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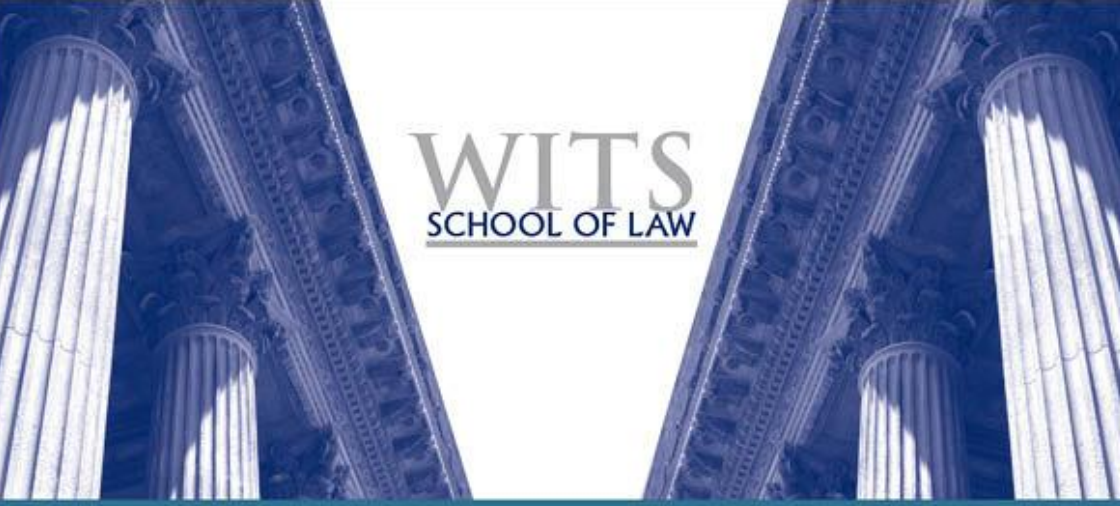

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WELFARE LAW AND BUREAUCRACY IN A CHANGING SOUTH AFRICA
A CASE STUDY OF STATE MAINTENANCE GRANTS FOR THE ILLEGITIMATE

by

Sandra Burman and Amanda Barratt

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INTRODUCTION

There is a growing body of research in Europe, America, and Australia which demonstrates that in general children growing up in single-parent families (which are usually female-headed) have lesser life-chances than those in two-parent families, when life-chances are measured by such indicators as future educational attainment, job expectations, and marriage stability.[2] It is uncertain whether financial opportunities, child care and stimulation, or other factors, such as the psychological, have the greatest influence, but it is clear that the greater the poverty, the greater the number of disadvantages likely to

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[1] The research for this paper was sponsored by the Human Sciences Research Council, the University of Cape Town Research Committee, the Wingate Foundation, and the Save the Children Fund, UK, to all of whom we are most grateful. Our thanks, too, to Professor Hugh Corder and Professor Christina Murray for comments on an earlier draft.

[2] See, for example, J Eekelaar and M Maclean *Maintenance After Divorce* (1986); MEJ Wadsworth and M Maclean 'Parents' Divorce and Children's Life Chances' (1986) 8 (2) *Children and Youth Services Review* 145-73; S McLanahan and K Booth 'Mothers-Only Families: Problems Reproduction and Politics' paper presented at a Seminar on the Economic Impact of Divorce 3-8 April 1989 Bellagio Italy; M Richards 'Children and Parents After Divorce' paper presented at the Seventh World Conference of the International Society on Family Law, Opatija Yugoslavia, 1991.

In South Africa the most economically vulnerable sector of children growing up in single-parent families are those born to mothers unmarried by any system of law.[3] Over 40 per cent of all South African births currently fall into this category, and in some communities the figure reaches 70 per cent. Yet state provision of creches and day-care centres for the children of working single parents are inadequate, often necessitating high payment for private child care if the parent is to be able to earn outside the home. Unmarried women in certain sections of the population are also unable to obtain state housing. In addition, in contrast to the mothers who are widowed or divorced, an unwed mother may well lack the legal and emotional support provided by the father's family, or even her own. Research has shown that, in the poorer sections of the population, default on child maintenance payments by divorced fathers exceeds 85 per cent[4] and there is no reason to believe that where fathers of illegitimate children are no longer living with the mother, their default record is any better. State maintenance grants are therefore,

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[3] In South Africa state law, which is Roman Dutch law, lays down a set of rules as to what constitutes a valid marriage, which must be performed by a state marriage officer. This requirements excludes many Muslim, Hindu, and Christian African religious leaders, who nonetheless perform marriages recognized by their own followers. In addition, African customary law has rules governing what constitutes a marriage, but such unions are afforded only partial recognition by state law. The figures quoted are, however, for children born outside any of these forms of marriage. For a fuller discussion of this point, see S Burman 'The Category of the Illegitimate in South Africa' in S Burman and E Preston-Whyte (eds) *Questionable Issue: Illegitimacy in South Africa* (1992).

[4] S Burman 'Marriage Break-Up in South Africa: Holding Want at Bay?' (1987) 1 *International Journal of Law and the Family*; S Burman and S Berger 'When Family Support Fails: The Problems of Maintenance Payments in Apartheid South Africa' (1988) 4 *SAJHR* 194, 334.

potentially, of crucial importance for the future of illegitimate children growing up in single-parent households, particularly if the woman is unemployed or in very low-paid employment, as the majority are.[5] In the worst situations maintenance grants may make the difference between starvation and survival.

This is an examination of the use of the existing system by parents of illegitimate children, its efficacy, and how it is adapting *in practice* to cope with the rapidly changing legal, social, and political changes in South Africa. In conclusion, we consider some of the implications for the future.

We take Cape Town as our sampling area, where illegitimacy in all communities is rising sharply. The Medical Officer of Health for Cape Town, giving the latest available illegitimacy figures for the city (for 1989-90), reported that 19.6 per cent of all live births of children classified as white were illegitimate, 44 per cent of those classified as coloured, 7.3 per cent of those classified as Asian, and 69.8 per cent of those classified as black. The illegitimacy figure for all live births in Cape Town was 45.7 per cent. Research has shown that almost all these births are to women who are not married by any system of law and who are not living with a man in a stable relationship.[6]

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[5] See D Budlender *Women and the Economy* (1991) (Community Agency for Social Enquiry, Johannesburg) for statistics on women's employment.

[6] See Burman op cit note 3.

Simkins and Dlamini,[7] using national figures, have shown that the percentage of illegitimate children for whom maintenance grants are paid is small for all communities, and declines in inverse relationship to need. Thus, according to their rough calculations on 1987 figures, a maximum of 37 per cent of illegitimate children classified as white are covered, 36 per cent of Asian, 24 per cent of Coloured, and 0.3 per cent of African. In other words, African children are almost entirely outside the system. In our study we found no reason to believe that Cape Town presented a different picture (although regional figures are not available). We therefore sought to investigate why this distribution had occurred and how it could be corrected.

Since the figures quoted above were published, the Population Registration Repeal Act 114 of 1991 has been passed, and provided that from mid-1991 newborn babies were not to be given a population group classification. In addition, the Abolition of Racially Based Land Measures Act 108 of 1991 abolished the law which provided that any area designated as being set aside for members of a particular population group was reserved exclusively for them. However, as we discovered in the course of our study and show below, such piecemeal attempts to abolish apartheid legislation have in fact been counterproductive, given the wider context in which they are operating. Grants are still paid and administered seperately for each population group, with three Houses of Parliament and the Provincial Administrations involved, as well as the six government

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[7] C Simpkins and T Dlamini 'The Problem of Supporting Poor Children in South Africa' in S Burman and E Preston-Whyte (eds) *Questionable Issue: Illegitimacy in South Africa* (1992).

departments of the self-governing territories, all of which are 'racially' based.[8] This is at last due to change with the implementation of the Social Assistance Act, for which, at the time of writing, no date had yet been set.

At present maintenance grants are awarded in terms of the Children's Act 33 of 1960. Section 89 enables the Minister to make grants to any person or association of persons working in the Republic for the protection, care, and control of children. Section 92(k) gives the Minister the power to make regulations prescribing the conditions and amounts of the grants. There are four sets of regulations (one for each population group), which stipulate the conditions under which a grant will be made.[9] Failure to satisfy these will disqualify the applicant. But, even where applicants do meet the requirements, the grant is not guaranteed, as the Minister retains a discretion to 'determine whether the application should be granted' (Reg 48 of GN 1085 *GG* 6494 of 22 July 1960).[10]

METHODOLOGY

Our basic information was derived from lengthy and detailed

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[8] In addition each TBVC administration has its own welfare department.

[9] GN 1085 *GG* 6494 of 22 July 1960; GN 236 *GG* 726 of 726 of 21 February 1964; GN 2433 *GG* 5357 of 10 December 1976; GN 85 *GG* 5385 of 28 January 1977 (all as amended).

[10] These regulations are for Africans. Similarly for other population groups, see Reg 60 GN 85 *GG* 5385 of 28 January 1977; Reg 7 GN 236 *GG* 726 of 21 February 1964; Reg 60 GN 2433 *GG* 5357 of 10 December 1976.

interviews with officials responsible for the allocation of state maintenance grants by each of the three Houses of Parliament, and the Cape Provincial Administration (CPA). In the case of the CPA, we also sent a set of written questions, to supplement the information provided by the officials. In addition, as we found that social workers played an important role in the making of grant, we interviewed those attached to each of the relevant offices. These interviews we supplemented with full life-history interviews of the parents of illegitimate children, to test the official assertions and gain some feeling for how the process appeared to applicants to each department. Similarly, we approached the Black Sash Advice Office for their experience as a private agency dealing with clients who were applying to the state departments for grants (mainly the CPA), and they were most helpful, giving us lengthy interviews and access to their case files.

For our interviews, we used interview schedules as guides to questions for investigation rather than attempts to obtain answers for tabulations, since the aim of the exercise was to discover the actual situation rather than the rules as set out on paper. As most officials and social workers were very wary of being identified, interviews were usually granted on condition of anonymity.

Types of Grants and Social Relief

The basic state maintenance grant is divided into two portions: a 'parents allowance' and a 'children's allowance'. As the terminology suggests, one portion of the grants is thus intended for the support of the parent, and the other portion for child support. The various Houses of Parliament and the CPA use means tests with different sliding scales to calculate awards, with the House of Assembly awarding

most and the CPA least.

