis, Sky really is the limit: the lowdown on Alex Crawford's reporting (2013), *Daily Maverick* <http://www.dailymaverick.co.za/article/2013-01-24-sky-really-is-the-limit-the-lowdown-on-alex-crawfords-reporting#.UW4ngqJmh8E> (last accessed on 26 November 2013).
- 55 *Leila Patel, Tessa Hochfeld, Jacqueline Moodley and Reem Mutwali*, The Gender Dynamics and Impact of the Child Support Grant in Doornkop, Soweto, Johannesburg 2012.

Africa there is insecurity about the continued existence of some forms of social assistance for poor women.

### E. The Child Support Grant – meeting women’s social security rights?

In the following section the *Child Support Grant* (CSG) will be examined in more depth from a gender and human rights perspective. As mentioned above, the CSG is a post-democracy social assistance grant that reaches more than 11 million children below the age of 18. It is overwhelmingly paid to women, mainly the mothers of the children for whom it is provided. Despite its small monetary size it has a critical impact in addressing the food needs of poor children and plays some role in increasing school attendance.<sup>56</sup> It may also be having some broader impacts such as enabling mothers to look for work.<sup>57</sup> Grants, often pooled, are used to support entire households rather than just the child for whom they are allocated. The CSG is means-tested and well targeted, successfully reaching most poor children in South Africa,<sup>58</sup> although a fraction of the very poorest are not reached<sup>59</sup> because they cannot provide the documentation required or due to misunderstandings of the means-test.<sup>60</sup> Because it is collected by such a large number of poor women it is an important grant to study and evaluate through a gender rights lens.

#### I. Background

The CSG developed from the work of the *Lund Committee for Child and Family Support* which was established soon after the first democratic government began considering reforms to the welfare system.<sup>61</sup> It replaced the *State Maintenance Grant* which was a two-part payment for single mothers and their children.<sup>62</sup> This grant had been racially allocated and only reached certain groups. Were it to be extended to all those eligible it would have been unaf-

56 *Francie Lund*, A step in the wrong direction: linking the South African Child Support Grant to school attendance, *Journal of Poverty and Social Justice* 19 (2011), p.5.

57 *Patel and Hochfeld*, note 45, p. 230.

58 *Ibid.*

59 *Francie Lund, Michael Noble, Helen Barnes, and Gemma Wright* Is there a rationale for conditional cash transfers for children in South Africa?, *Transformation: Critical Perspectives on Southern Africa* 70 (2009), p. 70, p. 81.

60 *Beth Goldblatt, Solange Rosa and Katharine Hall*, Implementation of the Child Support Grant: a study of four provinces and recommendations for improved service delivery (Centre for Applied Legal Studies, University of the Witwatersrand and the Children’s Institute, University of Cape Town, 2006); *DSD, SASSA and UNICEF*, The South African Child Support Grant Impact Assessment: Evidence from a survey of children, adolescents and their households. (UNICEF South Africa, 2012), pp. 29-30.

61 See *Francie Lund*, *Changing Social Policy: The Child Support Grant in South Africa*, Pretoria 2008 for an insider account of the Committee.

62 The change occurred in terms of the Welfare Laws Amendment Act 106 of 1997.

fordable. Hence, the Committee chose a simpler, smaller benefit to be paid to the primary caregiver of the child. This idea of a primary caregiver was an important innovation in the context of family dislocation and diversity, allowing people other than biological parents to collect the payment on the principle of ‘follow the child’. From 1998 the government provided the grant to children from birth to age seven but over the period 2003 to 2012 extended this, following significant pressure from welfare groups, to all children under 18.<sup>63</sup>

