

**SUBMISSION ON THE REPORT OF THE
COMMITTEE OF INQUIRY INTO A
COMPREHENSIVE SOCIAL SECURITY SYSTEM**

**Recommendations Relating to Persons with
Disabilities**

**Made by the South African Federal Council on
Disability and the Children's Institute, UCT
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INTRODUCTION

The South African Federal Council on Disability (hereafter referred to as the SAFCD) and the Children's Institute, of the University of Cape Town, (hereafter referred to as the CI) wish to thank the Department of Social Development for this opportunity to make submission on the Consolidated Report of the Committee of Inquiry into a Comprehensive Social Security System (hereafter referred to as the Committee).

We wish to stress that the time allocated for civil society to make submission on the Committee's Report was completely inadequate to allow for informed debate within the sectors, in order to provide detailed analysis and response to the recommendations made by the Committee. In addition, the report was not easily accessible to the majority of persons and organizations.

We therefore call for further opportunities for public input, such as public hearings, and for specific and sponsored workshops with the various sectors. It is essential that civil society are given the opportunity and support to interrogate the Consolidated Report and the full topic reports that were summarized in the Consolidated Report.

We call for all these topic reports, all the research that was undertaken or provided, and all the public submissions made to the process, to be made easily accessible to the public, as soon as possible.

We remind the Department of its commitment, stated in the White Paper for Social Welfare (1997), in the restructuring process of the social security system to be guided by organizations of people with disabilities and representatives of those constituencies who are unable to represent themselves.

Priority number 8 in the Minister's 10-Point Programme in response to the social crisis in South Africa, he says that ***"the Department will redesign services to people with disabilities in ways that promote their human rights and economic development. The Department commits itself to work with people with disabilities to ensure that their needs are met without further marginalizing them."***

PURPOSE AND OVERVIEW OF THIS SUBMISSION

Due to the short timeframes, this Comment represents an initial response, pending a more detailed response from the Sectors (Disability and Children), once consultative workshops have been held.

This submission shall examine the issues in the Report that relate to adults and children with disabilities and chronic health conditions, concentrating mainly on the Chapter on Disability, while making some suggestions regarding the other aspects as they relate to disability.

We are pleased that in the Chapter on Disability, the Committee draws extensively from the research and suggestions provided by ourselves in the report (2001¹) commissioned by the Committee. We believe that the points made represent important changes in theoretical frameworks and principles. However, the Committee fails to operationalise

¹ CHPI (now CI) & SAFCD. 2001. Social Security Policy Options for People with Disabilities in South Africa: an International and Comparative Review.

many of the conceptual issues, and does not provide concrete details on how these would be implemented. Many of the issues, however, would require extensive debate and exploration between the Disability Sector and the respective government departments.

We wish to highlight the recommendations for immediate implementation, and those which would feed into the longer-term development of a comprehensive system. We also make specific suggestions or additions to the recommendations made by the Committee.

The submission shall give an overview of the gaps and inconsistencies in the Committee's Consolidated Report by referring to specific chapters. The disability sector has made recommendations, suggestions, additional comments where necessary or by copying relevant sections in the Report¹ prepared by ourselves which adequately dealt with these matters.

CHAPTER 2: The Socio-economic Context and the Need for Comprehensive Social Protection

2.8.2 Shortcomings in the South African social security system:

*“ Disabled- There is a **disabled grant** of R570 per month for medically diagnosed disabled persons over 18 years of age. This grant is a **de facto** poverty grant, as 77per cent of recipients are also in poverty.” (...page30)*

The disability sector strongly objects to the terminology used in the above statement. The grant is not **disabled** but it should be registered that it is a form of social assistance referred to in the Social Assistance Act as a social grant for adults over 18years of age with a recognized disability referred to as a **disability grant**.

We would like to clarify that the DG has become a *de facto* poverty grant. The Disability Grant was not intended to be a poverty grant but rather to provide assistance to meet the additional needs resulting from a disability and to compensate for loss of income due to the disability. However, due to the high poverty levels and unemployment in the country the grant has become a poverty-alleviating grant that supports not only the persons with the disability but also entire households. Measures are required to return the grant to its original purpose and to maximize its potential impact on the lives of people with disabilities.

The disability grant will continue to have this skewed purpose as long as the additional support services are not in place, for example free healthcare and accessible transport.

CHAPTER 3: Approach to a Comprehensive Social Security Provisioning

3.4.1 A comprehensive social protection “package”:

On the issue of indirect social security benefits, the report does not commit sufficient attention to the range of options. The support services suggested to address *capability poverty* (free health, free education etc) are crucial to the development and advancement of adults and children with disabilities. It is therefore imperative that these

services be clearly defined again in the Disability chapter, with specific recommendations to the relevant departments' for their implementation and delivery. We

The components of the comprehensive package as described in Chapter 3 and presented in Table 7 (p.42) are indeed all important aspects of the package. However, the Committee fails to develop these ideas further into concrete recommendations, nor even refers to them again in the various sections of the Report.

Indirect Social Assistance – existing and limitations – with regard to persons with disabilities

The South African government has shown the will to respond to the needs of people with disabilities by working with them in developing the progressive Integrated National Disability Strategy concerning the realization of socio-economic rights of people with disabilities. ***The Constitution of the Republic of South Africa Act 108 of 1996 calls on the state to “respect, protect, promote and fulfill the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and environment.”***²

The Equality Clause in the Bill of Rights further affirms this. However despite the progress in legislation and the attempts by certain governments departments to speed up service provision to disabled people, the disability sector still faces multiple challenges. Therefore circumstances facing the majority of poor disabled people in particular are bleak, and cultural differences are not clearly understood by individuals and/or organizations when designing programmes or services for people with disabilities and this increases the gaps in service delivery further.