The maintenance grant is awarded by the House of Assembly, in principle, until the child reaches 18. After the child reaches the age of 16, the mother must submit proof annually that the child is still at school. (The grant is stopped when the child leaves school even if this is before s/he turns 18.) School attendance is proved by a form signed by the school principal. The grant can be extended until the child is 21 if s/he is still at school or at university. The CPA will award a grant until a child is 16, and generally the child must be at school. Exceptions to this rule are children who are unable to attend school due to a permanent mental or physical disability or a temporary illness. This must be verified by a certificate issued by the Medical Officer of Health, which is in accordance with practice at the other departments. The CPA also provides for cases where scholars cannot be placed in a school due to lack of space and a certificate to this effect is received from the school principle. However, a Black Sash worker with long experience of such work told us that she had never heard of the CPA stopping a grant for a child under 16, even when the child was not in school. The grant can be extended until the child is 18 provided that the child remains at school and is progressing satisfactorily. This is proved by means of a report from the principal. Unsatisfactory progress was illustrated by the official interviewed by means of the extreme example of a scholar aged 18 and still in Sub B. The officials of the Houses of Representatives and of Delegates told us that the grant would be paid until the child was 18, but that this could be extended until s/he was 21 provided that s/he was still at school (but not university). Again, this had to be certified by a principal's report. Children who left school before they reached 18 would forfeit their grant.

In all the above cases, the children's allowance is awarded for only one 'illegitimate child'. All officials except those of the House of Assembly stressed that this must be the 'first-born' illegitimate child of the woman concerned, although, if well motivated by a social worker, or if the second illegitimate child were conceived in circumstances such as rape, the second illegitimate child might qualify for a grant once the eldest child became too old. In the case of the House of Assembly, however, women were encouraged to apply for the grant for the *youngest* illegitimate child, to avoid the inconvenience of having to reapply for a grant when the eldest illegitimate child ceased to qualify on the grounds of age.

The parent's portion of the maintenance grant is a state grant in the same category as pensions or disability grants (and is awarded at the same rate). For this reason, those people already receiving a state pension or disability grant will not qualify for the parent's portion of the maintenance grant, although they may still qualify for the children's allowance, since no one person can be awarded two state grants *for him- or herself personally*. There are other circumstances where the mother may get only a children's allowance and not the parent's allowance (for example, if she is living with a man who is not the father of the child.)

In addition to the basic maintenance grants mentioned above, the House of Representatives routinely awards a very small amount (R7,50 per month at the time of our interviews) as a 'single allowance', but the precise purpose of this grant was unclear. We were told that it was awarded to any single parent, whether this be a widow[er], divorcee, an abandoned spouse, or someone who had never married. One of the clerks told us that the grant was

awarded 'because she is alone'. The officials from the Houses of Delegates and Assembly interviewed on this assured us that they had never heard of such a grant, and the CPA does not award it either.

To assess the level of assistance offered, we compared it with the poverty datum line set by the Institute for Planning Research.[11] This showed the amounts awarded to be very near or - depending on the age of the children - below the minimum subsistence amounts necessary for Cape Town. Grants do not vary in relation to the ages of the children, but estimates of the cost of their upkeep do.[12]

The only form of state assistance that does take cognizance of children's ages (to a very limited extent - only whether the child is under or over the age of 10) is 'social relief', which is awarded only to those defined as indigent. The House of Assembly social worker whom we interviewed explained that the aim was to make the women self-reliant and not dependent on welfare. If a woman were truly desperate, however, and still waiting for her grant to come through, they might step in with social assistance. A woman could get a food voucher for an amount dictated by the age of her child(ren), redeemable at a particular branch of a particular supermarket. If specially motivated and approved by a senior official in the House of Assembly Welfare

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[11] J Potgieter *The Household Subsistence Level in the Major Urban Centres of the Republic of South Africa: September 1991* (1991).

[12] For details of amounts of grants, compared with the poverty datum line, see, S Burman and A Barrett 'State Maintenance Grants and the Illegitimate' Report for the Black Sash June 1992 (Socio-Legal Unit, University of Cape Town).

Services, other forms of assistance could be arranged, such as rent or the childrens' train fare to school. Any amount given as social assistance would be subtracted from the maintenance grant once it finally came through. Usually, a food voucher would be given only once, but in exceptional cases the social worker might recommend that it be repeated.

The CPA might arrange for a woman to get a food parcel which could be collected at either of two specified shops in the African townships. This makes collection expensive and inconvenient for those living elsewhere, especially in the most distant township of Khayelitsha, which currently contains between 300,000 and 500,000 residents, many among the poorest in Cape Town. Such food parcels are awarded only under exceptional circumstances. A social worker must motivate for the award, and is likely to do this only if payment of the grant is delayed for some reason. Formerly, food parcels were awarded as a matter of course for people awaiting grants, but this was in the days when grants could take eight or nine months to come through. We were told that automatic provision of parcels was no longer necessary now that the applications were, according to the CPA officials, processed so quickly.

The amounts of House of Representatives food vouchers are similarly determined and are redeemable at specified supermarkets. Again, these vouchers are awarded only in 'very exceptional circumstances', defined for us by one official as 'like when there is no food in the house.' One pensions officer told us that if a woman were truly desperate, the officials would first refer her to a private charity. If she failed to obtain any assistance there, she would have to return to the House of Representatives'

offices and *then* they would give the above assistance. Another clerk interviewed said that if there were a very urgent situation (for example, if the woman was about to be evicted from her home, or if Christmas was approaching), they might be able to issue her with a maintenance cheque locally (that is, in the local office rather than from the Treasury in Pretoria). She would have to pay back the amount once her grant finally came through. A food voucher is a one-off grant for one week. If the person needed another, she would have to reapply. It was explained to us that this was to avoid creating a culture of dependency and to force applicants to look for work rather than depend on the state to support them, although we were also told that there was considerable debate within the department about this. Normally there is no consultation with social workers when an initial food voucher is awarded, but a social worker will become involved in the case if assistance is continued, as the person is then regarded as so poor as to warrant investigation by the welfare authorities.

The House of Delegates, while determining the amounts of food vouchers on similar criteria, had vouchers of higher value. We were informed that this amount would *not* be deducted from the maintenance grant once it arrived. The vouchers are redeemable from two particular shops in two Cape Town suburbs formerly designated as Indian Group Areas, which can be inconvenient for those who do not live in these areas. Vouchers are awarded only if the mother is 'really desperate' and payment of the maintenance grant has been delayed. The department will investigate how desperate she really is by visiting her at home, and possibly by talking to the neighbours.

ELIGIBILITY FOR A GRANT

1 *Who may apply for a grant*

An interviewee from the House of Assembly emphasized that one reason for the existence of the state maintenance grants is to enable parents to care for their own children, as opposed to placing the child in a home or foster care, or having the child adopted. For this reason, only the parents of the child may apply for a grant. The grants had, in her experience, been awarded only to mothers, but a father could also qualify in certain circumstances: if it had been medically proved that he was unable to work, was receiving a state disability grant or pension, and had been deserted by his wife for longer than three months or was divorced or widowed and had been awarded custody of the children. Because he was already receiving a state grant, he would then qualify only for the children's portion of the allowance. Other relatives of the child (such as aunts or grandmothers) do not qualify for a maintenance grant, but may qualify for a foster care grant if they have officially been declared a foster parent by the children's court.

The information from the House of Delegates and House of Representatives was consistent with this. The clerk at the House of Delegates had never had a father applying for maintenance and the House of Representatives officials said that it happened very rarely.

A CPA clerk also informed us that it was extremely rare for fathers to be awarded state maintenance. They could qualify only if the mother of the child was dead or had disappeared and was untraceable, *and* the father was receiving a pension or had been declared unfit to work and was receiving a state disablility grant (when, again, he

would qualify for only the children's portion of the allowance). Grandmothers can also qualify under certain circumstances. This appeared to be exceptional - none of the other departments awarded state maintenance grants to non-parents under any circumstances. (Such a provision is in fact essential, given child-care realities in the African community: most African women pensioners provide child care for their own and others' descendants.)[13] The grandmother would be eligible for a grant if the children's mother were dead, had disappeared (and the police had issued a certificate of non-traceability) or was institutionalized in a mental hospital, chronic sick ward, or prison. Documentary proof would have to be provided, and only the children's portion of the grant would be paid.

The CPA distinguishes between maternal and paternal grandmothers. In the case of children born to unmarried mothers, the maternal grandmother may apply for a grant subject to the same limitations that apply to unmarried mothers - that is, only one child will qualify. The child's mother must have been over the age of 18 at the time of the baby's birth. (For the situation where she is aged less than 18, see section 3 below.) In the case of legitimate children, the paternal grandmothers can apply for the grant. The CPA informed us in writing that these provisions are based on customary practices, according to which children born to unmarried mothers form part of the maternal family, while children born within marriage belong to the paternal family. However, research by the

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[13] S Burman 'Law versus Reality: The Interaction of Community Obligations to and by the Black Elderly in South Africa' in J Eekelaar and D Pearl (eds) *An Aging World: Dilemmas and Challenges for Law and Social Policy* (1989).

Socio-Legal Unit and others (eg Preston-Whyte and Louw),[14] has shown that nowadays the exigencies of urbanization sometimes lead to illegitimate children being cared for by paternal relatives, rendering this ruling out of step with current realities.

2 *Must the baby be living with the mother?*

The House of Assembly is very reluctant to award a grant to a mother whose baby is not with her, because the aim of the grant is to enable the mother to care for the child (but our information would seem to imply that the mother may still qualify for the grant even if the child is not with her under certain circumstances, such as a temporary absence while the mother is on holiday).

The CPA said that the mother will not be awarded any maintenance if the child is not living with her - but as the CPA, unlike the Houses of Parliament, will award a grant to other custodians of the child, the *child* in fact qualifies for the grant irrespective of whether or not his/her mother lives with him/her.

The House of Representatives was very reluctant to award maintenance to a mother who was not living with her child, but might make exceptions in some cases: for example, if the mother were doing live-in domestic work and was not allowed to keep the child with her. In such cases a social worker would have to investigate the circumstances and motivate for the grant. It is still extremely rare for grants to be awarded to non-custodian mothers. One of the

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[14] E Preston-Whyte and J Louw 'The End of Childhood: An Anthropological Vignette' in S Burman and P Reynolds (eds) *Growing Up in a Divided Society: The Contexts of Childhood in South Africa (1986).*

respondents said that women sometimes cite shortage of housing as the reason for not having the child with them, but this is not an acceptable reason.

A clerk from the House of Delegates told us that the mother *must* have custody in order to qualify, and if the department discovers the child is not living with her mother, the grant is stopped.

