



## Foster Care: The Present System and Possible Alternatives

*“Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance”, which “will ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment, shall be provided with alternative family care, which could include foster placement or placement in suitable institutions for the care of children”.*

*Article 25 of the African Charter on the Rights and Welfare of the Child*

### 1. Introduction

Foster care is a way of providing a family life for children who cannot, for whatever reason, live with their parents.<sup>1</sup> It has long been one of the strategies used as an alternative placement for the care for children found to be in need of care by a Children's Court as “a result of being orphaned, abandoned, abused, neglected, or at risk”.<sup>2</sup> It is an alternative to institutional care. However, the HIV/AIDS pandemic and its devastating consequences have resulted in a huge increase in the number of vulnerable children in need of care.<sup>3</sup>

In 2002, then-Minister of Social Development, Zola Skweyiya, publically encouraged relatives caring for orphans to apply for the Foster Care Grant. This announcement effectively introduced an escalating number of orphans into the statutory foster care system; as a result, “the sheer number of cases, coupled with the lengthiness of the grant application process, has overloaded social workers and children's courts ever since”.<sup>4</sup> The present system is both unsustainable and prejudicial to the interests of the children it is intended to help.

In terms of the United Nations Guidelines for the Alternative Care of Children, “all decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with

his/her family and to minimize disruption of his/her educational, cultural and social life”.<sup>5</sup> This resonates with the ‘best interest of the child’ standard which informs our Children's Act 38 of 2005.

### 2. Need for the Substitute Care of Children

According to the SA Institute of Race Relations Survey for 2012, there were 530 816 children in court-ordered foster care. There were 1 455 900 children living in skip-generation households, that is, those which have two non-consecutive generations living in a household. These children are being cared for by their ‘kin’, but existing childcare legislation does not make adequate provision for kinship foster care. Consequently, a high proportion of children who are effectively living in kinship care are dealt with in the same way as children in conventional foster care.<sup>6</sup> This impacts negatively on child protection services as well as on those children in kinship foster placements whose access to social grants is compromised due to delays in Children's Court hearings. While the term ‘kinship foster care’ is in the Children's Act, it is not defined, which results in much confusion.

“Notwithstanding the efforts of the Department and funded organisations, the foster care system experiences its own challenges, including those that have to do with institutional arrangements, inter-sectorial challenges and lack of human

resources; thus rendering this essential system inadequate and unable to fulfil its mandate to vulnerable children. This resulted in huge backlogs in the finalisation of foster care placements and management of statutory orders, thus leading to increased vulnerability of children".<sup>7</sup> This situation depletes already scarce resources in the child protection system, detracts from the other work of social workers, and impacts on service delivery to other children in need. These are serious problems, given the high levels of abuse and neglect of children which characterise our society. The increasing need for foster care services reflects the increasing number of abandoned babies, high levels of abuse, and the general neglect and exploitation of children.<sup>8</sup>

### **3. Crimes Against Children**

During 2012/13 there were 48 718 crimes against children; of these, 25 446 were sexual offences in terms of the Sexual Offences Amendment Act of 2007, constituting 38% of all sexual offences. While the incidence of crimes against children in general declined during the period from 2005/06 to 2012/13, the number of sexual offences against children increased by 8% during the same period.<sup>9</sup> These children are in need of care and protection and should be the subject of social work intervention and, potentially, of a Children's Court Inquiry. If the child is found to be in need of care, a foster care placement would be considered as a therapeutic treatment plan.