HEALTH

The South African Human Rights Commission (SAHRC) report (2000³) states that, Central to the government's provision of health care services has been the transformation of the public health care sector to a district based service providing primary health care (PHC). District Health Services accounted for one of the largest programme allocation increases in spending. However, a disproportionately high amount of the budgetary increases has been spent on personnel, to the detriment of non-personnel expenditure. Whereas personnel expenditure increased by 32.8% from 1996/1997 to 1998/1999, non-personnel expenditure decreased by 83% over the same period. The distribution of financial resources for health to provinces has resulted in some of the historically poorer provinces experiencing an increased allocation at the expense of some previously favoured provinces.

This particularly affects people with disabilities as they are unable to access private health care and are dependent on public health care. Furthermore most disabled people are resident in the rural or peri-urban settings. Primary health care services are almost non-existent to disabled people as their needs are catered for at district level due to the facilities are restructuring and the focus is on human resource development. Community Based Rehabilitation (CBR) is not seen as a viable alternative for addressing some of these needs, irrespective of the fact that these are proven good CBR models in the country for example the Department of Health & Disabled People South Africa (DPSA)

² Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

³ SAHRC. Second Economic & Social Rights Report (1998-1999). September 2000.

partnership in Mpumalanga. Indicators for human resources show gross disparities both between the private and the public health care sectors and between provinces.

People with disabilities are forced to use their disability grants to pay for private or public health care, and are therefore completely dependant on social assistance for example unavailability of medicine and medical supplies resulting in numerous hospital visits. The situation is exacerbated by the fact that there is no National Rehabilitation Policy, as the policy has been in a draft format for the four years. Provincial Health Departments are not legislatively obligated to seriously address rehabilitation needs of people with disabilities.

Presently some Provincial Health Strategies are not inclusive of rehabilitation at district level for example rehabilitation services are currently centralized at specialist hospitals and are not available to people outside urban areas. Also most people with disabilities who need assistive devices are without them as they are not easily available, appropriate and affordable. This further results in people with disabilities being dependant on the health system developing secondary disabilities, which makes economic liabilities of the state.

FOOD

Despite the constitutional provisions for the right to food, vulnerability to food insecurity continues to impact on the lives of many South Africans. The challenges that need to be addressed to improve on the right to have access to sufficient food are that, more policies should be developed to target women, children, children & people with disabilities, and people living in rural areas (including farmers) and informal settlements. The SAHRC report (2000) recommends that:

- School feeding programmes need wider coverage, as the majority of children with disabilities are not found in the formal schooling system and therefore not benefiting from the scheme.
- Addressing the problems of stunting and wasting in children under five, and in particular children with disabilities, as they are vulnerable beyond the age of five.
- Providing an enabling environment for people to gain access to food.

EDUCATION

Educational opportunities are less available and affordable. Service delivery and focus has been mostly on special schools, which are primarily focused on white children with disabilities and the legacy of the past is still carrying over. Schooling for poor disabled children is still limited and most black disabled children do not get education at all, and where there are special schools within their community, the subjects offered are limiting the children from ever going to a high school or a university, or going for formal employment as they are not equipped with skills to work. The current composition and curriculum for poor children with disabilities in these special schools is still inherently flawed. In some provinces there are schools, who, still remain predominantly for white and Indian children.

According to the SAHRC report (2000), the National Department of Education (NDE) has made significant progress in policy developments. The programme on Early Childhood Development (ECD) has reached about 2 800 non-governmental Early Childhood Learning sites serving approximately 70 000 disadvantaged learners.

Despite the progress of the ECD policy, some questions remain unanswered. For example how many disabled children are integrated within these sites, and how many of these sites are specifically targeted towards disabled children. Many children continue to be cared for by their mothers at home, and this results in mothers not being able to be economically active; and ultimately they become solely dependant on social assistance

Furthermore on the report it is stated that, ABET, which addresses the problem of adult illiteracy, is seen by government as an important tool for social participation and economic development. A number of provinces have formal ABET programmes with learning centers for adults and youth. ABET is one the most critical ways of alleviating dependency on social assistance, because it creates opportunities for persons with disabilities to access formal employment, but it is quite evident that almost of all the mainstream learning centers are inaccessible for disabled adults. This results in organizations for disabled people setting up their own learning centers, thereby drawing up on limited resources to operate and maintain these centers.

The report also states that, the Education for Learners with Special Education Needs (ELSEN) policy is meant to make education more responsive and sensitive to learners with special education needs. In KwaZulu-Natal there are 58 ELSEN schools with the necessary support resources and the Western Cape instituted a policy on the inclusion of learners with disabilities into mainstream schools.

The report emphasizes that, the South African Schools Act 84 of 1996 provides for compulsory education for learners between the ages of seven to fifteen years. The adoption of national norms in April 1999 has meant that no learner can be denied education due to inability to pay school fees. Expenditure for education constitutes almost 22%. However, schools spend more money on personnel than on non-personnel issues.

