

## CHAPTER 6

### RIGHT TO SOCIAL SECURITY

#### 1. INTRODUCTION

The Constitution<sup>1</sup> of the Republic of South Africa provides that everyone has the right to have access to social security including, appropriate social assistance for those who unable to support themselves and their dependants.<sup>2</sup> The State has a further obligation to take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of this right.<sup>3</sup>

Children, like adults have the right of access to social security. The Constitution<sup>4</sup> also affords children the right to social services. The right is entrenched in a cluster of other child economic and social rights found in section 28(1)(c) of the Constitution. This section provides that, every child has the right to basic nutrition, basic health care services and social services.

The White Paper for Social Welfare<sup>5</sup> provides that social security covers a wide variety of public and private measures that provide cash or in kind benefits or both. The provision of these measures takes place, first, in the event of an individual's earning power permanently ceasing, being interrupted, never developing or being exercised only at unacceptable cost and such person being unable to avoid poverty. Secondly, in order to maintain children.

The White Paper defines the domains of social security as poverty prevention, poverty alleviation, social compensation and income distribution.<sup>6</sup> The White Paper further defines social security as policies which ensure that all people have adequate economic and social protection during unemployment, ill health, maternity, child - rearing, widowhood, disability and old age, by means of contributory and non-contributory schemes for providing for their basic needs.

At the International arena, the International Labour Organisation (ILO) Convention, Social Security (Minimum Standards) 102 of 1952 defines social security, as the protection which society provides for its members through a series of public measures against economic and social distress that would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death. These measures include the provision of medical care, and the provision of subsidies for families with children.

The Convention on the Elimination of all Forms of Racial Discrimination puts an obligation on the State to afford everyone the right to social security and prohibit racial discrimination in all its forms.<sup>7</sup> The Convention on the Elimination of all

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<sup>1</sup> The Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>2</sup> Section 27(1)(c) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>3</sup> Section 27(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>4</sup> The Constitution of the Republic of South Africa Act 108 of 1996.

<sup>5</sup> White Paper on South African Social Welfare Policy 1997 chapter 7.

<sup>6</sup> *Ibid.*

<sup>7</sup> Article 5(e)(iv) of the *Convention on the Elimination of all Forms of Racial Discrimination* provides that State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to

Forms of Discrimination Against Women also advocates for the elimination of discrimination against women especially in as far as social security is concerned.<sup>8</sup>

In terms of the White Paper, the social security system in South Africa is based on four fundamental and inter-related elements, namely; private savings, social insurance, social assistance and social relief.<sup>9</sup> Private savings means that people voluntarily save for unexpected contingencies such as disability, retirement and chronic diseases. Social insurance is the joint contribution made by the employers and employees to pension or provident funds. Government may also contribute to social insurance covering accidents at work. Social assistance is the non-contributory and means-tested benefit provided by the State to people with disabilities, elderly people and children. Social relief is the short-term measure to tide people over a particular individual or community crisis, it is non-contributory and it is means-tested.

Little content analysis has been attempted in commentaries in South African literature on the meaning of the right to social services.<sup>10</sup> In the *Grootboom* case<sup>11</sup> the court found that section 28 (1)(c) must be read in conjunction with section 28 (1)(b) of the Constitution. These sections imply that parents have the primary responsibility to provide economic and social rights of their children. The State intervenes only where the guardian/parents fail or are unable to provide for children. The primary responsibility to take care of children thus lies with their parents. Children's growth, development and well-being depend largely on the ability of their parents or guardians' ability to provide for them.

The Convention on the Rights of the Child (CRC)<sup>12</sup> provides that every child has the right to benefit from social security, including social insurance. The State is thus under an obligation to take the necessary measures to achieve the full realisation of the right in accordance with national law.<sup>13</sup> The CRC further provides that every child has the right to a standard of living adequate for its physical, mental, spiritual, moral and social development.<sup>14</sup>

Article 9 of the International Covenant on Economic, Social and Cultural Rights provides that State parties should recognise the right of everyone to social security including social insurance. This provision binds the child's economic security with

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guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights, in particular the right to public health, medical care, social security and social services.

<sup>8</sup> Article 11(1)(e) of the *Convention on the Elimination of all Forms of Discrimination Against Women* provides that State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to have paid leave.

<sup>9</sup> White Paper on Social Welfare.

<sup>10</sup> J Sloth-Nielsen, "The Child's Right to Social Services, the Right to Social Security, and Primary Prevention of Child Abuse: Some Conclusions in the Aftermath of *Grootboom*," Vol. 17, Part 2, *SAJHR*, 2001.