### **4. The Role of Foster Care in Children's Services**

The intention of foster care "is to create opportunities for the child to live in a protective and safe environment with positive support, and to ensure that the child is surrounded by nurturing relationships that must last a lifetime. Its main goal is, on the one hand, to provide opportunities for nurturing the development of a child, whilst on the other hand, focusing on rendering re-unification services to the child's biological family".<sup>10</sup>

The advantage of foster care in children's services is that it "offers a valuable contribution to the continuum of child welfare response for orphaned, abandoned or at-risk children. Foster care is a highly flexible form of alternative care, which can be used in the short or longer-term, providing emergency care, preventing family-  
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breakdown by offering respite care, or offering more long-term solutions for children for whom adoption or return to families is not a viable option".<sup>11</sup> Foster care offers a therapeutic environment in a non-institutional setting. Unlike adoption, it is a temporary placement which is supervised by a social worker assigned to the case. Furthermore, the placement is subject to regular review, and can be extended, altered or terminated through a Children's Court hearing. All foster care placements are subject to a statutory process.

Potential foster parents are carefully screened, trained and supervised. Every attempt is made to match foster parents and children for the best possible outcome. Foster parents must be mindful that the purpose of foster care is family reconstruction/reintegration, and parental visits must be accommodated as part of the therapeutic process. Termination of a foster care placement may occur for various reasons: the child being returned to its parent/s due to the success of family reconstruction services; being placed in another foster home; being transferred to institutional care; being adopted; or attaining the age of majority. If a child is returned to the care of her/his parent/s, social work supervision will continue to monitor the reintegration process.<sup>12</sup> Furthermore, "a designated social worker's plan must incorporate preparation for this disengagement by preparing the foster parent and foster child beforehand through counselling, because foster parents and foster children develop an attachment which may make it difficult for them to separate".<sup>13</sup>

### **5. Fostering of Orphaned Children - Kinship Fostering**

In term of the Children's Act, the definition of 'family member' extends to any person who has parental responsibilities and rights in respect of the child; this may be a grandparent, brother, sister, uncle, aunt or cousin, or any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship. The definition is broad and accommodates the diversity of family composition that characterizes our society. 80% of children presently in foster care are in kinship foster care. The main challenge with foster care in (South) Africa revolves around formalisation, particularly where the carers and 'relatives' are part of the

child's family environment, but may not be formally related.

## 6. Structural Neglect

Many children are rendered vulnerable by poverty. However, "financial and material poverty or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family".<sup>14</sup> Structural neglect, which includes poor living conditions, inadequate diet, and difficulties in accessing health care, is endemic. It is vital to take into account the anxiety and stress engendered by poverty. There are many single-parent, female-headed households with little familial and community support. All of these factors impact on the quality of parenting. There is clearly a need for family preservation interventions at a primary level in order to improve the quality of parenting through psycho-social support and access to social security.

## 7. Social Grants

At the present time the Foster Care Grant provides an income which enables a family to foster a child. In order to receive this grant it is required that there is a court order indicating foster care status; the foster parent must be a South African citizen, a permanent resident, or a refugee; and the child must remain in the care of the foster parent(s).<sup>15</sup>

The Department of Social Development has indicated an intention to amend the Children's Act so that the foster care applications can be simplified and long delays avoided. Proposals include the overhaul of the foster care system in provinces (e.g. establishing alternative care units, employing graduate social workers, strengthening social work supervision, and better assessment of children); the conducting of longitudinal research in the field of foster care; and an audit and evaluation of foster care services. Furthermore, the appointment of a ministerial committee on foster care has been announced.<sup>16</sup> It will evaluate and review current policy and provide input to the third amendment to the Children's Act, which is scheduled for 2016.<sup>17</sup>

There is also some discussion taking place regarding the introduction of a 'poverty grant', which would mitigate the consequences of extreme poverty. And, given that the number of adoptions that take place is very low, there has been some suggestion that the introduction of an adoption grant would result in more adoptions and permanent placements, since many families, while being willing and suitable to provide a child with a loving home, cannot afford to do so.