## II. Implementation

There were many early implementation issues and some problems still remain. Some of these had a gender dimension such as the unofficial requirement for the purpose of means-testing, observed at certain offices, that women had to obtain proof of having unsuccessfully sought private maintenance from the fathers of their children.<sup>64</sup> This forced women to negotiate a very cumbersome court system that often resulted in them giving up in despair.<sup>65</sup> They were also sometimes asked to obtain a statement from the father saying that he was unable to support his child. This put women into dangerous situations by requiring contact with former partners who may have been abusive. It also brought the future grant payments to the attention of fathers who sometimes demanded ‘their share’ from mothers.<sup>66</sup> Local and regional variations in implementation meant some provinces and local offices had differing requirements and different outcomes for some of the CSG applicants. In one province, applicants were required to bring the child along to the office to prove it was actually in the physical custody of the person applying. This was not required by the regulations and complicated the process for applicants who might have to wait for many hours with small babies and children.<sup>67</sup> In another province, applicants were required to provide documentation that was not required by the regulations meaning that the most vulnerable groups such as farm workers, often not in receipt of these documents, were unsuccessful in their attempts to access the CSG.<sup>68</sup> Individual bias by officials was also observed. For example, an official who was interviewed admitted assisting older rather than younger women to access certain documents because ‘young women waste the CSG and do not need it anyway’.<sup>69</sup>

A further concern with the implementation as well as the design of the grant is the fact that it is meant for children from birth but can take new mothers some time to apply for and

63 *Goldblatt and Rosa*, note 13. Also see *Goldblatt, Rosa and Hall*, note 60. For details of the phasing in see, *DSD, SASSA and UNICEF*, note 60, p. 2.

64 *Goldblatt*, note 49, p.249.

65 The problems with the court run private maintenance system is explored in *Elsje Bonthuys* Realizing South African Children's Basic Socio-Economic Claims against Parents and the State: What Courts Can Achieve *International Journal of Law, Policy and the Family* 22 (2008), p. 333.

66 *Goldblatt*, note 49, p. 249.

67 *Ibid*, p. 248.

68 *Ibid*, p. 248.

69 *Ibid*, p. 248.

receive it.<sup>70</sup> In addition, pregnant women do not benefit from the grant in advance of the birth. Both of these issues mean that the nutritional benefits of the CSG are not reaching fetuses and new babies at a critical point in their development. There are recommendations for a pregnancy grant and other services to support pregnant mothers<sup>71</sup> and suggestions for a campaign to distribute CSG applications at birth.<sup>72</sup> While the arguments for such support may have some dangers if the focus is on women as mere reproductive receptacles or physical vehicles for the improved nutrition of their children, reforms to support and empower pregnant mothers would be a valuable contribution to their social security rights. These could be seen as an acknowledgment of women's unpaid reproductive functions and a recognition that the costs of pregnancy and childbirth should be borne by society and not just by the mothers themselves.

### III. Grant for children not carers

A key feminist concern with the grant relates to the replacement of the *State Maintenance Grant* by the CSG and the removal of the parent component of the former grant. This loss was a 'major blow to the struggle for the recognition of women's unpaid caring work in society' since women were clearly expected to undertake caring work without state support for themselves, even where they were facing severe poverty.<sup>73</sup> Mothers became conduits for assistance to children with their own citizenship entitlements to social security subsumed in their children's rights.<sup>74</sup> This is because 'women mediate social assistance and deliver it on behalf of the state. They claim it, collect it and are then expected to turn it into food, shelter, clothing, education, health and other aspects of a child's maintenance through their own labours.'<sup>75</sup> In the popular understanding, the CSG is seen as a grant paid to mothers rather than a grant for children, reflecting a conflation of the interests of women with their children.

The removal of the mother's component of the *State Maintenance Grant* may be seen as a retrogressive measure as defined by international human rights law in removing a social security right held by certain women.<sup>76</sup> The failure to provide for the indigent carers of poor children is also a possible violation of the social security guarantee in South Africa's *Bill of*

70 DSD, SASSA and UNICEF, note 60, p. 30.

71 Alex van den Heever et al, Investigating the Potential Impact of State Support for Poor and Vulnerable Pregnant Women in South Africa: An Options Assessment: Summary Report (Centre for Health Policy, School of Public Health, University of the Witwatersrand, 2012).