We acknowledge the progress by the Department of Education in terms of mainstreaming learners with special needs, it is however discouraging to note that there is still no National policy in South Africa (i.e. the White Paper on Inclusive Education is still a draft due to lack of financial resources for implementation. A majority of disabled children are still denied their right to education in both mainstream and ELSEN/special schools. In mainstream schools the problems arise from the infrastructure and incompetence of educators to teach learners with special needs.

Within special schools the issue is around the rigid assessment procedures, and another one is that most ELSEN schools are urban based, as a result inaccessible to rural learners with special needs. Therefore most disabled children of school going age are predominantly cared for at home, dependent on social assistance and are never going to access any educational subsidy. If at 10% of the total education expenditure can be spent on mainstreaming learners with special needs/disabilities, then the current expenditure on specials will decrease significantly.

HOUSING & TRANSPORT

Housing and transportation services are inadequate, as they keep the majority of poor disabled people inside their houses. Currently the mainstream transport services remain inaccessible for people with disabilities, and no access to transport has serious effects on disabled people's integration and economic activity. Physical environment presents

people with disabilities with many difficulties, as most facilities have been built by and for non-disabled people without consultation with disability sector.

According to the report, the White Paper on Housing was developed with the principal aims of stabilising the housing environment and providing subsidised affordable homes to the disadvantaged. The amended subsidy scheme allows persons with disabilities access to additional subsidy money for the necessary improvements to their units such as ramps, special doors, handrails and other design interventions.

Access to this intervention for people with disabilities is non-existent and attitudes of administrative staff towards disabled people when applying is normally negative resulting in the abandoning the application process.

The NEDLAC Job Summit agreement around housing obligates Department of Housing (DoH) to ensure that 10% of all new units must be accessible to people with disabilities. The problem, however arises at implementation level as accessibility is only limited to physical disability and people with other disabilities do not access this provision. This results in them being “trapped” in their house or residing in informal dwellings where they acquire secondary disabilities. For example a person who has a physical disability, who due to inaccessibility of his/her home falls and sustain a head injury that results in an intellectual disability.

Access to public transport is integral to the independence and development of people with disabilities, but it receives the least attention. There is no National Policy on Access to Transport for people with disabilities, which informs implementation at provincial level. This has lead to organizations for people with disabilities taking this responsibility on themselves and receiving subsidies from the Department of Social Development. The financial resources spent on “specialized” transport is costly and could be used elsewhere if the Department of Transport took its responsibility by ensuring that people with disabilities had accessible public transport that would enable them to actively participate in society. Various initiatives on making public transport accessible for disabled people have been undertaken by some provincial and local authorities, but this is almost useless in the absence of a National Transport Policy that demonstrates the commitment of the ministry towards people with disabilities.

EMPLOYMENT

Employment opportunities are few and far between, or only in the form of sheltered or protective employment. This form of employment furthermore perpetuates the image of disabled people as expensive burdens, for whom special provision must be made.

FUNDING OF DISABILITY PROGRAMMES

The other issue which is critical, that threatens stability and transformation in the disability sector, is funding. Some government departments are still currently funding organizations *for* disabled people but not *of* disabled people. These organisations continue to build institutions, which separate disabled people from their families. It is within these institutions that gross human rights violations occur. In these institutions people with disabilities are not empowered to take action to improve their lives, they become a drain to scarce resources.

Services for people with disabilities remain very institutionalized and “top down”, and people with disabilities still suffer at the mercy of services providers. This means the majority of poor disabled people’s needs and potentials remain unmet.

3.5.2 Social protection and institutional arrangements:

Means Tests

The Committee points out that the means-test has negatively affected the ability of the poor to access benefits. Means-tested schemes invariably have low-uptake rates, and also contribute to the ‘welfare-trap’ (p.45). The different and complex means-tests used by the different Departments for the various benefits are mentioned, and thus the Committee “*believes the most efficient, developmentally most effectively and fairest way forward is to **abolish all means tests** and to recover the costs through increases in tax*”.

3.6.3 Articulation and means tests:

The Committee initially calls for the abolishment of *all* the means-tests (i.e for *all* the grants) (p.47). However, it then states that if the means-tests have to be maintained, these must be rationalized, simplified and eventually eliminated (p.64). The Committee is not clear which means-test for which grants should be eliminated and which ones should be simplified.

The SAFCD and the CI strongly support the Committee’s call to abolish all means-tests, particularly for the proposed BIG (which must be universal), and all other social grants.

Regarding the DG and CDG, we suggest that eligibility for these grants be based on a holistic needs-based assessment, which would also consider the financial situation and needs of the applicant. Therefore recommending that a sliding scale of benefits approach should be applied, rather than means testing which is not realistic.

CHAPTER 4: Constitutional Framework for Social Security in South Africa

The Chapter on the Constitutional Framework for social security in South Africa fails to cover the specific rights of adults and children with disabilities that are enshrined in the Constitution, most pieces of legislation and in several other international treaties and covenants. The Chapter on Disability also fails to provide adequate discussion of these, which are relegated to a footnote status! Therefore we would like to recommend that the **footnote 27** be incorporated into the body of Chapter 4, specifically under section **4.4. A human rights approach**. Furthermore, Chapter 4 should include the principles and recommendations pertaining to Social Security articulated in the Integrated National Disability Strategy (INDS).

The Committee does not provide clear guidelines for the legislative framework required for the implementation of their recommendations. With regard to disability and children, existing legislation is fragmented and often contradictory, with no over-riding piece of legislation that ensures co-ordination and coherency between programmes. There is need to address this gap.