3 *Is it important with whom the mother lives?*

If the mother is still very young and in fact living with her own parents, how will this affect her chances of getting a grant? The House of Assembly said it would not bar her from receiving a grant but a social worker would probably investigate the circumstances. According to the facts of the particular case, the mother might qualify only for the children's portion of the grant but not for the parent's portion (the logic being that the mother needs no state support because her own parents are supporting her). A departmental social worker told of a case where a mother was receiving a state maintenance grant for her child and this child had herself now had a baby and successfully applied for a grant for the baby.

The CPA interviewee said that the mother could get a grant if still living with her own parents and that two-generational grants were possible. However, where the mother is under the age of 18, the mother's guardian automatically becomes the grandchild's guardian. A grandmother may apply for a grant in her capacity as guardian, subject to the other provisions governing maintenance grants. In such cases, the rulings about illegitimacy do not apply; for example, grants can be awarded for up to four children.

The House of Representatives gave us similar answers to the House of Assembly. One of the respondents further explained that if the mother were very young, a social worker would always investigate the circumstances to assess whether the mother was, in fact, capable of caring for the child. If the mother were deemed to be capable, there was no reason why she should not qualify for a grant. If she was found incapable, it would be better to remove the child and have it placed in foster care.

At the House of Delegates we were told that it was inconsequential whether the mother lived with her own parents; she would qualify for the grant as long as she had custody of the child (and other requirements were met).

If the mother is living with a man who is not the father of the child, interviewees from all three Houses said that she would still qualify for the children's portion of the maintenance grant because the man with whom she lived was not held responsible for the upkeep of her children. She would not be able to get the parent's portion, however, as it would be presumed that the man supported her. When we asked whether this presumption could be rebutted, we was told it could not. If the man is not in fact supporting the mother, we were told that 'her best bet is to leave'. The couple must, however, be living together as husband and wife: a 'one-night-stand' does *not* raise the presumption that the man is supporting the woman.

The CPA informed us that it was completely irrelevant whether or not the mother lived with a man.

4 ***Inability to get private maintenance***

To qualify for a state maintenance grant, the mother must

be unable to get private maintenance from the father of the child, or the maintenance award must be very low. Fathers have a legal duty to support their children, irrespective of whether or not they are legitimate. The following aspects of private maintenance affect whether a state grant may be obtained.

(a) Laying a charge

The House of Representatives explained that before applying for state maintenance, the mother must lay a charge of non-support against the father of the child. The officials will not even *interview* the woman until she can prove that she has laid this charge. She can then immediately apply for the state maintenance grant, which can be awarded subject to cancellation should a private maintenance order which exceeds the means test be made. If the father has been sentenced to at least three months in prison (and is therefore self-evidently unable to earn enough to be able to support the children), the mother will automatically qualify for a grant (provided she qualifies in other respects). The grant stops when he is released, but not immediately: he is given one month's grace to find employment and the grant is continued for this period. An unmarried mother, where the father of the children has died, can get a maintenance grant if the relatives of the deceased sign an affidavit saying that he was the father of the child.

Information from the House of Delegates was very similar, except that the grant could only be processed (but not paid) before the non-support charge was finalised and the magistrate had made an order. Again, the woman can get an order if the man has been sent to prison for at least three months.

The House of Assembly rules were essentially the same. Processing of the grant could commence once the mother had laid a charge of non-support. The grant would not be paid until the case had been finalised, which could take between three and six months. This did not normally lead to delay, as the grant could still be processed meanwhile and, in any case, such grants often took between three and six months to be paid. The mother would qualify for a grant if the father had been sent to prison on a sentence of at least three months. The grant stopped at the end of the month he was released (so the leeway he had in which to find a job could vary).

At the CPA it appeared that the non-support charge and ensuing case had to be finalized before the mother could get a maintenance grant. The application could not be processed in the meantime.

(b) Tracing the father

Where the father had disappeared, we sought to discover what proof was required that he was untraceable.

At the department of the House of Assembly, a woman will qualify for a grant if the child's father has disappeared and been missing for at least three months. (It is not necessary to provide a police report that they have looked for the father and been unable to find him.) The woman will, however, have to produce affidavits from herself, friends, and family to this effect, and take these to the Maintenance Court Office, which will certify that the affidavits are in order and that the father cannot be traced.

The CPA requires that the woman produces a card from the police certifying that they have looked for the

father and that he is untraceable. The respondent was unsure how long the police would look for the father before issuing the card, but thought it would be about four months.

The House of Representatives respondent said that the woman must report the father to the police if he disappears. One informant said that he thought the police spent only a week or two looking for the father before declaring him untraceable. He drew this conclusion from the fact that the women who were told to ask the police to look for their husbands usually returned with the necessary certificate within a month. If the father is deemed untraceable, the woman will qualify for a grant. The department employs some people whose job it is to investigate applicants: they will always investigate cases of untracable fathers, by visiting the applicant at home. (Women are liable to be investigated any time while receiving grants.)

At the House of Delegates we were told that proving that the father is untraceable can take three months or more. The woman needs documentary proof of non-traceability before the grant can be awarded. A social worker will also investigate cases of this nature, and the department similarly has investigators who may investigate the situation, for example by 'staking out' the house to see who comes to visit, or asking the neighbours about the family's circumstances.

(c) Cases where the father is unknown

One of the unmarried mothers we interviewed anticipated the problems she was likely to have in wringing maintenance from the child's father, and therefore put a prepared plan into action. She registered the baby immediately so that she

would be able to apply for a state grant, wrote 'father unknown' on the birth certificate, and lied to the clerk at the Welfare office, saying she did not know who the father was. She told us that the clerk realized that she was lying, but decided to turn a blind eye to it. Apparently the grant arrived very quickly - within two weeks, which she claimed was 'unheard of'. When we asked the maintenance officers what would happen if a woman told them the father was unknown, they were all extremely dubious about whether the woman would be believed or awarded a grant.

The House of Assembly (where our interviewee had applied), proved to be the most trusting. The woman would have to sign an affidavit that the father was unknown, and the office would check the child's birth certificate. A social worker would also probably have to investigate the circumstances.

The CPA, in contrast, was adamant that a woman who refused to supply a name could never qualify for a grant, the implication being that if there were only one or two candidates, she should be able to discover which was responsible. If there were too many, or if she had absolutely no idea of who the father was, it appeared that there would be no grant for her.

At the House of Representatives it was emphasized that the woman *must* always lay a charge of non-support against the father: that is, grants are awarded only where it can be shown that it is impossible to get private maintenance. One respondent said that if the woman refused to supply a name 'then we can't help her'. One mentioned that it was not unusual for the mother to be reluctant to identify the father where he was a married man (in order to protect him) but that this was not acceptable.

Sometimes the woman would relent and give a name as soon as it was clear that she would not get a grant without doing so. Sometimes the officials had to question the woman rigorously to try to make her divulge a name. We were told women often tried to circumvent this: for example, by saying that the father was a man she had met in a night club, that he was in Cape Town only on holiday and she did not know his name or where he came from - but the police would still take a description of the man and ask for descriptions of the people he was with, his car, and other details. The officials would probably make exceptions if the child had been conceived as a result of rape, or where the mother was mentally handicapped. In the latter case, they would require an affidavit from the guardian of the mentally handicapped applicant, certifying that the father's identity was unknown.

The clerk from the House of Delegates had never had a case where a woman claimed not to know who the father was. She supposed that social workers would have to investigate the situation and the officials would then act on the social worker's recommendations.

(d) Is it possible to get both private and state maintenance?

The answer appears to be yes. All four state welfare departments will give state maintenance even where private maintenance is being paid, if the private maintenance order is for a very low amount. The woman must furnish proof of the amount of the private maintenance order, and this will be considered to be part of her means, to be taken into account when deciding on eligibility according to the means test.

5 *Means test*

All four departments applied a complicated formula to ascertain whether the woman would qualify for a grant (and how much would be awarded) relative to her means. 'Means' included most income which the woman received. There was a great deal of confusion in the answers we received to questions about the test, mostly because the final amounts were usually calculated by someone other that the clerks we interviewed, who did not always have information about how it was done. However, it is clear that the means test limits are very low and this makes it extremely difficult to qualify for state assistance. On the other hand, in all cases only the mother's means are considered, so if a young mother is still living at home and being supported by her parents, the parents' means will not be considered even if they are, in fact, supporting the baby.[15]

6 *Citizenship*

The welfare departments of the three Houses said that the woman must in principle be a South African citizen in order to qualify for a welfare grant. A House of Representatives interviewee told us that foreign citizens must first visit their embassies to see if their own governments could supply them with a grant. If this were not possible, they might qualify for a South African grant as long as they were permanently resident in South Africa. However, the information we received was not entirely consistent. Other respondents from the three Houses told us that women

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[15] For greater detail on the means test, see Burman and Barratt op cit note 12.

qualified as long as they were South African citizens or permanently resident in South Africa. At the House of Delegates we were told that, to qualify for old-age pensions, applicants must have been permanently resident in South Africa for at least five years, but that in the case of maintenance grants there was no time period.

Given the so-called TBVC states,[16] citizenship and residence are most relevant when considering the position of Africans. The respondent at the CPA seemed rather confused on this point (although it must be added that the current situation regarding legislation on the removal of South African citizenship and its subsequent restoration to certain citizens of the TBVC states in 1986 is extremely complicated). Our respondent was also concerned that some women might be receiving grants from both the South African state and one of the TBVC administrations (and a Black Sash worker confirmed that this does indeed happen). He had recently met with a Transkei official, in order to work out how to do a computer check of both jurisdictions' lists so as to prevent this in future. The department hoped to do the same with all TBVC states. In terms of the Social Assistance Act 59 of 1992, social grants will be paid only to South African citizens, but this does not exclude citizens of TBVC states.

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[16] When these states were declared independent by South Africa, their 'citizens' automatically lost their South African citizenship. The Restoration of South African Citizenship Act 73 of 1986 restored South African citizenship to a small number of these people under a complex set of provisions.

7 *Are grants dependent on contraception being used?*

One of the motivations given for the reluctance of welfare departments to give a grant for more than one illegitimate child was that they were trying to discourage women from having children outside marriage. However, the House of Representatives was the only department which attempted to link this policy to any form of family planning education. Unmarried mothers who apply for a grant at the department's Wynberg office must attend a lecture on contraception given by a social worker before the grant can be awarded. All maintenance grant applicants at the department's other office in Athlone have to attend a series of lectures on various topics, including contraception. None of the departments insisted that the women actually had to use contraception in order to qualify for a grant.