72 DSD, SASSA and UNICEF, note 60, p. 30.

73 Goldblatt, note 49, p. 241.

74 Ibid. The concept of women as a policy conduit is developed by Maxine Molyneux, Mothers at the Service of the New Poverty Agenda: Progres/Oportunidades, Mexico's Conditional Transfer Programme, Social Policy and Administration 40 (2006), p.425.

75 Goldblatt, note 49, p. 242.

76 Committee on Economic Social and Cultural Rights (2007) General Comment No. 19 'The Right to Social Security', E/C.12/GC/19, para. 42, outlines the criteria for assessing whether a retrogressive measure is justified.

*Rights* which, as mentioned, promises everyone a right to have access to social security ‘including, if they are unable to support themselves and their dependants, appropriate social assistance’.<sup>77</sup> While the CSG provides for the dependent children of people who are unable to support them, it does not provide for those adults who are unable to support themselves. The millions of women who qualify for the CSG fall into this category as adults living in poverty without the means to support themselves.

*Chant*<sup>78</sup> discusses the difficulty of addressing female poverty through anti-poverty programmes. These are often aimed at addressing women’s *condition* rather than their *position* of disadvantage. Giving women money does not always translate into greater power, opportunities or time. In fact, women are often used in development as a ‘conduit of policy’ to achieve development goals rather than to address unequal gender relations. These interventions may reinforce rather than alter traditional responsibilities for care and household reproduction.

The CSG did not make any claims with regards to women’s poverty – it was squarely directed at addressing children facing poverty (half of whom are of course girls).<sup>79</sup> So it is difficult to evaluate it in terms of the goals of addressing women’s poverty or improving gender inequalities other than to point to this policy gap. The CSG can, however, be evaluated as an example of a social assistance programme that uses carers (primarily women) to achieve a policy goal of improving the life chances of South African children. Such an evaluation would consider whether women have been advantaged or disadvantaged by being given this role and the possible unintended impacts of the grant on gender relations. The following are some of the questions that would need to be considered in such an evaluation of the CSG:

- Does the CSG alter women’s power and status in the home and in communities?
- Does the grant lead to men feeling less responsible for the provision of support for their children? Does it have any impact on the extent to which they take responsibility for the care of their children?
- Does the grant cause resentment from men, leading to conflict and violence in families?
- Does the grant have any positive or negative intergenerational impacts in households, particularly in relation to the status of young mothers?
- Does the CSG reinforce the role of women as the major source of unpaid reproduction and care in the society? And does this have any additional impact on the difficulties women face in accessing paid work and income?
- Could the CSG have been designed differently to address or transform unequal gender relations?

77 Section 27(1)(b) of the Constitution, above note 22.

78 *Sylvia Chant*, ‘The ‘Feminisation of Poverty’ and the ‘Feminisation’ of Anti-Poverty Programmes: Room for Revision?’, *Journal of Development Studies* 44 (2008), p. 165.

79 In fact it was progressive in moving away from formal gender presumptions around the care of children in providing the grant to the primary care giver rather than the mother. But it has become ‘feminised’ because of strong social attitudes towards care as women’s responsibility: *Patel and Hochfeld*, note 45, p. 231.

- Did the designers of the CSG consider women's preferences and needs in its formulation?
- Does the CSG enable or limit women's capacity to participate more fully as active citizens?
- Does access to the CSG (application and ongoing receipt of the grant) have any negative impacts on the women recipients?