CHAPTER 5: Poverty, Social Assistance and the Basic Income Grant

5.4.1 What is the Basic Income Grant?

The Basic Income Grant

The SAFCD and the CI **support the notion of the need for a universal form of income support**, and therefore the Commission's call for a Basic Income Grant (BIG), which would be provided as an entitlement without means-testing to all persons in South Africa. Many adults with disabilities cannot access employment, not due to their disability, but rather due to the structural unemployment and limited opportunities, and thus live below the poverty line. We believe that a basic income support through a cash transfer would greatly enhance the standard of living of all adults and children with disabilities, many of whom cannot access the Disability Grant (DG) or Care Dependency Grant (CDG).

However, regarding the relation of the BIG to the existing grants, the Report is somewhat unclear and even contradictory. The Committee initially states that the BIG would only go to those persons currently not receiving any form of social security (p.61), therefore excluding persons receiving the Disability Grant or the Care Dependency Grant. At a later stage it implies rather that these 'de-facto' poverty grants would be 'rationalized', but does not elaborate. What does this mean and what is the impact of this on the lives of people with disabilities? The Chapter on Disability states clearly that the DG and CDG must be maintained at their current levels, if not increased (10.4.7.2 p105), and then suggests that persons with disabilities would first receive a basic income support, and then an additional "top-up" for their additional needs (10.4.7.3.p105).

The Disability Sector wish to state that we do not support the suggestion that the BIG only be for those currently not receiving any other form of social grant (p.61). Rather, we believe that **all** persons have the right to a BIG, and that those persons with additional and specific needs due to disability or chronic illness should still be able to access the Disability Grant and the Care Dependency Grant. The existing social assistance disability benefits must be retained until such time as a comprehensive package of social services are in place that are easy to access.

In the absence of basic free health, rehabilitation, assistive devices, inclusive education, accessible public transport and accessible housing, the person with a disability should receive a BIG to provide minimal income. In addition the person would still require the DG to cover the costs of the additional expenses due to the above services not being available.

We would like to stress that the DG was not intended to be a poverty alleviating grant, but rather to provide for the additional needs due to the disability that caused inability to work. It has only become a poverty grant because the high levels of destitution within households and the lack of jobs available to all people, irrespective of disability. So it must be recognized that the social grants (the DG and the CDG) and the BIG would be serving different purposes. Thus the introduction of a BIG would not reduce the need for the social grants, and therefore should not replace them but complement them.

CHAPTER 6: Employment and Unemployment

The Chapter on employment fails entirely to examine the employment status and opportunities for persons with disabilities, nor to make recommendations for their improved access. It does not examine the imperatives defined in the Employment Equity Act, the Employment Equity research reports, the draft code of good practice on disability, nor the international obligations included in the Covenant on Economic, Social and Cultural Rights (1976), and the UN standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993).

It would be advisable that the Committee examines the above documents when looking at the employment and unemployment for people with disabilities. The Department of Social Development is the lead department responsible for implementation of this report and should collaborate closely with the Department of Labour to ensure the release of the draft code.

Furthermore we would like the Committee to consider the following concerns with regard to the UIF system contained in the SAFCD and the CI report of 2001.

GAPS IN THE PROVISIONING OF UNEMPLOYMENT INSURANCE – with regard to disability

- Most people with disabilities are in the informal sector either self-employed or working in protective or sheltered workshops or else work on casual basis due to lack of skills, and they are excluded from this form of social insurance.
- The small percentage of people with disabilities that are able to access unemployment insurance are faced with negative attitudes from administrative officials who are implementing the act due to the lack of disability knowledge,
- If a migrant worker is faced with disability, he is not covered by the act, and they also cannot apply for a disability grant. Migrant workers have no support system.
- People with intellectual disabilities may only be able to concentrate for a limited time period due to the nature of the disability. They therefore often hold part-time positions, and are denied access to this benefit as part-time work is excluded.
- It is not clear how illness is defined in terms of benefits and therefore if the same person develops a disability resulting from this illness. At present they would only be able to access illness benefits but not social assistance.
- A pregnant disabled woman, who exhausts her maternity benefits would not be able to access a disability grant.
- On the Insurance Board there is no disability sector nor any other NGO representation.
- The unemployment insurance fund is administered by a number of structures, which may not be cost effective and efficient.

CHAPTER 7: Protecting the Children

Children with Disabilities

While the CDG's problems and limitations are discussed under the Children's Chapter, neither this chapter nor the Disability Chapter provide specific attention to improvement and extensions required for the CDG. **The report fails to mention that children with chronic illnesses are currently excluded from any form of assistance.**

We would like to add to the evaluation of the CDG:

The CDG is limited in its scope and purpose, and suffers from unclear eligibility criteria. By targeting only children with *severe* disabilities in *permanent* home care, it excludes children who may have moderate disabilities but due to their socio-economic situation these become severe handicaps and their needs are therefore great. It also excludes children with chronic illnesses, who similarly have great needs due to the nature of their illness.

The current Social Assistance Act does not define 'severe disability' nor 'permanent home care', leading to subjective interpretation by officers. We therefore support the call for an interactive approach to the definition of disability, "*which takes into account both the medical condition and social and environmental factors*" (p.106). The definition should cover any and all disability types and chronic illnesses, which result in special needs.