<sup>11</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

<sup>12</sup> The *Convention on the Rights of the Child* (1989) was ratified in 1995 by South Africa.

<sup>13</sup> Article 26(1) of the *Convention on the Rights of the Child*, 1989.

<sup>14</sup> Article 27(1) of the *Convention on the Rights of the Child*, 1989.

that of their adults. The African Charter on the Rights and Welfare of the Child ratified in 2000 makes provision for the survival and development of a child.

Despite these provisions the reality, however, is that the majority of children in South Africa live in poverty, even those in parental care face the same hardships as those without parental care. This is to a large extent caused by the fact that their parents are unable to provide them with the basic necessities. The infant mortality rate is high so is malnutrition. The number of child headed households is increasing at an alarming speed, which to a large extent is caused by the impact and effects of HIV/AIDS. Children heading households have been tasked with the huge responsibility of taking care of their siblings.<sup>15</sup> These children and others such as, those with disabilities and chronic illnesses; living on the streets; child offenders/children in conflict with the law as well as refugees and asylum seekers are amongst the most vulnerable children and marginalised.

The purpose of this chapter is to review the measures that have been taken by the government to realise the rights of access to social security including access to social services for children during the reporting period. The chapter will ascertain and assess whether the rights to social security including the right to social services have been realised and the extent to which the rights have been realised. The measures will include policies, programmes and projects and legislation instituted by government at both national and provincial sphere. This will also include the budgetary allocations for the realisation of the rights and the outcomes (indicators) of the measures instituted. Most importantly, the review will be based on the reasonableness and effectiveness of the instituted measures.

In order to pass the test of reasonableness, the measures have to be reasonable and effective in their conception and implementation, and must also take into account the needs of the vulnerable and marginalised. The critical review of government measures will be assessed against constitutional and international provisions. The adherence of the State to constitutional, regional and international instruments and the obligations thereto, will be specifically looked at in this chapter, and recommendations will be made on how best government can promote and fulfil the right in question.

## **2. POLICY, PROGRAMMES AND PROJECTS**

The government departments, namely; the Department of Social Development and the Department of Labour (DOL) were requested to report on policy, legislative and budgetary measures instituted between 2000/2001 and 2001/2002, including the outcomes (indicators) thereof.

### **National Sphere**

#### **National Department of Social Development**

The National Department of Social Development (NDoSD) reported that a Committee of Inquiry into a Comprehensive Social Security System was established; the

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<sup>15</sup> Children's Entitlement to Social Security, National Consultative Workshop Report, Cape Town, March 2001, 5.

Department also instituted a Review Policy on Social Grants policy and the National Norms and Standards for Social Assistance during the reporting period.

#### *Committee of Inquiry into a Comprehensive Social Security System*

The Committee established in May 2000, to investigate and present options to Cabinet for a comprehensive and affordable system of social protection for South Africa and to consider gaps within the existing social security system.<sup>16</sup> The brief of the Committee was not only confined to social assistance programmes but included matters relating to the health sector, the Unemployment Insurance Fund and the Road Accident Fund. The Committee submitted its first report to the Ministerial Sub Committee in 2002 for comment.<sup>17</sup>

The Committee's report reveals that most people do not have access to social security and that there is no income support for children between 7 and 18 years as well as for adults between 18 and 59 years of age. The Committee found that the lack of policy to address income poverty has been a constraining feature in South Africa's socio-economic programmes. The report paid considerable focus to a comprehensive social security system, with particular attention to children, disability, unemployment, health and retirement. The Committee recommended a comprehensive and integrated medium- to- long- term framework for income support. The framework will ensure that all citizens have a minimum acceptable standard of living and enjoy universal coverage.<sup>18</sup>

#### *Review on the Policy of Social Grants*

During 2000/2001 the department conducted a review of the regulations promulgated under the Social Assistance Act to identify policy improvements. This led to the review of social grants, assessment of disability grants as well as the care dependency grant, assets test and calculation of benefits.

#### *The National Norms and Standards for Social Assistance*

The department reported that it embarked on a comprehensive review of the delivery and administration of social assistance, with the view of developing national norms and standards. The policy aims at improving the efficiency and effectiveness of the administration of social assistance and ensuring that all beneficiaries have equitable access to social assistance irrespective of the provinces of their residence.