Many of these questions cannot be answered without empirical evidence. Aside from implementation studies that considered the last question in the above list on access to the grant,<sup>80</sup> there has been one study of CSG recipients that considers some of these questions. *Patel and Hochfeld* conducted a household survey in a poor urban area near Johannesburg, focusing on empowerment, decision-making and care responsibility.<sup>81</sup> They found that most respondents (women recipients of the grant) felt more secure financially, more able to care for their families, and more positive and empowered.<sup>82</sup> Worryingly, the research found some evidence that the CSG may be 'crowding' out financial support by fathers.<sup>83</sup> The study also found that women were continuing to perform the vast majority of care and domestic work in their households and that most held traditional views about gender roles in the home. Almost a quarter of respondents acknowledged the existence of domestic violence in their relationships with partners.<sup>84</sup> The authors of the study urged a better understanding 'of the impact of the CSG on care as a public good that contributes to economic and social development and that extends beyond the individual beneficiary'. They concluded that while 'social protection policies may contribute to transforming gender relations; (...) on their own, they are limited, and need to work in concert with other public policies, such as reform of the maintenance system and policies and programmes that reduce the burden of care on women and that promote more equitable social relations'.<sup>85</sup>

Clearly further study would help to develop a deeper understanding of the gendered impact of the CSG. But it seems likely that the grant has simply mapped itself onto the existing topography of unequal gender relations in South Africa and that the consequences of the provision of the grant are largely neutral for the women themselves. Some advantages (such as improved feelings of empowerment) and disadvantages (such as possible withdrawal of financial support by some fathers) may be the unintended by-products of the grant.

#### *IV. The introduction of conditionality into the CSG*

This evaluation of the CSG from a gender perspective is somewhat altered by a new development that changes the nature of the grant. One of the notable features of the CSG is that it

80 *Goldblatt*, note 49; *Goldblatt, Rosa and Hall*, note 60.

81 *Patel and Hochfeld*, note 45; *Patel and Hochfeld*, note 55.

82 *Patel and Hochfeld*, note 45, p. 236.

83 *Ibid.*

84 Note 45, p. 237.

85 Note 45, p. 238.

was an unconditional cash transfer.<sup>86</sup> Recently, the South African government attached a condition to the grant requiring caregivers to regularly demonstrate that their children are attending school. This change has been met with surprise and condemnation in welfare circles and raises concerns about the unfair burden that such a measure will place on women in receipt of the grant.

### 1. A Consideration of Conditionality

Before exploring these changes and their implications for women receiving the CSG it is necessary to discuss what is meant by ‘conditions’ or ‘conditionality’ in relation to social assistance and some of the views about the appropriateness of such conditions from a gender perspective, a human rights perspective and from other critical perspectives.

Conditional cash transfers (CCTs) require ‘behavioural compliance’ on the part of grant recipients, usually in relation to ensuring children reach services such as schools and clinics. These measures, originating in the USA in the 1980s in relation to children, have become increasingly popular in developing countries.<sup>87</sup> The policy logic behind these measures is that cash payments on their own will not address intergenerational deprivation that causes poverty – human development requires increased service use which conditions will assist in achieving.<sup>88</sup> *Barrientos* notes that to some extent, all social assistance programmes contain conditions.<sup>89</sup> Thus, simply registering for a benefit requires action that may be difficult for many people due to access issues, documentation problems and so on. Targeted rather than universal social assistance programs may require means-testing or other proof of eligibility, requiring further compliance that is sometimes onerous. *Lund, Noble, Barnes and Wright* see such administrative requirements as access barriers rather than conditions.<sup>90</sup> They also point to regulatory requirements such as those requiring that payments must be used in support of the child, which they call ‘normative injunctions’. They suggest that ‘true conditionalities’ require ongoing behaviours such as ensuring school attendance, although once off conditions may also exist in some programmes (such as immunisation of the child at a certain age). In many CCT programmes the focus is on mothers as the favoured recipients of cash who will ensure it is properly spent and as the people most likely to deliver on the conditions. In some schemes women are required to attend classes, meetings and undertake community work.

There are a number of critiques of CCTs, both practical and normative. Many evaluations of CCTs have found positive impacts both in poverty reduction and health and education utilisation. But critics note that studies fail to differentiate between the impact of the cash and

86 A once off immunisation requirement was initially required but this was dropped: *DSD, SASSA and UNICEF*, note 60, p. 2.

87 *Lund, Noble, Barnes and Wright*, note 59, p. 72.