## 8. Conclusion

About ten years ago, there was a proposal by the SA Law Reform Commission to separate kinship care from foster care, and in so doing reduce the burden on the child protection services by using three alternatives: foster care, court-ordered kinship care,<sup>18</sup> and informal kinship care. This would be in line with the UN Guidelines and the African Charter on the Rights and Welfare of the Child.<sup>19</sup> As a recent proposal from the Johannesburg Child Welfare Society argues, there is an urgent need for sustainable alternatives to the present crisis in the foster system, and "overall, introducing a Kinship Care Grant system is the most practicable way of doing so and stakeholders are urged to lobby for its introduction."<sup>20</sup>

As the National Welfare, Social Service and Development Forum has noted, "the national tragedy created by the death and incapacitation on a massive scale of parents of South Africa's children is making unprecedented demands on our social welfare system. As currently managed, it has the potential to bring about the collapse of many essential services, including those directed to the children themselves. At the same time, it poses a challenge which, if we rise to it through creative and holistic thinking, solid partnerships, and determination, could bring us into a new era for the development and the realisation of the human rights of our population".<sup>21</sup>

Legislation and policy pertaining to children should be regarded as an evolving area of jurisprudence and should be evaluated on an ongoing basis in terms of its success and efficacy in protecting and promoting the rights of children.

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Researcher**

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<sup>1</sup> Chapter One of the Children's Act, 38 of 2005.

<sup>2</sup> South African Institute of Race Relations 2013 Survey.

<sup>3</sup> Recently the Catholic Parliamentary Liaison Office, together with the Western Cape Department of Social Development, hosted a Roundtable Discussion on Foster Care. The Roundtable was addressed by Dr Usang Maria Assim (Community Law Centre - UWC); Ms Tozama Ngcongolo (Child Care and Protection Services - Western Cape Department of Social Development); Ms Thandiwe Zulu (Provincial Director, Gauteng - Black Sash) and Mr Elroy Paulus (National Advocacy Manager - Black Sash).

<sup>4</sup> 'Over a million children fall through foster care cracks', Ground-up, 12<sup>th</sup> November 2014.

<sup>5</sup> [www.unicef.org/protection/alternative\\_care\\_Guidelines-English\(2\).pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English(2).pdf)

<sup>6</sup> South African Institute of Race Relations 2013 Survey.

<sup>7</sup> Presentation by Ms Tozama Ngcongolo of the Western Cape Department of Social Development at the Roundtable on 6<sup>th</sup> March 2015.

<sup>8</sup> In response to a question in Parliament, the Minister of Social Development indicated that there were 49 300 children affected by the foster grant application backlog.

<sup>9</sup> South African Institute of Race Relations 2013 Survey.

<sup>10</sup> Presentation by Ms Tozama Ngcongolo of the Western Cape Department of Social Development at the Roundtable 6<sup>th</sup> March 2015.

<sup>11</sup> <http://www.everychild.org.uk/sites/default/files/docs/Foster>

<sup>12</sup> Emotionally, foster care can be challenging as the potential for separation is inherent. It is important that potential foster parents are properly informed and have the correct understanding of the purpose of this intervention and understand that it is different from adoption.

<sup>13</sup> See vi above.

<sup>14</sup> [www.unicef.org/protection/alternative\\_care\\_Guidelines-English\(2\).pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English(2).pdf)

<sup>15</sup> <http://www.sassa.gov.za/index.php/social-grants/foster-child-grant>

<sup>16</sup> Press Release by the Minister of Social Development, Bathabile Dlamini, 20<sup>th</sup> October 2014.

<sup>17</sup> Department of Social Development, Children's Directorate on Foster Care Reforms, 20<sup>th</sup> January 2015.

<sup>18</sup> Court-ordered foster care would be appropriate when a child was found in need of care as a consequence of abuse or neglect, and members of the child's extended family were able and willing to foster the child.

<sup>19</sup> Presentation by Dr Usang Maria Assim at the Roundtable on 6<sup>th</sup> March 2015.

<sup>20</sup> Johannesburg Child Welfare Society, *Position Paper on Foster Care*, March 2015.

<sup>21</sup> 'Use of the Statutory Foster Care System to Support Long Term Kinship Care: Impact on the Social Welfare System and the Social Work Profession' Discussion Paper 2007. See <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2007/070919nwssdfdiscus.htm>

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