African Grandmothers Tribunal—Seeking Justice at the Frontlines of the AIDS crisis

Swaziland:

Pensions & Child-Headed Households

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PENSIONS

Social security and pension schemes across sub-Saharan Africa vary in terms of their scope and design.[1] Core features common to most social security programs consist of a combination of the following: old age, disability and death, sickness and maternity, work injury, and family allowances benefits.[2] The configuration of these schemes takes multiple forms, chief among them are public pensions, universal pensions, private sector arrangements, and other forms unique to the respective state.[3] In terms of program eligibility, states vary with regard to age of retirement and required contributions. Retirement age ranges from 50 to 60 years and contributions vary from 3% in Mauritania to 35% in Senegal, as a percentage of total earnings.[4]

Social Security in Swaziland

The Swazi pension and social security system is comparatively basic relative to the more complicated arrangements found in neighbouring nations. The most comprehensive aspect of the Swazi social security system is the Old Age Pension Grant,[5] which is payable to citizens of Swaziland 60 years of age and older.[6] In 2010, the Oxford Policy Management Report stated that the old age pension grant covered approximately 60,000 members, or 100% of the target group.[7] The actual monetary amount received by eligible seniors is reported to be

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[1] Luca Barbone & Luis-Alvaro Sanchez B, "Pensions and Social Security in Sub-Saharan Africa: Issues and Options" (Paper delivered at the XIII International Social Security Association African Regional Conference, Accra, Ghana, 6-9 July 1999).
[2] *Ibid* at 9.
[3] *Supra* note 1 at 11-2.
[4] *Supra* note 1 at 10.
[5] Oxford Policy Management, *Evaluation of Retirement Systems of Countries Within the Southern African Development Community, Country Profile: Swaziland*, (Oxford: OPM, 2010).
[6] *Ibid*.
[7] *Supra* note 5.

aproximately SZL 200 per month (27 USD).[8] The Old Age Pension Grant is currently protected by the Swazi *Bill of Rights*.[9]

The second principle component of the Swazi social security system is the Swaziland National Provident Fund, which provides pension benefits for citizens of Swaziland employed in the formal economy.[10] Both employers and employees contribute equally to the pension fund, a sum totalling 10% of the employee's earnings. The eligible age of retirement is 50 and the benefits are paid as a lump sum.[11] There are separate systems in place for civil servants and there are several privately administered, voluntary schemes that operate tangentially to the national social insurance scheme.[12]

Economic and Demographic Trends

An analysis of the merits of the Swazi pension and social security scheme cannot be divorced from an overall understanding of the economic climate and demographic trends of the nation. Estimates of unemployment, while universally high, vary widely based on the source of the data. The 2007 Labour Force Survey estimates a total unemployment rate of 28.2%, with youth unemployment at 40%.[13] Demographic Health Survey statistics paint an even bleaker picture. This data suggests that 52%of women and 44.1% of men between the ages of 15 and 49 are unemployed.[14] Due to this chronic income insecurity, the Swazis' abilities to adequately prepare for retirement and old age are undermined, which places an increased reliance on pension funds. Even for those technically employed, poverty levels are extremely high in the nation. According to a 2010 World Bank report, 81% of Swazis were below the 2 USD a day

[8] *Supra* note 5 at 2.
[9] Martiro Garcia & Charity M T Moore, *The cash dividend: the rise of cash transfer programs in Sub-Saharan Africa* (Herndon, VA: World Bank Publications, 2012) at 148.
[10] *Supra* note 5 at 2.
[11] *Ibid*.
[12] *Ibid*.
[13] *Supra* note 5 at 4.
[14] *Ibid*.

poverty line, while 63% were below the 1.25 USD a day poverty line.[15] Although elderly Swazi citizens rely on pension funds, it is widely noted that pension grants are inadequate. As Gogo Khumlao, a 70 year-old widower in rural Milba noted, "You cannot live on such money [as government provides] but it can help you survive".[16] This chronic economic instability places a burden on the public provision of social security while simultaneously necessitating a strong social safety net.