The Houses of Assembly and Delegates and the CPA do not link contraception and the award of a grant.

8 *Must the mother be employed in order to qualify for a grant?*

At the House of Representatives we were told that a woman could get a grant if not employed - that is, the department *does* take cognizance of the high unemployment rate. However, 'young women' who are fit for work must show that they are at least looking for work. Asked about the definition of 'young', the officials were vague, with one replying that the woman must be under 30, another saying under 35, and a third saying under 40. A woman with a sick child (as proved by a certificate from the district surgeon) would be exempted from looking for work. So, apparently, would a woman who was still breast-feeding. Basically, the officials told us, they try to be reasonable

about the whole issue. However, when we asked an official what would happen if a woman were unable to find someone suitable to look after her children, he shrugged - if she was young enough to be expected to work, she must do so; lack of child care was not an acceptable excuse.

If a woman falls into the category of those who are expected by the House of Representatives to look for work, she must register at the Department of Manpower in Cape Town, where she will be given a form to take back to the House of Representatives welfare offices (to prove that she has actually registered). The Department of Manpower will also try to find her a job. If it succeeds, she *must* take it, or she will lose her grant: refusal of a job is thought to prove that she is lazy and undeserving. She is also given a form to take round to potential employers, who sign or stamp the form to show that she has requested employment but that they have been unable to accomodate her. If she obtains employment, she may still qualify for a grant, provided that her earnings do not exceed the means test. There is a prescribed form on which employers indicate how much she earns.

The House of Delegates clerk, when asked whether a woman must be employed in order to qualify for a grant, pointed out that the means test was so low that it was unlikely that any employed person would pass it. Recipients of the grants must be looking for work, however, and the procedure for this is the same as for the House of Representatives. We were told that the officials tried to point out to the woman that it was better to work and not get the grant than to get the grant but no salary, as the grant was so low.

The House of Assembly applies similar guidelines.

The woman must register with the Department of Manpower and accept any job they may find for her. In addition, she must take her work-seeking card around to various potential employers to sign, and accept any job they are prepared to give her. In principle, she is supposed to go out every day to look for work, but in certain circumstances the welfare department might be more lenient -for example, if the mother is breast-feeding a small baby. Every three months the mother must return the completed cards to the grants office, which sends them to the head office. If the woman's work-seeking performance is not satisfactory, the portion of the grant awarded to the mother is cancelled, but she may still qualify for the children's allowance. A social worker will probably investigate the circumstances. The policy on looking for work is strict. A woman may be exempted if she is disabled, but lack of child-care facilities is not accepted as an excuse. A clerk told us of a case where a woman with seven children was still expected to go out looking for work. As her eldest child was aged 19, this child was expected to care for the younger children. Work in the informal sector may also be regarded as acceptable, such as providing unregistered day-care, or doing others' sewing at home. If the woman does manage to find a job, she must notify the office immediately. They will stop the grant if her salary exceeds the means test. Apparently, many woman fail to report that they have found a job, but the department often discovers the truth later. This is a serious matter, and the woman will have to repay everything she received illegally.

A CPA respondent was rather unsure of policy on this issue. He seemed to think that the woman would have to be employed before she would qualify for the *parent's* portion of the grant as, he told us, the purpose of the parent's portion was to enable the woman to pay for someone to look after her child while she was at work. The

CPA does not take the unemployment rate into account (in 1990 it was estimated to be 60 per cent for African women in urban African townships[17] and will not award the parent's portion if the mother is not working, but she can get the children's allowance regardless of whether she is working or not (provided, of course, that she passes the means test). However, the confusion prevailing in the CPA is illustrated by a Black Sash Advice Office case. In October 1991 a woman's grant was suddenly reduced from R 290 to R 140 per month. When she queried the reason, the officials told her she was no longer being given a parent's allowance. When they were asked why, she was told that the parent's allowance is awarded for only one year. In fact, it appears that an unemployed woman will receive only a year's grace in which to find a job. During this period she must look for work or have found some way of supporting herself in the informal sector. In the latter case, her estimated income is taken into account in the means test without documentary proof being required.

In all cases, the earnings of an employed woman are proved by her employer completing a prescribed form. A House of Assembly clerk told us that informal sector earnings are shown by a submission of accounts.

9 *Definitions*

(a) Defining illegitimacy

As indicated above, 'illegitimate' children are at a disadvantage when it comes to receiving grants. We asked

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[17] Budlender op cit note 5.

the relevent officials what definitions they used with regard to illegitimacy.

This was simple in the case of the House of Assembly welfare department: if the applicant had not had a legal wedding performed by a registered marriage officer, her children would be regarded as illegitimate. (The marriage would be proved by the marriage certificate and paternity verified by the child's birth certificate, if necessary.)

The welfare departments of the Houses of Representatives and Delegates had many applicants who had married by religious law (Islamic or Hindu) but had not also had a civil ceremony. Technically these children are illegitimate according to South African civil law. However, officials in these two Houses said that for welfare purposes the children of such marriages were regarded as legitimate and up to four such children would therefore qualify for a grant (rather than only the first, as would have been the case had they been classified as illegitimate). The marriage is proved by a certificate signed by the relevant religious leader. Only children born outside any form of marriage at all would be regarded as 'illegitimate'. It was pointed out that in marriages by Muslim rites only, the wife and children use the father's surname.

An official interviewed at the CPA had never had to deal with applicants married in terms of Islamic or Hindu law, but some of their applicants had married by only customary law and not civil law. He did not know whether children from a customary union were regarded as legitimate for the purposes of maintenance grants, but told us that a grant would probably be given for only one child of a customary union. However, the department later informed us in writing that the children of customary unions are in

fact regarded as legitimate, provided that the existence of the union is proved. According to the CPA, this may be done by means of a statement signed by the couple concerned, or by relatives, or any other two people who witnessed the marriage ceremony itself, or by any two people who are willing to state that the marriage actually took place. However, in practice Black Sash workers have found that customary law marriages are very difficult to prove, which frequently gives rise to problems.

(b) Defining children and families

It is clear that the officials are operating with implicit definitions of 'children' and 'families', in addition to those that appear in the regulations, and that these differ for different population groups. For example, for the Houses of Assembly, Representatives, and Delegates, grants will continue until the child reaches the age of 18, although proof of school attendance beyond the age of 16 may be called for. These grants may be extended until the age of 21, provided the child is still studying. In contrast, the CPA grants stop automatically when the child reaches the age of 16, and even before this age if the child leaves school. The grant can be extended until the child is 18, provided that school attendance and satisfactory progress are proved. Thus, whether employed or not (and African unemployment is by far the highest in Cape Town), African children are treated as adults and expected to be self-supporting from at least two years earlier than children of other population groups.[18]

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[18] See also S Burman 'Defining Children' in E Boonzaier and J Sharp (eds) *South African Keywords: The Uses and Abuses of Political Concepts* (1988).

Similarly, there are different implicit definitions of family types and different role models operative in each department, though most appear to be more appropriate and do less violence to principles of equality than is the case with 'children'. First, each department apparently operates with different definitions of what shall count as a marriage, so that, while all recognize a state marriage as a marriage, the departments of the Houses of Representatives and Delegates also recognize Muslim and Hindu marriages, and the CPA recognizes customary unions for the purposes of legitimacy.

Second, while the departments of the three Houses of Parliament operate on the basis that only a parent can obtain a maintenance grant for a child, the CPA allows a grant to grandmothers who care for the child, thus allowing for a reality in which the three-generational extended family continues to play a crucial role. It is noteworthy that this has not been allowed for by either the Houses of Representatives or Delegates, despite the fact that their constituencies have histories of different forms of extended families that are still operative in many cases.

Third, the limitations on who may obtain maintenance grants imply views of how the family functions, which differ between departments. Those of the three Houses of Parliament have a far stronger emphasis on the role of the mother as the giver of child care, with the grant specifically to enable her to care for the child rather than place it in an institution or foster care. She also receives a parent's grant for this purpose. By comparison, the CPA places far less emphasis on care by the mother, allowing the grant to grandmothers who are caring for the child, whether or not the mother is present in the household. Moreover, should an African mother fail to obtain a job

within a year, her grant will stop anyway, forcing her to take work wherever it is obtainable, even away from home, in order to survive. The assumption, presumably, is that somebody else will be available for child care if necessary. In contrast, women served by the other departments will retain their grants at least as long as they fail to obtain a job (although there is a strong emphasis on them accepting any local jobs they are offered). It is also noteworthy that fathers are assumed by all four departments to be breadwinners. They can never receive a parent's grant and can receive a children's grant only in exceptional circumstances, as they are normally assumed to be earning enough to support the family.

(c) Race classification

As mentioned above, in mid-1991 it was announced that, with the passing of the Population Registration Act Repeal Act 114 of 1991, new babies would no longer be classified and assigned to 'population groups'. Their parents and older siblings, however, would retain their classifications. This raises interesting questions for a welfare service where people in different 'groups' have to apply to different offices, conform to slightly different requirements, and are awarded grants of differing value. One of the questions asked of interviewees, therefore, was whose race determines to which department a woman must apply for a grant.

The welfare departments of the Houses of Representatives and Delegates had encountered problems with 'racial' classification before 1991. We were told of a case, for example, where one of the parents was classified as Indian and the other as coloured. Their four children were classified as follows : 2 Indian, 1 Malay, and 1

coloured. Where the mother and child are classified differently, each would have to go to the appropriate welfare office (that is, if the baby was classified as Indian, the House of Delegates would pay the children's allowance, but if the mother was classified as coloured, the House of Representatives would pay the parent's allowance. Where two children in one family were classified differently, as in the above example, each would have to go to the appropriate office. The House of Delegates can give welfare grants only to those who are classified as Indian.) Even more complicated cases occurred where the racial classification was unclear. One clerk had had a case where the mother of the children had been classified as 'Malay' and the father as 'Indian'. The mother then applied for a maintenance grant for herself and the children. One of the children had been classified as 'mixed'. The applicant first approached the Department of Indian Affairs, who said they were unable to help as neither the child nor the mother was classified as Indian, and sent the family to the office for those classified as coloured. However, as the child was not classified as 'coloured' either, the clerk telephoned the Department of Home Affairs to discover what kind of race 'mixed' was. Eventually, after much administrative wrangling, he was authorised to handle the case. Such problems were made even more complicated by the scrapping of the Group Areas Act, which resulted in an increasing number of people who were classified as one 'race' going to live in the geographical vicinity of a department supposedly serving another 'racial group', necessitating long trips to the 'appropriate' office.