88 *Armando Barrientos*, Conditions in antipoverty programmes, *Journal of Poverty & Social Justice* 19 (2011), p.15, at pp.17-18.

89 *Ibid.*, pp. 16-17.

90 *Lund, Noble, Barnes and Wright*, note 59, p. 73-74.

the behaviour-producing conditions in achieving these successes.<sup>91</sup> Gender-based critiques point to the demands that such programmes make on women's limited time, sometimes restricting their income-producing activities.<sup>92</sup> CCTs aimed at improving girls' attendance in schools might come at the cost of distress to girls who are forced to face physical danger in meeting conditions.<sup>93</sup> A further concern is that conditions will not be effective where there are 'supply-side' problems with services such as lack of schools and clinics<sup>94</sup> and that the costs of administering conditions could be better spent on much-needed services.<sup>95</sup> This raises the need for provision of increased and improved basic services alongside cash transfers, including the need for 'gender sensitive social services, (...) and sexual and reproductive health care'.<sup>96</sup>

*Standing* provides an ethical argument against conditionality.<sup>97</sup> He suggests that the roots of behavioural policies are in libertarian paternalism aimed at addressing deficiencies of individual character rather than structural causes of poverty and underdevelopment. His critique of conditionality includes the full range of conditions discussed above including means-testing. He argues that controls imposed on some people and not on others violate the autonomy of poor people and bring into question their capacity for rational choice. They are also unfair since they require the poor to meet conditions not required of the rich. They may also create hierarchies of deservedness amongst the poor. A focus on pushing people towards services fails to engage with the reasons for the lack of service take-up and hence fails to deal with these often structural problems. CCTs turn rights into charity and allow for the removal of rights without due process as a result of the inability to properly monitor compliance without arbitrariness or bias. This can encourage corruption.

*Molyneux* raises normative gender concerns about the values that certain CCTs impose. In her case study of the *Oportunidades* CCT in Mexico she found that by premising the programme 'on normatively ascribed maternal responsibilities' the transfers effectively become conditional on 'good motherhood'.<sup>98</sup> Men were not included or encouraged to share responsibility with women for the betterment of their families. 'The social relations of reproduction therefore remain unproblematized, and the work performed easily naturalized'.<sup>99</sup> The critiques of conditionality even lead a number of authors to suggest that cash transfers should not only

91 *Barrientos*, note 8888, p. 19.

92 *Molyneux*, note 74.

93 *Magdalena Sepúlveda and Carly Nyst*, *The Human Rights Approach to Social Protection* (Ministry for Foreign Affairs of Finland 2012), p. 50.

94 *Lund, Noble, Barnes and Wright*, note 59, p. 77.

95 *Sepúlveda and Nyst*, note 93, p. 49.

96 *Ibid.*, p. 50.

97 *Guy Standing*, *Behavioural Conditionality: why the nudges must be stopped – an opinion piece*, *Journal of Poverty & Social Justice* 19 (2011), p. 27.

98 *Molyneux*, note 74, p. 59.

99 *Ibid.*

be unconditional (in the sense of ‘true conditionalities’) but should also be universal involving the removal of means-testing.<sup>100</sup>

From a human rights perspective, conditionalities appear problematic but this issue has not been fully canvassed or resolved at the United Nations’ treaty body level. The treaty body responsible for the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) has produced *General Comment 19 on the right to social security*.<sup>101</sup> This interpretation of States’ parties obligations regarding the right to social security does not make specific mention of CCTs, although the Committee has criticised welfare conditionality as having a punitive effect on marginalized women<sup>102</sup> and encouraged a State Party to make one of its social assistance programmes universal.<sup>103</sup> *General Comment 19* lists accessibility as an element of the right and within this, looks at eligibility.<sup>104</sup> Here the Committee notes that:

*Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.*

While this seems to relate to initial inclusion in a particular scheme, it may also refer to ongoing eligibility. It is unclear what would make a CCT reasonable and proportionate and how this would be determined. Perhaps this is a gap in the *General Comment* where insufficient direction was provided for the evaluation of CCTs from the perspective of rights compliance.

