**Annexure to CINDI submission on the Social Assistance Amendment Bill**

**Illustrative case study**

**Asanda – an orphan, abandoned by her mother, living with her granny**

Asanda Ngwenya was born in 2012 in Cape Town. Her mother brought her to visit her paternal grandmother, Mrs Feni, in Mthatha, when she was one month old. Her mother left the next day and the family has not heard from her since and do not know where she is. Asanda’s father, Sipho Feni, was supporting Asanda and Mrs Feni until he passed away last year.

Asanda is now 8 years old and her grandmother, Mrs Feni is struggling financially. She has a job as a cleaner at the local shop but only earns R1000 a month and this is not enough for her and Asanda - the electricity often runs out by mid-month and sometimes Asanda can’t go to school because there is no money left for the taxi fare. Mrs Feni is 50 years old and therefore does not yet qualify for the state old age pension. She has heard that she could get a grant from government for Asanda. Mrs Feni and Asanda approach the social work office in Mthatha to ask for help.

She takes with her the ID and death certificate of Asanda’s father, the name and ID number of Asanda’s mother and Asanda’s unabridged birth certificate. Asanda’s unabridged birth certificate does not include her father’s name or details because Asanda’s parents were not married and her father was not present when her mother registered the birth, therefore Home Affairs did not allow her father’s details to be added.

The intake social worker does an interview with Mrs Feni and Asanda and establishes that there is a clear attachment bond between the two, Mrs Feni is a nurturing and responsive caregiver to Asanda. Asanda is attending school and is in grade 2. The family is living in poverty and is in need of assistance.

**Scenario 1 – Current law (2020)**

What does the law say the social worker should do to assist Mrs Feni and Asanda?

1. assist them with a foster care placement so that they can obtain a foster child grant of R1000

OR

1. advise them to approach SASSA to apply for a child support grant of R430.

AND

1. assist Mrs Feni to obtain guardianship via application to the High Court.

**Answer**

Legally the family is currently entitled to either the CSG or the FCG.

What is happening in reality on the ground is either (a) or (b). There is no clarity in the law however to guide SASSA, the social workers or magistrates when deciding between the FCG and CSG.

If Mrs Feni is given the CSG of R430 but she knows the higher FCG of R1000 is also an option. She decides she wants to challenge the social worker or magistrate’s choice. She approaches Legal Aid in Mthatha who advises her that she can legally challenge the social worker or magistrate’s decision. If the refusal is purely because she is related to the child, then existing High Court jurisprudence (The *SS* and *Manana* cases) is on her side and she is likely to succeed in her challenge.

**Scenario 2 – The future: A comprehensive legal solution is in place (2021)**

What does the NEW law say the social worker, SASSA and children’s court should do to assist Mrs Feni and Asanda?

1. assist them with a foster care placement so that they can obtain a foster child grant of R1000

OR

1. advise them to approach SASSA to apply for a child support grant top-up of R650

AND

1. assist Mrs Feni to obtain guardianship via application to the Children’s Court or High Court

AND

1. assist Mrs Feni and Asanda with counselling and other support services

**Answer**

The option of foster care [option (a)] will no longer be an entitlement in law for this family. However, the combination of (b) to (d) will be available.

***Vision of how the comprehensive legal solution could work in practice.***

1. ***Address the family’s need for income support as a priority***

The social worker advises Mrs Feni to got to SASSA to apply for a CSG Top-Up of R650. She advises her what documents to take with her:

* her ID
* Asanda’s unabridged birth certificate
* Her late son’s ID and Death Certificate
* Any information she has about the child’s mother, eg name and or ID number
* An affidavit explaining she is the primary caregiver and the grandmother

Mrs Feni asks what about the FCG because she has heard about this grant for orphans because her neighbour got it three years ago. The social worker explains that Mrs Feni is not eligible for this grant in terms of the Children’s Act because Asanda is not a child in need of state care and protection because Mrs Feni is Asanda’s caregiver and she is providing good care for Asanda. Foster care is for children who do not have caregivers or whose caregivers are abusing or neglecting them.

She explains that the law was changed last year to provide the CSG Top-Up for orphans in the care of relatives (Social Assistance Amendment Act and Regulation 6) instead of the FCG (Children’s Amendment Act s150 (1) (a)) because it is much easier and faster to get the CSG Top-Up. Mrs Feni can apply today and get it by next month. However, in the past she would have had to wait up to 3 years to get the FCG and there would be no back-pay for the 3 years of waiting.

Mrs Feni is glad that she will be getting the money next month and that she will not have to wait three years for the money. She knows that Asanda won’t have to miss anymore school days now because she will have extra money for transport to school. If she had to wait three years, Asanda might fall behind and have to repeat grades, or drop out of school.

When Mrs Feni gets to SASSA, an official asks her what grant she is coming to apply for and looks at all her supporting documents. He then fills in the CSG Top-Up application form and takes biometrics for Mrs Feni and Asanda.

He notices that there is a death certificate but he cannot verify that it is Asanda’s father because her birth certificate does not contain his name. He advises Mrs Feni that he will also need an affidavit from her attesting to the fact that Asanda’s father is Sipho Feni, and that her mother is Ms XY (ID number 330etc) and that she abandoned Asanda when she was one month old and Mrs Feni has not heard from her since. He helps Mrs Feni to fill in and sign the prescribed affidavit.

Before he finalises the application, he runs a check on the computer against the Asanda’s mom’s ID number and name to check whether she is already receiving a CSG for Asanda. The check come up negative. He finalises Mrs Feni’s application and tells her that her SASSA card will be ready at the end of the month for collection and the grant will be in her SASSA/Post Office account by the 1st of the next month.e

1. ***Enquire whether the family is in need of any other welfare services and assist the family to obtain these services from the relevant dept/agency***

The social worker asks Mrs Feni if there is anything else she can help her with. She asks questions aimed at finding out more about Asanda’s psychological health and development.

Mrs Feni says that Asanda often wakes up crying at night because she misses her father, and that she does not have any friends at school and tends to play by herself all the time.

* The social worker suggests that Mrs Feni and Asanda go see a counsellor to get grief counselling for Asanda. She tells Mrs Feni that the provincial DSD recently got increased funding from National Treasury and they are funding a local NGO to provide counselling to children who have been orphaned or abandoned. She gives Mrs Feni the address and a referral letter.

Mrs Feni says she thinks her late son left a small pension because he worked for a big company in town and he told her there would be about R1000 a month pension for Asanda if he died. But she doesn’t know how to claim it for Asanda. She said she went to the company to enquire on Asanda’s behalf but they refused to help her because she was not Asanda’s legal guardian.

* The social worker tells Mrs Feni that she has two options: She could go to the closest High Court and see the Master of the Court. The Master could assist her and Asanda and manage the pension on Asanda’s behalf in the Guardian’s Fund. Or Mrs Feni could apply to the Children’s Court to be made Asanda’s legal guardian and then she would have the right to administer the pension for Asanda’s benefit.

Mrs Feni chooses the option of becoming Asanda’s legal guardian because the magistrate’s court is down the road while the High Court is 100kms away and the transport costs are very high. The social worker helps her complete the necessary forms in terms of the Children’s Act, advises her to obtain a signed and stamped letter from the school principal or traditional leader confirming her circumstances and to then go see the clerk at the Children’s Court who will assist her further.