

# Hesitation to implement foster care law changes will fail kids again

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*File photo: Dumisani Sibeko*

The foster care system is failing children and the failure is happening on many levels, as social work practitioner Candice Fortune has explored in some detail in her MPhil in Law, obtained at the University of the Western Cape (UWC) in 2017.

As Fortune explains in her thesis, by the end of the year a vast number – as many as 200 000 according to one estimate – of foster care orders are expected to lapse.

As those orders are necessary to apply for the country's Foster Care Grant (FCG), this would deny as many children (and their caregivers) of what is often a financial lifeline.

It is at the end of this year, too, that after a long procession of court extensions, the Department of Social Development is due back in court to present a “comprehensive legal solution” to sort out the crisis.

It is a situation whose genesis can be traced back to the early 2000s.

Back then the child protection system dealt (and apparently coped) with the around 50 000 children in need of foster care.

But then came the explosion of the Aids epidemic and by 2004 the number of maternal orphans (children who had lost their mothers) had jumped to more than 1 million children.

Many of those children were taken in by relatives (it's estimated that as many of 80% of children in foster care are in kinship foster care), who could then apply for a Child Support Grant (CSG).

Worth R380 as from April 1, 2017, the CSG is legally seen as a poverty alleviation tool.

But another option for these families was to formalise the care arrangement and apply for the FCG.

In contrast to the CSG, the FCG is worth R920 as from April 1 and is considered a child protection mechanism.

Not too surprisingly, given the growing demand for the FCG, the child protection system, and the social workers responsible for keeping it ticking over, were overrun.

It is partly a question of personnel. According to the Children's Institute at UCT, only about half the country's 18 000 registered social workers are employed by the government and not-for-profit organisations, and only a proportion of these work with children and families.

In part it is because the foster care system is of necessity cumbersome and bureaucratic.

To qualify for an FCG, an orphaned child has to be placed in the child protection system.

This requires not only orders from a Children's Court, but must be backed up by a blanket of administrative services, including ongoing monitoring and treatment.

As a result of the current crisis children are not only under threat of losing their grants, but social workers are also unable to offer the necessary support to children in need of protection from abuse and neglect, the primary concern of the foster care system.

"Many children have fallen through the cracks and foster care orders have lapsed as social workers are overburdened with high case loads and cannot always provide the adequate amount of monitoring or supervision," says Fortune, a part-time lecturer at UWC.

In social work, all work related to children is centred on the best interests of the child, adds Fortune.

This serves as a benchmark for all decisions made about children, noted Fortune in her MPhil.

It's a principle recognised in one form or the other in everything from the Children's Act to international agreements like the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

"But if so many of our children have fallen through the cracks in the current crisis, can we say we have acted in the best interests of those children?" asks Fortune, who has previously counselled young victims of sexual abuse in the Court of Sexual Offences in Cape Town.

"If child protection agencies have failed to provide an effective foster care system, as the copious amounts of lapsed orders suggests, then there has also been a failure in ensuring the best interests of those children in foster care."

In addition, the foster care system is failing children in other ways – the constitutional rights to family care and shelter, adds Fortune.

In the foster care system, children are removed from families – because of suspicions of abuse and neglect – but with the hope of reintegrating the child into his or her family.

That requires, among other things, that social workers investigate the home circumstances of the child.

But overburdened social workers rarely have the time to do that, says Fortune.

Similarly, they are constrained for time and resources when it comes to identifying suitable placement for the children – preferably in close proximity to their families.

Many children then end up in over-crowded group homes or with relatives with neither the space nor other means to provide for them.

A number of options are currently considered for alleviating the pressure on the foster care system, explains Fortune.

One proposal is the introduction of a Kinship Care Grant, which would be made to children who are orphaned and living with relatives.

It is suggested that such a grant – which would probably be worth more than the Child Support Grant – would require only an initial assessment of the child's situation, but none of the intensive supervision required with foster care placement.

"With the introduction of a Kinship Care Grant, less monitoring would need to occur and less court intervention would be required," says Fortune.

"This would lessen the burden placed on social workers, but more ideally it would ensure that the best interests of the children are considered paramount in all decisions made."

There are questions hanging over whether the department will meet its December deadline.

Failure to do so would, sadly, be another failure to help South Africa's children.

*Morris is a freelance writer for the University of the Western Cape*