Regarding 'permanent care', there are children who would benefit from a few hours each day in a 'day-care' facility, but in such cases the parents would lose the grant, thus discouraging them from seeking some part-time employment, and denying the child's rights to education and stimulation. Access to the grant should be based on levels of care-need, in conjunction with the other factors mentioned above, and not specifically for permanent home care alone.

The current assessment tool for the CDG is purely medically-based, and does not consider the socio-economic and environmental situation of the child. It also has serious limitations in measuring childhood age-related disability and functioning.

Improvements required to the CDG:

All the conceptual principles described in Points 10.4 to 10.5 if implemented, would automatically improve the aspects of the CDG. Specifically, or in addition:

- Develop clearer policy eligibility criteria, definitions, assessment procedures and guidelines.
- Develop definitions based on the needs resultant from the disability or chronic illness, *rather than* on the disability or chronic illness diagnosis or severity.
- The purpose of the CDG should be to meet the extra needs of the child due to the chronic health condition, to promote the child's survival, development, protection, equality and participation in everyday life.
- Eligibility to the CDG should be based on level of need due to the medical, social, educational and financial consequences of the health condition.
- The assessment tool must capture the range of needs and the burden of the health condition to the child and their care-giver.
- Extend provisioning to children with moderate disabilities *and those with chronic health conditions*, including HIV/AIDS.

- HIV positive children should be able to access the CDG as soon as possible, to assist in preventing the rapid progression of the illness.
- Extend coverage to temporary chronic conditions (lasting longer than six months but which may be cured with treatment e.g cancer), which require high care and expenses, based on need, and subject to review within specific timeframe.
- Children attending LSEN schools or special day care facilities should still be entitled to the CDG, as they have huge need and cost due to their disability.
- Develop new assessment tools based on holistic needs assessment.
- Utilize a multi-disciplinary panel for assessments.
- Develop clear eligibility criteria and guidelines for assessors.

CHAPTER 8: Health

The Health chapter looks specifically at health insurances, it does not address the ***inadequacies of the current public health care services***, particularly those for persons with disabilities and chronic illnesses. Refer to our recommendations copied earlier in this Submission in Chapter 3 on Indirect Social Assistance.

CHAPTER 9: Retirement and Insurance

A glaring omission of the report is that it does not acknowledge the discrimination against disabled people within private medical schemes and private insurance schemes. In principle the concept of private disability cover is fundamentally right or correct, but it can become a complex issue when we look at the implementation of the scheme. Therefore this needs further social dialogue and debate between civil society and the private insurance sector. Furthermore, the following section highlights concerns raised in our previous report to the Committee.

PRIVATE INSURANCE SCHEMES, PENSIONS, PROVIDENT FUNDS – with regard to disability

There are many private insurance companies who offer individuals a wide range of insurances to cover for social risks, including disability, illness, retrenchment and death.

The different options are not presented here. However it is important to stress that a very small percentage of persons with disabilities can afford to access these schemes. In addition, they are penalised for their disability by higher premiums, even when the disability type does not incur any extra costs itself.

There are many cases of discrimination and unfair treatment of persons with disabilities in the private insurance arena. However these have not been well documented. The Human Rights Commission⁴ has indicated that it would be willing to undertake data collection regarding this issue, in order to access the actual situation. This would be useful to the process of the Committee of Inquiry.

The middle-income persons with disabilities are also particularly discriminated against. They do not qualify for the Disability Grant, due to their income, yet they also cannot afford private medical coverage and the higher premiums due to their disability. They

⁴ Consultative SAFCD workshop. 20 Feb 2001.

cannot access free assistanve devices and so have to pay all their medical and devices expenses themselves. Often, in order to maintain their positions, they must have the latest technology, which is extremely expensive. The maintenance and up-keep costs of this equipment is also high. They in essence have no form of assistance or support available to them.

CHAPTER 10: DISABILITY

Introduction

We acknowledge and appreciate the fact that the Committee has incorporated all the recommendations made by SAFCD and CI as contained in the “Research Report on Social Security Policy Options for People with Disabilities in South Africa: An International and Comparative Review” submitted to the committee in March 200. However, it is important to note that other sections in the report are contradictory to the recommendations in the disability section. These recommendations are also not clearly articulated and there are no suggestions for them to be operationalised.

It is for this reason that we would like to suggest the re-structuring of the chapter, as follows:

Specific Comments:

10.2 The demographics of disability: We find it difficult to support the statement expressed in the last paragraph of this section that claims that **men are slightly more likely to live with disability after accounting for age effects, probably due to the dangerous jobs many men hold**. There is no substantial evidence to support the above statement rather there is more anecdotal and documents studies which proves the opposite. Furthermore the INDS affirms women as a more vulnerable group to disability.

10.2.1Consequences of disability: We support the definition offered by the Committee regarding comprehensive social security relevant to the South African situation. We recommend that the term **special protection** be replaced with **specific support measures**. The words **special and protection** has negative connnotations when used in relation to disability. It defeats the objective of moving towards an integrated and inclusive society for all (including people with disabilities).

10.3.2 Conceptualisation and definition of disability and implications for national policy: We support the sentiments expressed in this section. However, we would like to note that the only omission is that the current Social Assistance act excludes certain categories of disabilities.

10.3.3 Progress and gaps in the current framework: Nowhere in the report is mentioned made of the uptake and coverage of the disability grant. Therefore the statement, which alludes to **State managing to create and maintain a system reasonable for a relatively large group of adults with disabilities** is not substantiated.

Enclosed please find figures for uptake rates for the CDG and DG.