The announcement that babies are now not to be classified by race is the ultimate complication for such a system. At some of the departments the officials seemed utterly perplexed by the idea - we were told that everyone

has a race, whether officially classified or not. It would simply be a matter of deciding what race the child belonged to.

A further complication of a rather different order for those trying to implement the tricameral system is that the tricameral structures have been subverted already for bureaucratic reasons. The fact that Cape Town's Indian population is so small has meant that the expense of setting up a whole House of Delegates welfare office in the Cape cannot be justified. The head office is in Durban but it was felt that the junior clerks staffing the Cape Town office needed some supervision and support. They are thus answerable to officials from the House of Representatives - that is, their immediate superiors are from a different department. The opposite scenario occurs in Durban, where senior House of Delegates officials supervise junior House of Representatives welfare staff.

PROCEDURE

1 ***Office structures and application***

In terms of the tricameral system, welfare is an 'own affair' and those classified as white, coloured or Indian must therefore approach the House of Assembly, Representatives or Delegates as appropriate.

When applying for a grant at the various offices of the House of Representatives welfare department, people do not usually have to wait very long, though sometimes it may take an hour or two before they are interviewed. This is done by the senior clerks, who assist the applicants in completing the application form, which is in fact an affidavit in all departments, and must therefore be witnessed by a

commissioner of oaths. The clerks also check that the applicant has all the required documentation. One of the respondents remarked that the maintenance grant is the most difficult of all to administer because so much documentation is necessary. The woman must supply her birth certificate or ID book, her marriage certificate (if applicable), her decree of divorce (if applicable), her husband's death certificate (if applicable), the birth certificates or ID books of *all* her children (including those who will not be eligible for a grant), proof that her children are attending school, proof that she has registered with the Department of Manpower, proof of her earnings if she is employed, proof that she has laid a charge of non-support (which is almost invariably applicable), proof of any maintenance order that has been awarded by the maintenance court, proof that she is a South African citizen or permanant resident, details of any immovable property or other assets she may own, as well as any other documentation which may be required according to the particular circumstances of the case - for example, a woman applying for state maintenance on the basis that her husband has been sent to prison will have to furnish proof of his sentence. Under certain circumstances she may also require a social worker's report. Understandably, unless a woman telephones first to check requirements, she will probably not have all the above on her first visit - which is why the Wynberg office receptionist will check before the woman wastes her time waiting to see a clerk, only to be told to go away and get her paper-work in order. However, the clerks we spoke to felt that the requirement of all this documentation did not lead to much delay in the application process, as it was all fairly easy to obtain. Women who were sent away and told to get their documentation sorted out usually managed to return with it within a week.

After the forms are completed, the women are sent to the District Pensions Officer. The District Pensions Officer is responsible for seeing that the forms are correctly filled in (and he also has to see the applicant so that she can swear to the contents of her affidavit, since the clerks there are not commissioners of oaths). Then the form goes to the Assessment Section, where the final decision is made: the Pretoria office which actually pays out the money is merely informed of the amount due to a particular individual. The Pretoria office then authorizes the payment and tells the Post Office branch chosen by the woman to pay her a certain sum of money each month. The money usually comes through within two to three months of application, but delays may occur if there were any problems with the woman's form or accompanying documentation. The grants are backdated to the date of application.

The House of Delegates is served by three offices in the Cape Town area, (two open part-time), and the women are interviewed by one of two senior clerks, who rotate round the offices. The clerks send the completed forms directly to Durban for processing. Given the small number of Indians in Cape Town, the House of Delegates has decided to move all this administrative work to their head office in Durban.

The required documentation is the same as for those applying to the House of Representatives. The clerk at the House of Delegates estimated that it takes about three months for a grant to come through, from the date of application, but there may be delays - for example, if the Durban officials require more information from the Cape Town office, which may need to call in the woman to obtain it. To some extent, the length of the delay depends on the woman herself, and on how long she takes to collect the

required information. The grants are backdated to the date of application.

The House of Assembly head office for welfare was in Pretoria until the end of 1991, when the department was decentralized. There are three clerks ink Cape Town to interview applicants, who usually receive immediate attention. We were told that the interview itself can be quite difficult for all concerned, since people are often desperate and react badly to being told that the clerks cannot help them. One clerk told us that she had even been threatened with a knife. Again, extensive documentation is required - the same documentation as that listed above. The completed application form is then sent to the regional office in Bellville for a final decision. Grants are backdated to the date of application.

People who are not represented in the tri-cameral administrative structures have to approach their local provincial authority for welfare grants, and Africans living in the Cape thus deal with the Cape Provincial Administration.[19] This body has been administering state grants since 1989. Previously, they were handled by the Department of Home Affairs, which, though open to considerable criticism, is regarded by the Black Sash as having done a more efficient job of administering pensions than the CPA. Applicants are expected to approach the 'counter-service' in the area where they live. Each of these services is open one day per week, according to the CPA official 'until everyone has been attended to' - usually until 3 or 4 pm. The clerk we interviewed in this regard claimed

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[19] Those living in the TBVC states or in 'self-governing' states must apply to the welfare departments of those states.

that they have even been known to stay open until 8 at night, but Black Sash workers cast doubt on this assertion, although they agreed that when the CPA first computerized there was such chaos that the offices were forced to stay open longer. Each counter service is staffed by six clerks who rotate (together) around the various townships. Each counter service handles about 400-1200 applications (for *all* kinds of grants) on the days on which they are open. Understandably, queues are long. It is worse during the first two weeks of the month, when some of the clerks are busy paying out grants and pensions, leaving fewer officials to interview new applicants. The clerk at the CPA whom we interviewed on this matter said that people were beginning to realise that it was better to apply towards the end of the month.

Applicants for maintenance grants are required to bring large amounts of documentation. It is preferable that they have a social worker's report, but not essential. They should also have a police report saying that the father of the children is untraceable (where applicable), as well as all the other documentation listed earlier as being necessary for a House of Representatives application. The clerk interviewed said that the reason the birth certificate/ID book of the child was required was that the department had discovered that some women who would come and apply for a grant for children A, B, and C. Later they would come back and apply for a grant for B, C, and D. When questioned about what had become of child A, they would look confused and say that they did not have a child by that name. A Black Sash worker said that it could be difficult to discover how many biological children a woman did, in fact, have, since when a Xhosa woman was questioned on the number of her children, Xhosa generational terminology would include those grandchildren for whom she was caring. The CPA

clerks' difficulties would seem to stem from this situation, which our own interviews of grandmothers and mothers confirmed, and relates also to the mobility of African children.[20]

If the women are missing any of the required documentation, they are sent away and told to bring it the following week. Previously, the clerks would occasionally allow a grant to go through to the Cape Town office without all the accompanying documentation, but this led to delays later in the procedure, as no grant could be awarded until all the documentation was submitted. They therefore now insist that all documentation is correct. This was also, we were told, a method of weeding out 'chancers'.

As pointed out above, obtaining the police report (of non-traceability) can be time-consuming, given that the police spend about four months looking for the father before certifying that he is untraceable. We were told by a CPA clerk that it would take between six weeks and two months for the grant to come through. According to the department, the decision on whether the grant should be awarded was usually made within a month of receipt of all the required documentation. After approval, payment information is placed on the computer and the first payment generated during the following month. Actual payment takes place the month after that: for example, a grant approved in April will be paid out in June. However, a very experienced Black Sash worker told us that these time periods run from date of *approval*, not date of application as elsewhere, and the former was the date to which the grant could be

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[20] See, for example, SJW Jones 'Children on the Move: Parenting, Mobility and Birth-Status among Migrants' in S Burman and E Preston-Whyte (eds) *Questionable Issue: Illegitimacy in South Africa* (1992).

back-dated. Black Sash experience was that payment of a grant three months after approval would rank as quite fast - more commonly it took about six months, a long time for a woman and child to survive on very little or no money.

Although the time it took to get a completely unproblematic grant (that is, all paper work up to standard, etc) was quicker now than in the past, there seemed to be more 'problem cases', which took a very long time to sort out. Our survey of the Black Sash files confirmed this.

Once the clerk has assisted the woman to fill in the form, he brings it back to the regional office, where it is checked to see that it contains all the required information, and then sent through to the head office in Cape Town, which approves the grants and authorizes payment.

2 *Payment*

Maintenance grants are paid out once a month. Women who receive grants through the Houses of Parliament have an option to have the money paid directly into their bank accounts or to collect it from the post office of their choice. Normally, personal collection is insisted upon, but in exceptional circumstances a woman can grant a power of attorney to someone else to collect the money on her behalf. This is most commonly arranged at the time of application. The officials warn her that this can be dangerous if her nominee is unscrupulous, and the woman will usually choose a relative. If the applicant does not follow the above procedure and merely sends someone to collect the money, one respondent told us that the officials would send someone to investigate the circumstances as they would suspect that the reason she could not come herself was because she had found a job.

Women collecting from the CPA do not have the option of post office collection. This is because numbers are apparently too great. (However, while this may be true of pensions, it is not true of maintenance grants. Central Statistical Services statistics (1990: 6.4) reveal that *fewer* grants - in absolute numbers - are paid to African applicants than to other groups.) African women can have the money paid directly into their bank accounts, but we were told that this was rarely done, because there were no banks in the townships. Women are also discouraged by the officials from having the money paid into their accounts because, according to a respondent, women sometimes withdraw all the money from their accounts, which are then closed, making payment of the following month's grant impossible. The alternative is that they (and all other recipients of state grants) must collect their money at the pay-out point. These are specific places in the townships where grants are paid once a month. The woman must ensure that she goes to the correct pay-out point, as her money will not be waiting for her anywhere else. According to Black Sash workers, the pay-outs are quite well organized, given the very large numbers involved, but problems can arise from the procedure that requires the payee to fingerprint their receipts before getting the money, since people may find when they reach the cashier that expected back-pay has not arrived but that they have already 'signed' the receipt. If the grant money is not awaiting the woman, she will be given a piece of paper to prove *she* was there, which can be important as officials often claim non-collection, and the money is then eventually returned to Pretoria.

Grants which are paid through the Post Office (that is, to payees of the three welfare departments of the Houses of Parliament) are kept for three months. If a woman fails to collect after this time, the pay-out vouchers are sent

back. Usually this results in her losing the money permanently, but if she can provide an adequate reason for non-collection, she will not forfeit it. In contrast, the CPA will keep a woman's grant money for six months. After this, her grant is cancelled and she will have to reapply. She will get the uncollected money only if she has a good reason for non-collection. One of the doubts raised by the pension's clerk interviewed was where exactly these women were for the six months when they failed to collect. He believed they were in the Transkei, collecting another grant there. For this reason, the department was thinking of reducing the grace period for non-collection to three months.