*Sepulveda* and *Nyst* echo *Standing*’s points about the loss of individual autonomy and the assumption that poor people are not capable of making rational choices.<sup>105</sup> They see conditions as depriving people of their freedom to determine what is best for themselves and their families. They also note that States have an international obligation to immediately provide for the essential levels of the basic needs of their people. “The enjoyment of these rights by all individuals is not conditional on the performance of certain actions or the meeting of requirements. Rather, these are inherent rights which are essential to the realisation of human dignity”.<sup>106</sup> Conditionalities might also impact on democratic solutions by communities (such as parental involvement in school management) if officials are given too much authority. Non-compliance with conditions must not result in exclusion of beneficiaries from programmes aimed at meeting their basic rights – on the contrary, they should alert officials to the need to assist those people to access services. Where conditions exist these should operate as incentives rather than exclusionary or punitive measures. ‘From a human rights perspective, these

100 *Standing*, note 97, p. 36; *Lund, Noble, Barnes and Wright*, note 59, in relation to the CSG.

101 Note 76.

102 CO Australia E/C.12/AUS/CO/4 (42<sup>nd</sup> Session, 2009), para. 20.

103 CO Brazil E/C.12/BRA/CO/2 (42<sup>nd</sup> Session 2009), para. 20(d).

104 Note 76, para. 24.

105 *Sepulveda and Nyst*, note 93, p. 49.

106 *Ibid*.

beneficiaries *must not be excluded* from their entitlements because the State has failed to improve the provision of public services or take an appropriate gender approach in designing the programme'.<sup>107</sup> They recommend that 'protections must be put in place to ensure that conditionalities do not create an unnecessary burden on women, expose them to abuse, or perpetuate traditional gender stereotypes within recipient households'.

*Sepulveda* and *Nyst* use a human rights perspective to find that CCTs have dangers in terms of autonomy, freedom, dignity and democracy. While extremely mindful of gender discrimination and stereotyping, they do not specifically consider equality rights violations that might arise in relation to conditional programmes. *Fredman* has looked closely at this issue, bringing a four dimensional substantive equality approach into an analysis of CCTs from a gender perspective.<sup>108</sup> She finds that CCTs fail to ensure gender equality on all four of these dimensions (distribution, recognition, transformation and participation) and that unconditional cash transfers are a more equality enhancing option. She concludes that 'real substantive equality is most likely to be achieved, not through making women bear the burden of breaking the inter-generational cycle of poverty but through universal, free access to good quality State schools, health clinics and other essential services'.<sup>109</sup>

## 2. Evaluating Conditionality in the CSG

Returning to the CSG, it is unclear why government suddenly decided to introduce conditions into this previously unconditional grant. One possible explanation is that it is an attempt to satisfy international agencies such as the World Bank that are very much in favour of CCTs. *Lund* suggests that this might arise from a conservative shift at the macroeconomic and social policy levels away from a redistributive and inclusionary approach.<sup>110</sup> There is clearly a contest in government between those who see social assistance as rights-based and developmental and those who see it as dependency-producing.<sup>111</sup> The policy shift may signal a desire to impose conditions on receipt of grants to send an ideological message that grants are not just hand-outs or entitlements but are provided in exchange for evidence of responsibility.

When the regulations to introduce the conditions were first published in 2009 they required primary caregivers to provide proof of the child's school attendance every six months failing which the CSG would be suspended until the condition was complied with.<sup>112</sup> Welfare and human rights groups opposed the regulations. The government amended them to remove the

107 *Ibid*, p. 53.

108 *Sandra Fredman*, *Engendering Social Welfare Rights*, in Beth Goldblatt/Lucie Lamarche (eds.), *Women's Rights to Social Security and Social Protection*, Oxford, 2014, forthcoming.

109 *Ibid*, p. 19.

110 *Lund*, note 56, p. 12.