Dec 2001	CDG	DG
EC	8 226	155 399

FS	1 319	42 469
GT	4 030	65 457
KZN	11 368	143 722
MP	1 862	37 164
NC	922	32 166
NP	4 060	56 043
NW	2 852	55 678
WC	4 237	98 269
NAT	38 876	68 6367

Source: SOCPEN Dec 2001. National Department of Social Development

It is clear from these figures that a very small percentage of disabled people are currently accessing the disability grant. This is quite alarming given the percentage of prevalence noted in the introduction of this report.

Recommendations:

Sections **10.4.2 to 10.4.7** is captured in the report as conceptual points. However, we like to verify that these are **long-term recommendations** that should be reflected as such in the report. Furthermore section **10.5 on Short-term measures** should be reflected as **short-term recommendations** for immediate implementation over the next three years.

As the recommendations in 10.6 are not clearly articulated and they seem to be contradictory with no clear time-frames and indicators for operationalisation. The disability sector suggests that the recommendations contained in 10.6 should be incorporated in long-term recommendations of sections **10.4.2 to 10.4.7** as the seem to be loosely constructed and tend to be repetitive of points are mentioned in these sections.

10.6 Recommendations:

Although the sector makes the above recommendations we have attempted to review the recommendations contained in this section. Herewith we would like to articulate the following concerns regarding each of these recommendations and

- The concept of independent living for people with disabilities in the African region is inappropriate. The emphasis should be on providing an enabling environment for equal participation and integration of disabled people into society, rather than segregation and discrimination.
- Whilst in principle the disability sector supports this recommendation, it should be noted that the current support services are inadequate to meet the needs of disabled people. Therefore it is quite crucial that the disability grant remains and in addition disabled people benefit from the basic income grant as well.
- In this recommendation a point is made as if the non-cash benefits are in existence. Clarity is required regarding the nature of these non-cash benefits alluded to in the recommendation.

- The disability sector agrees with the recommendation that the definitions contained in the act are insufficient. The sector affirms that if redefinition of disability is to take place it needs to take account of the broader needs and capacity of disabled people, rather than impairment or condition. The particular needs resulting from a specific category of disability should be examined in relation to the particular scheme or benefit.
- The sector welcomes the recommendation of broadening the eligibility criteria to include other categories of disabilities such as sensory and intellectual disabilities. However, strongly recommend that the criteria expand to all disability types and chronic illnesses that have been previously excluded. This should be done based on the **need** rather than the impairment, type, and severity.
- The terminology in this recommendation seems to be outdated as the ICIDH-2 has been revised and is now referred to as the ICF, which now uses positive terminology such as activity limitation and participation restriction instead putting the focus on bodily functions of the person. We do not support this recommendation because ICF cannot be used to define disability. As it can be easily misinterpreted and it is also lacking in providing a framework for childhood disability. In addition by defining the disability or the impairment we will go back to our past of the medical model and will undermine the release of the INDS. The ICF is a framework illustrating the wide range of possible needs for disabled people in different areas ranging from physiological, social, environmental and participation. Also that the ICF should be used in conjunction with other instruments. Its applicability is more in the line of developing assessment tools. Therefore the disability sector has recommended the usefulness of the ICF as a guide for the development of the needs-based assessment tool.
- We support the two purposes of the amended definition that these should be to determine eligibility based on purpose and benefits of scheme; and based on the needs resulting from a particular kind of disability. A person does not suffer a disability instead a person experiences its consequences. It is based on this premise that we suggest withdrawal of the word '**suffering**'.
- The recommendation does not give clarity regarding who is responsible for the provision of assistive devices. It should also be noted that the definition of essential assistive devices includes the non-human i.e. calipers, wheel-chairs, Braille machine, hearing aids and prosthesis; and human assistive devices i.e. personal assistance, readers, sign language interpreters etc. The current situation is that the Department of Social Development is responsible for personal assistance. The department's response to this is the grant in aid of approximately R120, which is inadequate. This amount enables a quadriplegic to get out of bed once a month. The policy around personal assistance should be reviewed in consultation with the disability sector. An inter-sectoral approach should apply as assistive devices are not the only support measure required by disabled people, but should be part of a broader support services package inclusive of education, transport, housing etc. Refer to the section on support services.

- The principle of self-representation is crucial in this regard. The disability sector should be the first to be consulted to assist with the specific indicators for issues relating to disability contained in this report prior to further consultations with other stakeholders.
- The Social Assistance Act should be rewritten to articulate implications for application of the act and implications for implementation of the act. The disability sector supports this recommendation but suggests a social Security Act, which encapsulates the different social security schemes (social insurance and social assistance). All these different social security schemes should have their own regulations and guidelines for implementation. We support the notion that officials should be aware of the obligations and rights of applicants. Furthermore we recommend that the officials should be trained and the disability sector should be an active partner in the training process.

CHAPTER 11: Road Accident Fund (RAF)

11.2 Conclusions:

Regarding the RAF, the Committee makes some recommendations, but passes responsibility of the more substantive process to the Satchwell Committee. Since the Committee was meant to examine all aspects of a comprehensive social security system, and due to the fact that many people become disabled through road accidents, we strongly believe that their Report should have examined in greater detail the Fund and made more concrete recommendations. The analysis provided by ourselves (SAFCD & CHPI 2001) is copied here below the Committee's perusal.