Economic and Social Challenges

There are various factors that undermine the efficacy and integrity of the provision of social services in Swaziland. Like many of its neighbouring states, Swaziland struggles to combat corruption within government agencies. In a statement to the Swazi Senate in October, 2011, Swaziland's Minister of Finance, Majozi Sithole, stated that the country loses almost double the annual social services budget to corruption on a annual basis.[17] Although an Anti-Corruption Unit was established in 1998, Swazi officials continue to struggle to contain what can only be described as an epidemic of corruption. It is estimated that approximately R80 million ($10.6 million USD) per month is disappearing, or R960 ($128 million USD) annually. The actual budget for social services in the 2010/11 year was R562 million ($75 million USD).[18]

Compounding difficulties in providing social services are the pressures of a growing financial crisis, largely stemming from the 2008 financial meltdown. In 2011, the Swazi government lacked the funds to pay both elderly grants and school fees for orphans and vulnerable children, suspending the former and redirecting the funds to pay the latter.[19] It is unclear as to whether or not pension benefits have been reinstated presently. On its face, it appears that this decision

[15] *Supra* note 5 at 5.
[16] IRIN, "Swaziland: Government suspends pensions", *IRIN* (22 March 2011) online: <http://www.irinnews.org>.
[17] IRIN, "Swaziland: Corruption exceeds social services budget", *IRIN* (12 October 2011) online: <http://www.irinnews.org>.
[18] *Ibid*.
[19] *Supra* note 13.

would be directly beneficial for vulnerable Swazi youth – an important consideration in light of Swaziland's youthful demographics. However, given the fact that many elderly citizens who are reliant upon pension grants are also charged with the care of young dependents, the suspension of these benefits can in fact be detrimental not only for elders but also for Swazi youth. Largely responsible for this demographic trend is the HIV/AIDS epidemic, which has rendered many Swazi youth orphaned and in the care of surviving grandparents.[20]

Social Security and the HIV/AIDS Crisis

Swaziland currently has the world's highest HIV prevalence rate – 26.1%, or one in four Swazis between the ages of 15 and 49 are currently infected.[21] This epidemic has resulted in a marked decline in the average life expectancy. Between 1997 and 2008, the average life expectancy in Swaziland dropped from 60 years to 45.8 years.[22] The HIV/AIDS epidemic intersects with the provision of the social security fund in several important ways. As noted above, the elderly, who are often responsible for caring for orphaned youth, are increasingly susceptible to poverty, and are at greater risk for unemployment.[23] Additionally, rising mortality levels place an additional financial burden on the Public Service Pension Fund, since more individuals are accessing the availability of death benefit grants.[24] Given the current economic climate facing the Swazi government, this additional strain further undermines the ability to maintain this integral facet of financial assistance for Swazis throughout the nation.[25]

CHILD-HEADED HOUSEHOLDS

[20] *Supra* note 13.
[21] *Ibid*.
[22] *Supra* note 5 at 6.
[23] National Emergency Response Council on HIV/AIDS (NERCHA) and Health Economics & HIV/AIDS Research Division (HEARD), The Socio-Economic Impact of HIV/AIDS in Swaziland by Alan Whiteside et al (Mbabane, Swaziland: NERCHA and Durban: HEARD, 2006) at 70.
[24] *Ibid* at 71.
[25] *Supra* note 20.

As is typical of Sub-Saharan African states, Swaziland has been severely impacted by HIV and AIDS. HIV was first diagnosed in Swaziland in 1987 and the nation currently has one of the highest prevalence rates in the world.[26] It is projected that the nation's crude death rate will almost double by 2015, with annual AIDS death rates totaling 30,000.[27] This crisis has had an alarming effect on the nation's child population with an estimated 66% of Swaziland's orphaned and vulnerable children resulting from the death of parents due to AIDS.[28] It is estimated that the number of orphans will increase from 60,000 in 2006 to 110,000 by 2015.[29] The impact of HIV/AIDS on the orphaning of children is unique in two ways: it is more likely to lead to the loss of both parents and the problem will continue to grow as there is an 8-10 year time lag between HIV infection and eventual death.[30]

The slow response of the state to this epidemic has led to the majority of the burden of care to be handled at the household level.[31] Stemming from this, there has been a rapid growth in the instance rate of child-headed households. Child-headed households are those in which a child has assumed what are typically deemed to be adult responsibilities in running a household, either resulting from the absence of an adult altogether or when there is an adult but one that does not contribute to running the home.[32] It is important to note that a significant percentage of non-orphan children are living in poverty with little to no food security.[33]

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[26] National Emergency Response Council on HIV/AIDS (NERCHA) and Health Economics & HIV/AIDS Research Division (HEARD), The Socio-Economic Impact of HIV/AIDS in Swaziland by Alan Whiteside et al (Mbabane, Swaziland: NERCHA and Durban: HEARD, 2006).
[27] *Ibid* at 11.
[28] *Ibid* at 14.
[29] *Ibid*.
[30] *Ibid* at 67.
[31] S Earnshaw et al, "The Health and Living Conditions of Children in Child-Headed Households in Swaziland" (2009) 6:1 East African Journal of Public Health 95.
[32] *Ibid*.
[33] *Supra* note 13 at 68.