111 *Goldblatt and Rosa*, note 13, p. 13.

112 Department of Social Development, 'Social Assistance Act, 2004: Amendment: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance' (G 32747, RG 9192, GN 1116), 27 November 2009.

reference to suspension of the grant but kept primary caregivers' reporting obligations.<sup>113</sup> It also placed a reporting requirement on school heads of department to inform the welfare department of the child's lack of enrolment or attendance. The department would then be required to get a social worker to investigate and report to the department. Thereafter, the department would have to take steps to ensure enrolment and attendance by the child.<sup>114</sup> The regulations apply to all children in receipt of the CSG between the ages of 7 and 18. This is patently unfair since children are only required to attend school in South Africa up to the age of 15 which raises issues of discrimination between groups of children and in relation to the obligations of different groups of parents, depending on whether they are social assistance beneficiaries or not.

Commentators have pointed to the absurdity of these conditions given the already high level of school enrolment (97%)<sup>115</sup> which had improved under the previously unconditional CSG. They also note that the assumption in the regulations is that parents must be responsible for children who are not attending school rather than there being other reasons for non-attendance. Such reasons include lack of access to schools for reasons of affordability, disability/illness, because schools are full, and physical access issues such as distance, weather etc.<sup>116</sup> There is a serious concern that the conditions create a harsh and unnecessary burden on school administrators who are already overloaded with collection of fees and school maintenance. The issue of fee collection follows from the erosion of the post-democracy promise of free schooling.<sup>117</sup> While the shift from the 'hard' condition of the draft regulations requiring suspension of the CSG to the 'soft' condition of the final regulation requiring a social worker investigation is an improvement, it sets up a highly impractical process. There are not enough social workers to undertake such investigations or provide supports to the children concerned.<sup>118</sup>

*Hall* suggests that the regulations may not be legal as they may violate children's rights to social security.<sup>119</sup> *Lund et al* argue that conditionalities are 'inconsistent with the (essentially) social democratic social policy regime set out in the Constitution'.<sup>120</sup> Conditions on social security assume that parents are responsible for school non-attendance rather than structural causes of poverty recognised in the South African Constitution.<sup>121</sup>

113 Department of Social Development, 'Social Assistance Act, 2004: Amendment: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance' (GG 32853, RG 9218, GN 1252), 31 December 2009.

114 *Ibid.*

115 *Katharine Hall*, *The child support grant: Are conditions appropriate?* Children Count Brief (Children's Institute, University of Cape Town, 2011).

116 *Ibid.*

117 *Lund*, note 56, p. 11.

118 *Ibid.*, p. 12.

119 *Hall*, note 114.

120 *Lund, Noble, Barnes and Wright*, note 59, p. 86.

121 *Ibid.*

From a gender perspective, the new conditions on the CSG are problematic. Although the conditions place enforcement burdens on schools they still place reporting burdens on primary caregivers (mainly mothers who are the CSG recipients). They also lead to potential stigmatisation of primary caregivers who fail to meet the reporting requirements and where officials blame them for a failure that may have arisen from a range of possible difficult circumstances. Requiring carers to take school reports to departmental offices twice a year would be very onerous for people who live a long distance from such offices or face difficulties such as disabilities, lack of childcare and lack of money for transport. Primary caregivers were not involved in the decision to add this condition to the CSG and might have contributed important insights into issues of education enrolment and attendance had they been consulted. The measure makes life more difficult for disadvantaged women who are already assuming the major responsibilities for child care and household reproduction. The conditions also challenge full and equal access to the right to social security as set out in South Africa's Constitution and in international law.

## F. Conclusion – addressing the gaps

South Africa's social security system has a relatively large social assistance component that is critical to poverty alleviation efforts. The CSG is one of the important features of this system. While it provides for the food needs of children in poor households, it has limited impact on the poverty and inequality faced by millions of South African women. The glaring gap in the system is the lack of provision of state support, in line with the Constitution's promise, of social assistance to working age people (age 18-59). Women's disadvantaged status in relation to access to the workforce means that the group left out of employment and social assistance is disproportionately female. A large number of these women are, however, working – they are performing the necessary but unremunerated care and household labour of the society.