3 *Review of grants*

We were told that the House of Assembly reviews all its grants annually. The head office sends a list of all the grants it wants checked, and which specific aspects of each recipient's case should be checked. The officials at the local office then ask the woman concerned to come to see them. If she fails to do so, they block her grant. She usually comes in at this point, if not before. If, however, she does not appear and her money is blocked for three months or more, the grant is cancelled. She may reapply for it, and may even be able to get it again, if she has a good reason for her non-appearance.

The CPA also claimed to review grants annually, but said that due to computerisation problems they had not, in fact, reviewed any grants from the time they took over grants in 1989 until May 1991. It appears that in May 1991 the CPA suddenly realized that it had not been doing reviews, and decided that *all* grants, pensions, etc would have to be reviewed that month. They were therefore all cancelled and were supposed to be renewed. This resulted

in considerable administrative chaos, with some of the cases and files being lost during this time. According to the CPA, a woman is informed the month prior to review that she must come in for review. Should she fail to do so, her grant may be cancelled after six consecutive warnings. Black Sash workers told us that the review notification took the form of a note in either English or Afrikaans, with her money, and that this sometimes led to problems in the case of women who were either not conversant with the language used, or illiterate.

The House of Representatives told us that grants awarded to mothers of illegitimate children are reviewed annually, and all others (in practice) every three years, except in problem cases. The purpose of review is to ensure that the woman still qualifies for a grant at the end of every year (on the anniversary of the day on which she was first awarded the grant). If there are circumstances that may easily change and disqualify her, she will be subject to annual review - for example, if her children are over 16, she will have to prove each year that they are still at school. If the woman has been exempted from having to look for work on the basis that she has a sick child, the situation will also be reviewed annually. Similarly, if the woman works, but still falls within the means test, her employer will have to give details of her wage once a year so that the department can ensure that her earnings have not been raised beyond the means test.

House of Representatives grants are not suspended pending review; they continue into the second year of payment *unless* information shows that the woman no longer qualifies. The exception to this is where a grant is awarded for a specific period: for example, where a woman's husband has been declared unfit to work for a

three-year period and she has been awarded a three year grant, she may renew the grant at the end of that period if her husband is still unfit. In such a case, the women must reapply for a new grant at least three months before the period expires - otherwise she may face a delay while her new grant is processed. Much of the documentation necessary for a first application is normally needed for a review.

The House of Delegates reviews grants annually. The maintenance grant is continued throughout the review process, and only discontinued if review shows that circumstances have changed. If a woman does not come in for a review when requested, the clerk will visit her at home to remind her to come in and to warn her of the consequences of not doing so. If she still fails to come in, her grant will be blocked until she does so.

4 *Lines of authority and discretion*

According to our interviewees, the House of Representatives clerks who interview the women exercise no discretion at all. They simply fill in the forms and hand them on to the Pensions Officer, even if they can clearly see that the woman will not qualify. The are forbidden to tell applicants that their applications will be unsuccessful - mainly to avoid wrangling at the interview stage. One clerk said that he was relieved not to have this responsibility: it was not his decision whether an applicant was successful or not, so he did not see why he should have to shoulder the unpleasant burden of having to tell her the bad news. The more junior members of the department seemed to feel that there was no discretion in grant applications: rules were rules and either an applicant met the requirements or did not. More senior staff (at the pensions officer and chief clerk levels)

recognized that discretion was indeed exercised. One such case is the application of the rule as to whether a woman is required to be looking for work or not. An official said that, as a welfare department, they were trying to help those people in need of assistance. Sometimes they were prepared to make exceptions and bend the rules a little. Usually a social worker's report would be necessary to motivate for this. The social workers would try to ascertain whether the family was better off with or without a grant. An example of where discretion could be exercised was in dealing with whether a second illegitimate child could qualify for a grant once the first-born child reached the age limit. Other rules were not flexible - for example, those governing the means-test.

Social workers from the House of Representatives seemed to think that the clerks had a less flexible attitude than the clerks themselves maintained was the case. The social workers pointed out that there was a difference in attitude between the clerks and the social workers. One asserted that the clerks tended to view things very narrowly, suggesting that they had a set of rules and if anyone did not meet their requirements, then the clerks' attitude tended to be 'sorry, but there is nothing I can do'. Bureaucrats have more power than social workers in the sense that administrative officials make the final decision on whether or not to give a grant: all that the social worker can do is to make recommendations. Social workers may recommend bending the rules in cases where women are desperate, but find the clerks reluctant to do this and that the people who make the final decision tend to apply the rules very strictly. The social workers said that they seldom succeeded in persuading the bureaucrats to make exceptions - maybe in five per cent of cases. The rules will never be bent without a social worker's report. If an applicant is desperate, the

social workers will most probably direct her to sources of assistance *outside* the state welfare system - to a private charity or church for food or other assistance.

When a grant is refused by the House of Representatives' department, the reason for refusal is explained to the applicant, and she is told that if the offending circumstance disappears, she may reapply. There is no formal appeal procedure against refusal of a grant. Apparently, a number of people contact the Minister of Health and Welfare or their local MP, who in turn contacts the department and queries the refusal. They are informed of the reasons. We were told that ministerial intervention will not cause officials to change their minds (although presumably mistakes are picked up during this process), but at least one informant complained bitterly about Ministerial 'interference'.

As mentioned, the House of Delegates clerks sent their applications to the Durban head office, which made the final decisions. As in the case of House of Representatives clerks, our interviewee said that she exercised no discretion: she had to submit all applications and could not inform an applicant about her chances of success. Again, there is no appeals procedure, but if a clerk feels that a grant has been refused to a deserving case, she may submit a second application. Where bending of the rules may be required, a social worker's report is necessary in motivation. An example of a case where a clerk was disatisfied with a refusal of an application was one where the husband was an alcoholic and unable to keep a job for long. The wife was sick. She applied for a grant but the Durban office refused it, saying that the woman was married and her husband was not disabled, so he had to support her. At the time of our interview a social worker had been sent to investigate the

circumstances and report on it fully, after which the report would be sent to Durban. Sometimes this strategy works, but not always. The clerk felt, however, that the rules were generally flexible enough - and had to be flexible, as each case was unique.

The clerks at the House of Assembly also do not have much discretion. Unlike clerks at the other two Houses, however, they will advise applicants to abandon their applications if it is clear to the clerks that they will be unsuccessful. However, if the woman insists that she wants to apply, they will send in the application. An official interviewed on this felt that the rules had some flexibility, but in cases where they need to be bent a little, she would add a few remarks in support of the application and probably also attach a social worker's report. There is no formal appeals procedure if an application is refused, but the women are informed that if the reason for the refusal disappears, they can apply again. If circumstances do not change, the clerks do not query or argue with the decision of the head office - it is final.

The clerks who interview CPA applicants do not formally have any discretion. However, if they feel a case looks unlikely to succeed, they may insist on a social worker's report; in this way they can delay the applications of cases about which they are dubious and, given the contraints on social work in the townships, may possibly stop them permanently.

Completed CPA applications are sent to the Parow branch office, where they are checked for prima facie mistakes but the merits of cases are not considered. The forms are then sent to the Cape head office, where the grants may be approved and where pay-outs are authorised.

Exceptions to the rules may occasionally be made, and all exceptional cases are referred to the Director-General of the department for his decision.

5 *The role of social workers in maintenance grant procedures*

The House of Representatives office in Wynberg does not insist on a social worker's report accompanying every application. The basic guideline is that there must be a social worker investigation where the office needs more information about the case. Examples of such cases would be if a woman's first-born illegitimate child becomes too old to qualify and she then applies for a grant for a second illegitimate child; or if the mother is not living with the child; or if the mother is very young, in which case a social worker should investigate whether the mother is capable of looking after the child at all, or whether it should be placed in foster care. The department will not award a grant in such cases without a social worker's report.

Women classified as coloured who have illegitimate children will probably be visited by a social worker as a matter of course for social welfare purposes. The social worker will want to check whether the family is coping, and also to investigate the father's position. The social worker visits the family, reports on the home circumstances, and may make recommendations about whether or not a grant should be awarded in a particular case, and why. The social worker may even feel that ultimately a particular family is better off without a grant. The report is very influential when the decision is made on whether the grant should be awarded, but is not decisive. Because so few social workers are attached to the department, it may take four to six weeks for the social worker to investigate and compile

the report. This may not delay all grant applications, however, as an application may be processed and approved before the report is received.

The House of Delegates *always* requires a social worker's report for grant applications, unless the father of the child is dead or is receiving a disability grant. There are only two social workers employed in Cape Town by the House of Delegates, and waiting for the report can therefore lead to delays. Another problem is that maintenance grant work is not regarded as a priority for the social workers, who often need to attend to more urgent matters, such as child abuse. The head office in Durban takes the social worker's report very seriously, as the social worker has actually visited the woman and knows the circumstances of the case. The reports can be especially useful for 'problem cases' in deciding whether an exception to the rules is to be made. However, the Durban office is not compelled to follow the social worker's advice.

The House of Assembly officials said that in the case of unmarried women they always demanded a social worker's report, and that the grant could not be approved until this report had been considered. In practice, cases where the mother is, or has been, married have normally been investigated too. (It is very difficult for a married woman to get a grant, as she will have to prove that her husband cannot support her. Normally the grant can be approved only if he has been declared unfit for work. In this case, he must be examined, and the home circumstances will probably be investigated.) The social worker may also investigate whether the mother is able to administer the grant properly - for example, whether she is too young or irresponsible, or whether she is misusing the money. (Sometimes neighbours telephone with complaints of this

nature.) In this case, a welfare organisation may be brought in to administer the grant on her behalf or, if the situation is very bad, the child may be removed and placed in foster care. On the other hand, a common situation in which women receive grants occurs when they come to welfare departments saying they cannot cope and want to have their babies adopted or fostered. The social worker can then point out that the mother may have alternatives - for example, a maintenance grant may enable her to keep her baby after all.

The social worker's report should explain why the mother is unable to maintain the child, and what prospects there are of her being able to do so in future. It was pointed out to us that maintenance grants were so low that they were insufficient to support the child and mother; the social worker therefore has to show what other means the mother has. The report should address the question of whether, if the mother did not receive the grant - or even if she did - she would be able to support the child or whether the child should be removed. The social workers will speak to neighbours and ask how the mother cares for the child and how she supports it. If the mother is working, her child care arrangements will be examined. If the mother says the father is unknown, the social worker will make enquiries at her neighbours and family, and will question the woman herself extensively.