GAPS AND DEFICIEINCIES IN THE ROAD ACCIDENT FUND – with regard to disability

Historic Development

The way, in which the RAF has been formulated since the inception of the introduction of the compulsory motor vehicle insurance in 1942, has done little to improve the instrument into an efficient and effective of the method of compensation. In addition to this the primary legal premise that this RAF has been derived from a principle of liability cover for the guilty party. This has created a compensation system, which is out of line with other the compensation instruments such as COIDA, and the UIF.

In general the RAF and the Acts that preceded it have been the subject of extensive criticism, not only related to the alleged misadministration corruption and fraud, but also in response to the complexity and problematic interpretation of the RAF as a legal instrument.

Administration and Policies

The structure of the Fund and the infrastructure which is has developed has done little to improve the efficacy and cost of the process of delivering compensation. The financial management of the fund and the underwriting principles used by the fund, continue to be the subject of debate and criticism. Claiming from the Fund is generally regarded as

problematic and it is suggested that the general policy adopted by the Fund is to contest any claim except the lowest levels of compensation.

The focus of the Fund seems to be more akin to insurance practice of minimising the settlement value of a claim, as opposed to providing adequate compensation. This has provided a fertile framework for litigation and protracted legal process, which generally provide settlement years after the date of the accident.

Financing

Unlike other compensation instruments the revenue base for the fund is achieved by levies associated with the consumption of motor vehicle fuel. While in principle it may seem appropriate, comparison with other areas of personal liability, it generates questions related to the equity of this type of taxation.

The large deficits reported by the Fund have generated a great deal of anxiety and confusion regarding the sustainability of the Fund, this has called into question the nature and level of compensation offered by the Fund. The legal fraternity, in representations said to represent the interests of the victims, has rejected continued recommendations that the level of compensation be limited or “capped”.

Legal Basis for Compensation

The common law principle of delictual liability generates a fundamental anomaly that if you are adjudged to be the primary cause of the accident you, your family and dependants cannot claim from the Fund. By contrast the suggested victim can be apportioned up to 49% of the blame and can receive compensation to the value of 51% of their claim. There are other more subtle anomalies in the legal basis for compensation, which cannot be covered by the scope of this summary

The RAF has very significant gaps and anomalies in the scope of cover:

- The victim of a hit and run accident is excluded from accessing the Fund, in a society where public safety is generating an increasingly high level of hit and run accidents, which are tacitly condoned by law enforcement agencies
- Paying passengers on motorcycles are also excluded for reasons which are no longer understood, while paying passengers in a Rickshaw would be covered. This anomaly was very evident in a City such as Durban, where Rickshaws and Tuc-Tuc's operate side by side.
- The fact that the spouse, family and dependants of the deemed guilty party are excluded from access to compensation from the Fund seems to be in direct conflict with the constitutional rights of the individual.

There are a number of less defined forms of exclusion, which are difficult to summarise in a summary of this nature and form the basis of extensive case law.

Limitations

The limitation of R25000.00 placed on victims who were paying passengers in a vehicle used for public transport, lift clubs and passengers in vehicles, as deemed employees, has its basis in expediency related to the level of risk exposure. It offers little equity to these victims, who are often at very high risk in vehicles owned and driven by unscrupulous private transport operators, fly by night businessmen and ruthless farmers. It also impacts on the potential claims from domestic workers

Access to Compensation

The RAF is essentially a system based on a highly legalistic approach to achieving compensation. This makes it inaccessible and beyond the comprehension of most laypersons. The process includes a number of points of exclusion, based purely on not meeting procedural requirements.

The process of claiming has developed a component of the legal fraternity who specialise in processing claims and generate the perception that there is not other viable means of accessing fair compensation from the Fund. This has been reinforced to some extent by the Fund approach and unwritten policy, with respect to contesting the larger claims. In cases where attorneys have succeeded in securing multi-million rand awards, victims have sacrificed large components of the legal costs to their legal fees.

The perception that the man in the street can only access RAF compensation by engaging legal assistance, saps a large proportion of funds, which should essentially be allocated to compensation. It is currently estimated that on aggregate one third of the compensation is paid in legal costs and administration costs. In certain cases legal professionals are absorbing as much as three quarters of the claim to cover their legal services.

Awards

Once awards have been made the lump sum or certified awards both pose potential problems:

- Lump sum awards are often mismanaged by both the victims or their families who gain access to significant resources, with little understanding of the lifetime expenses of the victim. The result is these resources are depleted within years of the award and the later more problematic years of the victim's life are left unresourced.
- In cases where a curator is appointed to administer lump sum awards, misadministration and fraud are often linked to high administration fees. The inability of victims to generate legal remedies against the curators is exacerbated by their lack of access to their own resources.
- Certified awards generate an onerous obligation on the victim to motivate every component of expenditure in a system that is steeped in bureaucracy. The burden is so severe that most victims give up their right to claim this compensation, as it requires an extensive commitment of time and resources, which are already at a premium.

Overview

Given that the existing RAF is full of anomalies and inconsistencies, linked to mismanagement and the fundamentally unsustainable levels of compensation offered currently. It is essential that the primary concept of compensating motor accident victims in a different framework from the main social security system, should not be taken as a given.