There have been a number of proposals, both from within and outside of government, to address the social assistance gap. Progressives within government have looked at ways of incrementally extending the social assistance net to disadvantaged groups. For example, the idea of a chronic illness benefit has been considered to assist people with HIV and other diseases who are not eligible for the disability grant but who need support to access medical care, shelter and nutritious food.<sup>122</sup> The major non-governmental demand has been for a *Basic Income Grant* (BIG) – the provision of a relatively small universal grant for all South Africans (with a possible tax claw-back for those who do not need it). This idea was proposed in the 2002 report of a government appointed *Committee of Inquiry into a Comprehensive System of Social Security for South Africa* (known as the *Taylor Committee*).<sup>123</sup> The Committee recommended wide-ranging reforms to the social security system including the introduction of

122 Goldblatt and Rosa, note 13, p. 264-266.

123 *Taylor Committee Transforming the Present – Protecting the Future. Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa* (2002) Department of Social Development, Pretoria.

a BIG to ensure universal coverage for all South Africans. These recommendations have, in the main, not been followed due to the dominance of an economically conservative faction within the ruling party that has seen social assistance as the preserve of the aged, children and the disabled while being dependency-producing for able-bodied, working-age people, despite the obvious unemployment crisis.<sup>124</sup> There is a failure to acknowledge, through the social assistance system, the particular vulnerabilities faced by women in poverty.

The idea of a BIG has been approached somewhat cautiously from a feminist point of view in response to the idea that the small sum of a BIG can be developmental if incomes are pooled in households.<sup>125</sup> This view questions whether lack of trust between men and women in households might prevent such pooling, or if it does occur, whether women will have any control over decision-making around expenditure choices. Issues of violence against women, so prevalent in South Africa, might be worsened by conflict over grant funds. On the other hand, rural households, many of which are women-only households, might benefit from breaking their reliance on remittances, and might be able to use the income developmentally.

Responses to poverty and gender inequality through South Africa's social security system require new and creative thinking. The expansive rights framework in South Africa provides a backdrop against which to engage in democratic deliberation over policy options for gender transformative social security. These policies solutions, informed by agreed values, would shape the evolving meaning of rights. This is the process proposed by *Nedelsky* in her consideration of the gendered division of household labour as an issue of constitutional rights.<sup>126</sup> She recognises, as many feminists have before her, that this division of labour severely impacts on women's enjoyment of their rights. Rather than looking only for solutions that accommodate women's care and household responsibilities, transformative solutions that bring men into these areas of life while both restructuring institutions and altering attitudes, are essential for real change. She sees this best achieved as a deliberative project that goes well beyond law and courts to reach people in all areas of society, but which is part of a feminist constitutionalism that 'brings together rights, values, and participation in norm creation to give a sense of urgency about finding ways to reflect on what our core values really are and to hold ourselves and our institutions to account'.<sup>127</sup> It is hard to envisage this occurring in a developed country context, and even harder to envisage in the South African context where gender relations are shaped by poverty, violence, a history of brutalisation and injustice, AIDS and many other challenges that impact upon equal participation. Nevertheless, such a project would be worth attempting to develop South Africa's right to social security to provide a

124 *Goldblatt and Rosa*, note 13, pp. 266-268.

125 *Hassim*, note 10, at pp. 123-126.

126 *Jennifer Nedelsky*, *The Gendered Division of Household Labor – An Issue of Constitutional Rights*, in: *Beverley Baines/ Daphne Barak-Erez/ Tsvi Kahana* (eds.), *Feminist Constitutionalism: global perspectives*, Cambridge 2012, p.15.

127 *Ibid*, p. 47.

gender-responsive vehicle for fundamental social change rather than as a gender-neutral instrument that simply reinforces existing inequalities.