Where technically the mother does not qualify for a grant, the social worker will have to investigate and write a report motivating for any exceptional treatment recommended. If the social worker decides that the family should be given a grant, the recommendation is sent to head office with the grant application. The person making the final decision will usually act on the social worker's

recommendations and the application will be successful. Social workers claimed that they did not often advocate bending of the rules, but asserted that there are not *rules* for the award of the grants as much as *guidelines*. The social workers' recommendations were, they said, made according to the merits of each case and based on humanitarian priciples. Again, the House of Assembly social workers stressed that each case is unique.

Sometimes the social workers will recommend that a woman does not get a grant. One of the requirements for a grant is that the woman must be looking for work. If the social worker feels the woman has not been looking hard enough, she may recommend that the grant be stopped. Social workers will look at the mother's qualifications and why she is unable to find work. If she worked before the child was born, they will look at why she stopped working. It was felt that grants may have a negative effect on people: we were told that grants are really intended as only temporary measures for people in desperate straits and the state cannot be expected to take care of people indefinately.

The grant is not enough to live on, but when women get a grant the social workers said that recipients sometimes became lazy and did not look for work or try to improve their situation, finding it easier to depend on hand-outs. Ultimately, we were told, this amounts to child neglect, because the grants are insufficient to support the child adequately. In such a situation, the social worker may recommend that the mother's portion of the grant be stopped, to force her to pull herself together, but the child's portion of the grant will usually be allowed to continue, to prevent the child suffering greater deprivation. The social workers will look at how the mother is treating the baby and whether the baby has enough to eat. They will also

question neighbours and others.

Another problem social workers encountered was that many mothers do not want to apply for private maintenance. They usually know who the father is and where, but do not want to have anything to do with him. Often he is unaware that he has a baby.

Contradicting some other informants, the House of Assembly social workers told us that their reports did not really lead to delays. As it usually takes between three and six months for a grant to be approved, the report is sent to the Cape head office once it is ready and arrives in time for the decision. Similarly, a CPA official also told us that most women who applied for grants have been referred by a social worker, so the department already had a social worker's report and was not delayed by this requirement. Any exceptional treatment *must* be motivated by such a report, but all applications are more likely to be successful if accompanied by one. As with other departments, reports should show that the social worker has investigated the home circumstances of the applicant so as to be sure that she does qualify (for example, if she says that the father of the child is unknown, this would be checked). Social workers would also investigate how the grant should be administered (that is, whether the woman should control it herself, or whether someone else should do so on her behalf).

6 *Welfare policy and the attitudes of officials and social workers*

The focus of the questionaire used to interview officials was on illegitimate children. Our interviews revealed that there are many ways in which mothers of illegitimate children are

at a disadvantage when applying for maintenance grants. For example, only one child qualifies for a grant; only mothers of illegitimate children (when applying at the Wynberg office of the House of Representatives) need to attend family planning lectures; and more emphasis is placed on women with illegitimate children looking for work than in the case of other mothers.

The attitude of officials towards illegitimate children varied. Some regarded illegitimacy as a social problem to which they as welfare officers needed to be sympathetic in order to assist the mothers and children concerned as much as possible. Others were very hostile, and felt that illegitimate children (and their mothers) were not deserving recipients of state aid.

When asked what they believed was the reason for awarding a grant to only the first-born illegitimate child (when four legitimate children would qualify), some felt that the policy had an educational function. At the House of Representatives, for example, a woman with an illegitimate child is told that if she has a second child, she will not qualify for a maintenance grant for that child, and that she must attend lectures on contraception in an effort to prevent a second pregnancy. What the officials try to convey is that it will not be in her *own* interests to have a second illegitimate child. Asked if the policy had been successful in curbing illegitimacy, most of the informants were dubious. One said that he felt the policy *could* have been successful had it been rigidly applied, and spoke bitterly about politicians looking for votes who interfered to have the policy relaxed in various cases. However, he did add 'but what is the woman supposed to live off?' Another respondent at the House of Representatives said that the department actively discouraged the women from being

dependent on welfare, and tried to make them self-sufficient. This is one of the reasons why the officials there stress getting a job. Because the department is against giving hand-outs, it is also particularly difficult to obtain a food-voucher from the House of Representatives. The clerks at the House of Assembly welfare department were unsure about what motivated the policy. When questioned, they appeared never to have considered the question before. After much discussion, they decided it was probably to discourage women from having illegitimate children.

Other respondents looked at the issue from the point of view of the state, rather than that of the applicant, asking why the state should be expected to pay for what they viewed as the promiscuity and irresponsibility of its citizens. According to this line of reasoning, the state may assist where the mother has made one 'mistake', but cannot be expected to condone a second. Some respondents even suggested that there are women who would try to make a business out of having babies if it were not for the 'one illegitimate child only' rule. However, social workers at one department felt that while the policy of giving an unmarried mother a grant for only one illegitimate child was based partly on the myth that some women see their children as 'cash cows' and deliberately 'breed' in order to get the grant, this view was patently ridiculous: the grant was not enough to support the child, and the expense incurred would be greater than the grant. Another social worker we interviewed regarded policy based on a typography of 'deserving' and 'undeserving' unwed mothers as misguided. She argued that 'bad girls' (that is, those she viewed as immoral women) did not often have illegitimate children as they expected to have many sexual partners and used contraception. 'Good girls', on the other hand, usually did not use contraceptives because they did not expect this to

be necessary - so it was these latter girls that usually became pregnant and needed help.

The 'hard-line' policy towards illegitimate children was introduced in 1983. The CPA said they had been very strict in applying this approach only in the last couple of years. The wording of the section had also changed from indicating that they would pay for 'one' illegitimate child to paying for the *'first-born'* illegitimate child. This made it extremely difficult to get a grant for the second child once the eldest child passed the age limit.

The attitudes of officials toward the issue of illegitimacy correlates quite strongly with their attitudes toward welfare as a whole. Some officials clearly do not regard welfare as the duty of the state or the right of the citizens. One informant lamented the 'large' amount that his department had had to spend on welfare over the past year. In his view, welfare payments are a favour the state bestows on its citizens; people should be deeply grateful for what they receive and not act unreasonably by asking for more than this, nor complain if they do not qualify for a grant. Other officials questioned the idea of welfare, and suggested that it was incorrect to create a 'culture of dependency'. They said that having a welfare state of the type where the state had made a commitment to care for all children could create a culture of dependency in which people became unable (and even unwilling) to care for their families or even themselves; they began to perceive this as the state's responsibility rather than their own, got out of the habit of fending for themselves, and lost confidence in their own ability to do so. Others pointed out that it was welfare policy to make people take responsibility for themselves and their children, and that the state stepped in to aid only the truly indigent. As one official stressed,

welfare is not for those above the 'so-called poverty datum line': the state wants to ensure that it is *never* worth anyone's while to be on welfare rather than working.

Some of the respondents were critical of the way in which state welfare funds have been divided in terms of apartheid legislation, with benefit scales differing from department to department. Some criticized the means test for being unrealistically low, while other felt that the system was too inefficient, forcing women to wait months for grants which they clearly desperately needed.

We enquired specifically whether the welfare officers believed that women tried to manipulate the system. Some of the mothers we interviewed who had received grants told us that they had indeed managed to manipulate the system in various ways - such, for example, as the woman mentioned above who had lied about the father being unknown to her. One interviewee had even applied for state maintenance, claiming not to know who the father of the child was, although she was actually living with him - and she got the grant (which she promptly used to buy a train ticket to Johannesburg, partly to get away from the man).

In the light of our interview information, some of the officials appeared somewhat naive. One felt that since the application was in the form of an affidavit, women would not lie. Others said that some of the applicants did try to lie, but that it was usually easy to catch them out: any suspicious stories or contradictions would be investigated. One agreed that the women do sometimes succeed in fooling them for quite a while. For example, a woman may claim that the father of her children cannot be found. When the police visit the house, they see a man in the garden, who claims he is Mr X and that he has no idea where Mr Y

can be found. Later, through the social workers or the departmental investigators, they discover that Mr X is in fact Mr Y.

Women are often caught out after receiving a grant. For example, if a woman does manage to find a job, she must contact the department with details of her salary. Usually the grant will be cancelled at this stage because her income will exceed the means test. Many women do not contact the department, hoping to continue to get the grant. But they are caught out when, for example, they suddenly request that the grant be paid at a different post office. Investigation follows such a request, and the reason often proves to be that the woman wants to collect the money near her new place of work. The department will also become suspicious if the woman suddenly sends someone else to collect her grant. As mentioned above, some of the departments employ teams of investigators to check on their applicants, while in others the social workers perform this role, or even the interviewing clerks themselves. Apparently, neighbours and relatives also act as informers. A number of clerks told us that they receive complaints from people, usually motivated by spite, reporting their relatives or neighbours for fraudulently receiving grants - for example, a telephone call may follow a family quarrel, or somone who has been refused a grant may resent someone else receiving one when she considers herself equally deserving. One official seemed to think that mothers of illegitimate children did try to lie more often than others. He called them 'good triers' and gave an example of a woman who had four illegitimate children by four different fathers, and then claimed not to know who any of the men were. (The department tried to circumvent lies of this nature by refusing to give a grant until the applicant supplied a name.) A woman who is found to have lied faces the heavy sanction

of having to repay all the money she received while she did not, in fact, qualify.

7 *Efficiency and communication*

The time taken for grants to come through (see above) is an indication that the process is not as efficient as it should be. Yet women qualify for grants only if they are already very poor, and social assistance awarded in the interim is difficult to obtain and is usually on a once-off basis. Delays are therefore very serious for those literally trying to survive until a grant is approved.

Not all the welfare departments are computerized, and this may aggravate delays. However, departments which *do* have computers do not seem significantly more efficient. The Black Sash office informed us that when they queried information from the CPA, they were frequently told that the computer is off-line. Nevertheless, the CPA has made an effort, although the transition to computerized files has caused some problems. Apparently, the clerks at the pay-points have computers to record transactions, and this has significantsly speeded up time spent in queues.