In the context of providing a seamless holistic social security framework, the RAF as an integrated instrument of compensation generates the fundamental debate, as to why a victim of motor vehicle accident should receive an essentially unlimited level of compensation, while victims of occupational accidents and illness should receive limited levels of compensation and victims of violence receive no compensation at all. In addition to this the basis for compensation is steeped in socio economic stereotypes, where an attorney defending the claim of a daughter of a white affluent family may

succeed in persuading a judge that she would have become a famous concert pianist and should be awarded a multi-million rand compensation package. In stark contrast to this a son of a family living on the Cape Flats in an informal settlement, is unlikely to succeed in persuading the legal system that he was destined to become Benny McCarthy and should be compensated accordingly.

CHAPTER 12: Coverage Against Employment Injuries and Diseases

The Chapter fails to highlight implications for people with disabilities with regards to COIDA. Furthermore, we would like the Committee to consider the following concerns with regard to COIDA contained in the SAFCD and the CI report of 2001.

GAPS IN THE PROVISION FOR COMPENSATION OF INJURIES & OCCUPATIONAL DISEASES (COIDA) regards to disability

Administration

There is no disability expert on the COIDA board who is conversant with the impact of disability and the needs.

A one-year post-humus child with a disability who is waiting for the compensation, cannot in the meantime access a disability grant.

One cannot receive a grant at the same time as receiving payment for COIDA. The delay in payment of COIDA causes suffering in the meantime and the person has no other source of assistance.

Some accidents may fall out of the ambit of what is defined in the Act for example in most cases people with disabilities provide for their own transport to and from work, should they meet with an accident during this process they would automatically not be compensated.

Calculation of the Compensation benefits payable, uses a schedule which is inappropriate and punitive to people with disabilities, as it does not consider the following factors when determining the compensation:

- Environmental barriers
- Socio-economic circumstances of the individuals
- The individual's skills base
- The individual's specific support system that might be needed post accident
- Retraining and re-skilling

The composition of the COIDA board is mostly legal and medical, the degree of disability is determined against a financial background without looking at the needs of the person facing that particular disability.

There is also an assumption that people who are permanently disabled will never work again, therefore compensate for the loss. It is not considered what is to happen when the COIDA money runs out, but these people fall back on Social Assistance, and the vicious cycle continues.

Also it is stated that a person has freedom of finding work after receiving compensation, but expected to find work without being re-assessed and retrained to find work, in the other words there is no rehabilitation after compensation.

Claims of the dependants of the deceased employee are calculated on the basis of he/she being permanently disabled (inappropriately determined in the first place), and not from the basis of how the deceased employee would have provided for his or her dependents needs.

Gaps in the Process of Claiming for Compensation

- Notice of the accident must be given within seven days, but the employer in most cases does this at their own discretion (it can sometimes take up to 107 days to report). Who provides for the employee's needs during this time?
- People's right to just administration is often violated because often people do not have access to application forms and the offices are not accessible as they are centralized in Pretoria.
- There are also many disabled people who are injured at work but have never been compensated. Employers are reluctant to report accidents at work due to the levy linked to the number of accidents sustained at work.
- The assessment is solely medical, as the doctor is the only person who can assess the severity of the disability. The outcome of the medical examination is not the only means of assessing the extent of the disability.
- Most people do not have access to appeal hearings due to the fact that the venue, and communication used during the hearing, are not accessible. Therefore this person does not have any recourse when appealing a decision because of the above barriers.

CHAPTER 13: Institutional Framework

Regarding the Institutional Framework proposed, the CI and the SAFCD wish to re-iterate that all structures must have adequate representation of the beneficiaries of the grants, and so must include persons from the Disability and Children's sector. The Chapter does not clearly indicate which department will have responsibility for the Social Security Agency, nor how to ensure that the *"administrative and institutional arrangements concerning people with disabilities be included in a new national framework developed for social security delivery"* (.107). We believe the appeal mechanisms must be autonomous from the Department of Social Development. The appeal tribunals could consist of a similar range of professionals and disability representatives as are to be included in the Disability Assessment Panels. We would also recommend that the Agency have at least provincial level offices and are easily accessible to persons with disabilities, especially those living in rural areas.

CHAPTER 14: Financial Framework for Comprehensive Social Protection

Regarding the Financial Framework chapter, the CI and the SAFCD would request that the research that was commissioned by the Committee on their financial options and costs of providing their recommendations, be provided for public scrutiny. Furthermore, research on these matters may have to be undertaken, and should inform debate among

the sectors and departments. In addition, any future budget allocations must be in line with the Disabled People's Budget Report (IDASA and DPSA 2001).

We recommend that when the Cabinet discusses or examines the financing options for a Comprehensive Social Security System, it should not fall into the trap of believing the **myth** that provision for disability should be separate because it is "**more expensive.**" Rather, the Cabinet should look at options that ensure that the needs of people with disabilities are integrated into the system.

CONCLUSION

We acknowledge the fact that the Committee has dedicated a specific Chapter on disability. Furthermore, we appreciate the fact that the Committee has seemingly incorporated all the recommendations made by the Disability sector in the SAFCD and CI Research Report (2001). However, it is still a major concern to the disability sector that the Committee did not integrate disability specific issues in the rest of topic reports contained in the various Chapters.

Where the Committee incorporated disability, they seem to contradict the recommendations made in Chapter 10. The Disability sector supports all the recommendations made in Chapter 10 (with the proviso that all the changes or additions made by the sector in this submission will be considered). For the Disability sector it is important that disability is dealt with in an inclusive and integrated manner throughout the report. This will ensure that the needs of disabled people are adequately and sufficiently addressed when the recommendations on a Comprehensive Social Security System are implemented.