Additionally, a large number of children are being abandoned by living parents, adding to the already overwhelming number of children in need of care and community support.[34]

Extended Family System

Traditionally, when faced with increased threats to their livelihood, households were able to rely on extended family for assistance.[35] In the case of orphans, it was the norm to distribute children to be put under the care of extended family members who assumed responsibility for the child as if he or she were their own.[36] This practice successfully provided the orphan with food, shelter, and clothing but also helped to mitigate any potential negative psychosocial impacts of losing a parent since the child remained under the care of kin.

Caring for the large number of orphans and vulnerable children is placing an extreme burden on the community and extended family networks, both economically and socially. There is evidence that the extended family system and community networks are becoming overwhelmed and are no longer able to care for the increasing number of vulnerable and orphaned children. Most notably, there has been a rapid rise in the number of child-headed households and social orphans (children whose family are so burdened by AIDS that they are abandoned)[37].[38]

An additional factor to consider with respect to the extended family network is the impact this system is having on women in the community. Through marriage women in Swaziland typically relinquish any control over land and property to the husband and his family.[39] Cultural norms and a general patriarchal society render women with no property or inheritance rights.

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[34] *Ibid*.
[35] James P M Ntozi, "Effects of HIV/AIDS on Children in Swaziland: Is the Extended Family Coping?" (Paper delivered at the Fifth African Population Conference, 10-14 December 2007) at 9.
[36] *Ibid* at 10.
[37] *Supra* note 6.
[38] *Supra* note 13.
[39] Lynne Jones, "Childcare in Poor Urban Settlements in Swaziland in an Era of HIV/AIDS" (2005) 4:3 *African Journal of AIDS Research* 161.

Though there has been some progress and a shift towards less tradition kinship relations, there is still a strong emphasis placed on fixed general roles. Women are the domestic caregivers and, as such, are expected to take on the extra work that comes with taking in orphans.[40] Some women report feeling coerced into accepting orphans or had no other choice but to care for the children as they were either abandoned at their home or the parents of the children died while living in the adopter's home.[41]

The AIDS epidemic has placed additional strains on the Swaziland households through its simultaneous deleterious impact on income (for example, lost income and cost of care) and its necessitating absorption of the extra costs and work associated with care of orphans.[42] Importantly, this burden is primarily placed on female household members as the domestic caregivers, while men are relatively unaffected by the additional work.[43] In the case of single women or widows who are already subject to particular vulnerabilities surrounding inabilities to control or access property, the societal expectations to care for more children is especially onerous. The breakdown of traditional coping methods necessitates the development of formal safety net programs.[44]

Characteristics of Child-Headed Households

The deleterious impact of these types of households on both the children heading the home as well as their siblings is evident. Though most are living in formal housing structures, the majority of the homes are in various states of disrepair.[45] Research shows that while children report that the majority of the assistance received comes from family (rather than charitable organizations), these donations are extremely unreliable and sporadic with many

[40] *Ibid* at 167.
[41] *Ibid* at 168.
[42] *Ibid*.
[43] *Ibid*.
[44] *Supra* note 13 at 69.
[45] *Supra* note 6 at 98.

stating they do not expect to receive aid in the near future.[46] With respect to work and education, the majority of these children do not have regular income-generating employment, largely due to conflicting schedules with school.[47] While many are able to continue their studies, school is not free in Swaziland and the majority of members in child-headed households rely on family or NGO's to pay their school fees.[48] Those that attend school receive meals provided with the assistance of the World Food Programe[49] but otherwise a large percentage of children do not have access to regular meals and proper nutrition.[50]