Black Sash workers complained about the rudeness, inefficiency and ignorance of the clerks, as illustrated by one (of many) of their cases, of a man who went to the payout point for his pension. The counter he went to was not for payment, and the clerk there shouted at him, telling him to go around the other side. The old man misinterpreted this, believing that the clerk was telling him to go away. So he went home. This happened a number of times until eventually he approached the Black Sash Advice Office and they managed to find out what had occurred. Such cases of poor communication can result from unsympathetic

official attitudes, even when language itself is not a problem (as it was not in this particular case, where both the clerk and the applicant had Xhosa as their first language).

In the House of Representatives Wynberg office, files are not computerized and apparently one of the problems with the maintenance grants procedure is the number of people involved with each file. Bottlenecks may occur and work may be delayed because someone else is busy with a batch of files. Inevitably, the fact that files are passed around so often results in some being lost. When an applicant arrives at the office and her file is missing, a lost-file form is sent down to the file room. The filing clerks will search for the file only the following day, which means the applicant will have to return the next day. A further inconvenience for users of the Athlone and Mitchell's Plain branches is that the files are physically housed in Wynberg and have to be sent to the appropriate branch when required. However, the procedures have been much improved since the move to new offices in Wynberg in August 1991, where clients can now visit the whole department under one roof.

An informant at the House of Representatives told us that a major problem with the maintenance grants system was lack of information. The application procedure and requirements are complicated, and people often do not understand why they fail to qualify. The officials are therefore trying to educate people about the system, with lectures in the waiting room and also to community groups.

8 *Maintenance grants procedure as experienced by applicants*

Very few women are receiving maintenance grants, as the

estimates mentioned above show,[21] with those most in need receiving the smallest amounts and fewest grants. Our own life-history interviews of unmarried mothers reflect much the same pattern.

Many women reported that they had experienced difficulties with the system. Some complained of the bureaucracy; others of a lack of understanding of their difficulties by the officials; one said that officials refused to discuss anything over the telephone but she found it difficult to visit the offices herself as she had a young baby to care for. A social worker said that women were often reluctant to apply for grants because they were intimidated by the bureaucracy. Some of our interviews with unmarried mothers showed their ignorance of the system. One, for example, decided not to apply for state maintenance because she was under the impression that it was not available if the mother had only one child. Another respondent would certainly have qualified for a grant, but she knew nothing about them and so did not apply. It would seem that ignorance and inability to face officialdom may well account for why many women who are eligible for grants do not apply.

CONCLUSION

It may be asked why the above investigation was conducted, given the expectation that apartheid institutions will very shortly be abolished and that the entire structure described will change. Indeed, there is now on the statute book (although not yet in force at the time of writing) an act (the Social Assistance Act 59 of 1992) which aims to

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[21] Simpkins & Dlamini op cit note 7.

standardize and consolidate all forms of state social pension for all South Africans. It must be questioned, however, how far change will in fact extend. Under the best scenario that can realistically be hoped for, at least in the short-term, amalgamation of the various welfare departments will result in an equalization of the amounts and conditions of all state maintenance grants, and a staffing policy not dictated by apartheid population groups - though the latter change may occur only gradually if, as seems probable, the country can afford to effect it only by a change in recruitment policy. However, many of the basic problems in the system are likely to remain, and new ones may well be created. We outline some below.

First, it must be asked whether a welfare system is desirable in a future South Africa, and if so, to what extent. This must be considered on two different levels: principle and practicability. The issue of principle is whether South Africa should recognize socio-economic rights to state welfare such as those embodied in the Universal Declaration of Human Rights, and if so, whether they should be entrenched in a Bill of Rights. As indicated above, current welfare policy is that individuals are primarily responsible for their own welfare. However, it should be noted that pressure group activity led to recognition in principle in the Social Assistance Act of 1992 that state grants were a right, not a privilege. The African National Congress draft bill of rights provides for economic and welfare rights, and its recently formulated policy guidelines make provision for social welfare, including 'the basic rights to shelter, food, health, employment, education and all those aspects which promote the physical, social and emotional well-being of all in our society'. In addition, it committed itself to the provision of a safety net for those who are unable to care for themselves because of certain problems, such as children

and families in need of care.[22] But while the major parties agree that there should be a recognition of such rights, the difficulties of financing them give rise to disagreement over whether the rights should be absolute, qualified, or merely a national aim. There is also concern that an incorrectly structured welfare system may encourage a culture of dependency in recipients.

On the practical level, many will question, in the light of such figures as those provided by Simkins and Dlamini, how far the country can afford a welfare system, once grants are equalized for the entire population, the public becomes better aware of its rights, and access to them is made a less intimidating process. South Africa is likely to find the bill extremely high, even if equalized for all population groups at the present low rates payable by the House of Representatives. Simkins and Dlamini[23] have shown that at that rate, with coverage for illegitimate African children increased by twenty-four per cent, total expenditure in 1990 would have been tenfold actual expenditure or, to put it another way, more than double total state expenditure on housing in the same year.

On the other hand, it must be asked whether any humane society can afford not to have at least a minimum state grant system when the family has broken down to the extent it has in South Africa, as demonstrated by divorce

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[22] See further S Burman and A Barratt 'Human Rights and the Administration of a Welfare System' (1993) 9 *SAJHR* (forthcoming).

[23] Simpkins & Dlamini op cit note 7.

and illegitimacy figures.[24] A safety net is essential for those mothers and children for whom there is no other source of income. South Africa may need to rethink what type of aid is offered to such families, as has been discussed in more detail elsewhere[25] and should beware that in 'firefighting', underlying causes of poverty are not ignored. It seems likely, however, that for political reasons at least a minimal state maintenance system will be retained, possibly supplemented with innovative schemes to maximize community and private assistance for those in need. It is to be hoped that, in redesigning the state maintenance system and its relationship to the private maintenance system, the latter will be restructured too along the lines suggested. By the redistribution of resources to those in greatest need, the welfare system may also contribute to the redress of imbalances created by apartheid.

If a state maintenance system remains, various issues raised by the above survey need to be faced. If an aim is to make the system less intimidating, then particular attention will need to be paid in a unified department to the question of staffing criteria, of both bureaucrats and social workers, given the different linguistic requirements and behaviour patterns demonstrated by the different communities. Applicants should, if possible, be interviewed

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[24] S Burman & R Fuchs 'When Families Split: Custody on Divorce in South Africa' in S Burman & P Reynolds (eds) *Growing Up in a Divided Society* (1986); Burman op cit note 3.

[25] Simpkins & Dlamini op cit note 7; S Burman & E Preston-Whyte 'Assessing Illegitimacy in South Africa' In S Burman & E Preston-Whyte (eds) *Questionable Issue: Illegitimacy in South Africa* (1992); S Burman 'Capitalizing on African Strengths: Women, Welfare and the Law' (1991) 7 *SAJHR* 215.

in the language of their choice and by an official with adequate training or background to understand the social context in which the applicant is operating. There may be a danger that, in seeking to divest ourselves of anything that smacks of apartheid, we ignore the reality of South Africa's social diversity and the world-wide trend towards acknowledging such differences and catering for them.

Closely associated with this is the question of what values welfare policy is to encapsulate, particularly in relation to issues of illegitimacy, child care, and women working. Further, who is to formulate it at the various local, regional, and national levels?. Underlying these questions is the basic problem of the desirable balance between the opposite poles of certainty and flexibility: on the one hand establishing certain and unchangeable criteria for entitlement to grants, on the other allowing enough flexibility in the regulations to enable officials to cater for the very diverse communities and conditions of the country.

There is also a need to overcome certain problems evident in the present system which are likely to be taken over by a future administration unless a concerted effort is made to prevent this. One is that the complexity of the payment system results in much ignorance among staff at the local level of how grants are calculated, and in many cases officials do not appear to feel that as civil servants they owe the public any duty to provide information, even on such basic facts as how the means test is calculated. Our own experience over the last decade of this refusal to give information has been confirmed by research by the Black

Sash in the Transvaal[26] and by other advice offices. Such bureaucratic secrecy, apart from the difficulties it creates for grant recipients and advice givers, has the additional danger that it may mask inefficiency or malpractice that is very difficult to challenge. Legislation is required which makes such information freely available, preferably in a convenient, central location and in an accessible format.

It was encouraging to note in the course of our research that attempts to address the issue of informing the public, such as the House of Representatives' public lectures on welfare procedure, necessitated departmental self-education and apparently resulted in a lively, ongoing departmental debate on policy issues and philosophy. This in turn resulted in a conscious attempt to act accountably to clients, supplying reasons for decisions, and therefore observing consistent criteria in the exercise of discretion. In contrast, Black Sash experience and files revealed a number of cases where women have not been given reasons for decisions at the CPA, or where, when reasons were given, they appeared to be inconsistent. Nor did our interviews of CPA officials indicate any departmental ethos equivalent to that of the House of Representatives. A general duty to give reasons for all administrative decisions should be required by statute.

Further, in addition to internal departmental regulation, a procedure for appeal against administrative decisions on grants is essential to ensure consistency and

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[26] S Sparks 'Double Discrimination, Race and Gender: Maintenance Grants: Women are the Losers' Lawyers For Human Rights (1992) (March) *Rights* 20.

accountability by bureaucrats. Corder[27] has discussed a range of possibilities, such as administrative tribunals or an ombudsman, and has suggested a comprehensive package of administrative law reforms for South Africa to serve as a basis for such accountability. In the context of state maintenance grants, any procedure will need to be, above all else, both simple and cheap, if it is to serve a clientele of the socio-economic type involved. Relying largely on a right of judicial review, as proposed earlier by the ANC Constitutional Committee[28] and the South African Law Commission[29], is unlikely to meet these criteria by itself, but both the ANC and the Law Commission also proposed the establishment of the office of Ombud. In addition, the ANC's 1992 Policy Guidelines stress the importance of easy access to services, accountability of officials, decentralization, and community participation. As illustrated by our survey, in conjunction with any appeals procedure it is essential in the context of maintenance grants that officials receive on-going training in the 'new ethos, procedures and responsibilities', as Corder (and the ANC) suggest, and that the public is educated 'in their rights and duties in this regard'.[30] Ultimately, the greatest safeguard of the just operation of any state maintenance system in a future South Africa will be a public knowledgeable about

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[27] H Corder *Empowerment and Accountability. Towards Administrative Justice in a Future South Africa* (1991).

[28] ANC Constitutional Committee *A Bill of Rights for a Democratic South Africa* (1992) art 2.24.

[29] South African Law Commission *Interim Report on Project 58: Group and Human Rights* (1991).

[30] Corder op cit note 27 at 82.

what is due to them, unafraid to claim it, and concerned to prevent public abuse which could lead to the breakdown of what they regard as *their* safety net.