National Response to Child-Headed Households

The Ministry of Health and Social Welfare is the main ministry charged with ensuring that the rights of all children are upheld.[51] The Office of the Deputy Prime Minister, along with several government organizations and NGOs, is the primary body responsible for implementing assistance initiatives for child-headed households.[52] In keeping with traditional strategies, aid measures are generally geared at supplementing and strengthening community efforts to support orphans and child-headed households.[53] Three notable initiatives are: the development of Neighbourhood Care Points (led by UNICEF) which provide care, food and educational services to children in need; the establishment of social centres to help foster community and social support for orphans; and, the revival of Chief's fields, which provide crops and food for community members that are not self-sufficient.[54]

Obstacles to the successful implementation and running of these programs largely stem from a lack of an overseeing body capable of collecting helpful broad data and facilitating

[46] *Ibid*.
[47] *Ibid* at 98-99.
[48] *Ibid*.
[49] *Ibid* at 99.
[50] *Ibid*.
[51] *Supra* note 13 at 69.
[52] *Ibid*.
[53] *Ibid*.
[54] *Ibid*.

collaboration between these organizations.[55] Additionally, orphans and members of child-headed households are not always making use of these efforts because they are unaware of the programs altogether.[56] Among those that are aware of these facilities, many yet still did not utilize them, citing reasons such as distance or lack of knowledge of location, confusion surrounding the purpose of the organization, or belief that a formal invitation was required.[57]

In addition to these efforts, the Kingdom of Swaziland ratified the *Convention on the Rights of the Child* ("*Convention*")[58] in 1995 and put into force a new Constitution that became operational in 2006 that included a Bill of Rights and specific provisions on children's rights.[59] The *Convention* is a legally binding document highlighting the human rights of children. Its four main threads focus on non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and, respect for the views of the child.[60] Through its ratification of this *Convention*, the state committed itself to the protection and assurance of children's rights.

Committee on the Rights of the Child and Recommendations

In its 2006 report, the Committee on the Rights of the Child ("Committee") praised the state's adoption of the *Constitution Act of 2005*[61], specifically acknowledging its legislative protections of the rights of the child.[62] Also highlighted was the implementation of a national HIVS and AIDS policy and strategic action plan.[63] In its assessment, the Committee recognized

[55] *Ibid*.
[56] *Supra* note 6 at 100.
[57] *Ibid*.
[58] *Convention on the Rights of the Child*, 20 November 1989 (entered into force 2 September 1990).
[59] Committee on the Rights of the Child, *Consideration of reports submitted by states parties under Article 44 of the Convention*, Official Records, 2006, UN Doc CRC/C/SWZ/CO/1 (2006).
[60] *Supra* note 58.
[61] *The Consitution of the Kingdom of Swaziland Act 2005*, 26 July 2005.
[62] *Supra* note 33 at 1.
[63] *Ibid*.

the HIV/AIDS epidemic in collaboration with drought and lack of food security, as significant impediments to the successful implementation of the Convention.[64]

Chief areas of concern (relevant to child-headed households) are the lack of a thorough legislative review to ensure constitutional compatibility with the key principles of the *Convention*, the absence of an operational coordinating unit to oversee the efforts and collaboration of both governmental and non-governmental agencies involved in the fulfillment of children's rights, the low priority of resource allocation to education, a dearth of a comprehensive data collection system, the ambiguous definition of a child under the law, and, finally, the adverse impact of HIV/AIDS on orphans as well as the lack of operational guidelines for orphanages.[65]

The Committee set out recommendations to help tackle each area of concern. It is recommended that the state adopt a Children's Bill (which was endorsed by His Majesty King III in 2012[66]); prioritize and increase budgetary allowances for educational services; continue its efforts to obtain comprehensive data and seek technical assistance from UNICEF; and, clarify its definition of a child, adopting the *Convention*'s definition of persons under 18.[67] With respect to children without parental care the Committee implores the state to develop an effective policy addressing needs of orphans; provide governmental support for programs that support children in vulnerable families, especially those impacted by HIV/AIDS; offer psychosocial and financial assistance to extended family groups caring for these types of children; promote alternative family-type forms of care for children without parents; develop and ensure the implementation of operational guidelines for orphanages; and, lastly, ensure access to counseling services for children.[68] Additionally, as previously mentioned, it seems critical that greater awareness of

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[64] *Ibid* at 2.
[65] *Ibid* at 2-5.
[66] Kwanele Dhladhla, "Kwendzisa is an offence", *Times of Swaziland* (10 September 2012).
[67] *Supra* note 33 at 2-4.
[68] *Ibid* at 5.

governmental and non-governmental assistance programs is ensured among vulnerable children such that they feel comfortable utilizing these organizations.