#### *Financial Management Improvement Programme*

The Financial Management Improvement Programme was implemented with the assistance of a conditional grant from the National Treasury in May 2000 for a period of 22 months. The grant was used to contract financial experts to assist the departments with the implementation of the Public Finance Management Act(PFMA)

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<sup>16</sup> Department of Social Development, Annual Report, 2000/2001, 17.

<sup>17</sup> Department of Social Development, Progress Report, March 2002, 8.

<sup>18</sup> Transforming the Present-Protecting the Future, a Consolidated Report, Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, March 2002, 154.

of 1999 in order to build capacity in financial management and in improving the management of social security budget allocations and conditional grants in provinces.

The programmes instituted by the NDoSD are illustrated in the table below:

**Table 1 Programmes and projects**

<b>Programme/projects</b>	<b>Policy on which programme/project is based</b>	<b>Objectives</b>	<b>Beneficiaries</b>	<b>Achievements or goals attained</b>
Norms and Standards	White Paper on Social Development  Ten Point Plan	Improve efficiency, effectiveness and equity in the delivery of social assistance	Recipients of social grants	Implementation plan completed
Audit of pension paypoints	White Paper on Service Delivery (DPSA)	To improve infrastructure at pension pay points, with focus on provinces that are predominantly rural	Recipients of social grants	50 percent of 8200 pension pay points have been audited
Technology infrastructure and Rural connectivity project	White Paper on Service Delivery	To improve communications and technology infrastructure in provinces	Recipients of social grants	Upgrading and replacement of computer and office technology in provinces
Social Grants Awareness Campaign	White paper on Social Welfare  White Paper on Service Delivery	To inform eligible beneficiaries about rights and procedures for accessing social grants	Recipients of social grants,	There was a total number of 4 374 817 beneficiaries as at March 2002
Financial management improvement	Public Finance Management Act	To improve financial management in the national and provincial department, with emphasis on social assistance	departments and social grants beneficiaries	10 departments had the benefit of financial experts to assist with implementation of PFMA improvement in financial management varied from province to province Good results achieved in national department and there was no under expenditure

**Department of Labour**

The DoL reported that Provincial Benefit Committees were appointed in ten regions. The Benefit Committees which consisted of an equal number of representatives from business and the labour movements were established to hear appeals against the decisions of claims officers who refused payment of unemployment insurance benefits to the beneficiaries.

The DoL further reported that it was engaged in a programme to improve the social security safety net. Though the department did not explain much about the programme, it did state that the programme was aimed at improving the coverage of the workers redistribution of wealth and improving financial viability of the unemployment insurance fund. All the workers especially poor members of the working class, are classified as beneficiaries of the programme.

In responding to implementation difficulties the DoL reported that the unavailability of major banks in remote rural areas forces beneficiaries to travel to the nearest town with a financial institution to have access to payment. The beneficiaries travelling from rural areas experienced problem as there was no form of safety and security from criminals. To address this problem the department engaged in talks with service providers such as TEBA Bank and the Post Office to try and afford beneficiaries in remote areas access to the unemployment benefits.

## **Provincial Sphere**

### **Provincial Departments of Social Development**

The departments that responded to the policy section were the Northern Cape, Western Cape, Eastern Cape and the Free State. Gauteng reported that there were no policy measures instituted during the reporting period, except for the Poverty Alleviation Programme and the Financing and Monitoring Programme. Mpumalanga indicated that it was implementing policies that were instituted prior to the reporting period. Limpopo and KwaZulu Natal were the only provinces that did not respond to the policy section.

#### *Norms and Standards Policy*

The Northern Cape indicated that the Norms and Standards Policy repealed the three month-processing period for social assistance applications.

#### *Review Policy*

The Northern Cape reported that the Review Policy aimed at reviewing the provisions relating to disability grants in the Social Assistance Act in order to maintain nation wide uniform standards on grants for people with disabilities. The department further established review panels through the Review Policy, and they were formed in all regions of the province.

The Western Cape Department established appeal panels to deal with rejected disability grant applications. The Eastern Cape reported that the Review Policy was instituted to govern the review of all grants that were approved as at the 1<sup>st</sup> of

December 2001. The department further reported that the policy ensured that only qualifying beneficiaries had access to the grants and also focused on administrative review and medical reviews.

The Free State Department reported that an appeals panel was introduced to allow persons who were aggrieved by the decision of the Head of the Department in the administration of the Social Assistance Act 59 of 1992 to appeal against such a decision. The appeals panel therefore had to ensure that appeals are conducted independently and objectively.

### **3. LEGISLATIVE MEASURES**

#### **National Sphere**

The NDoSD reported that the following legislative measures were instituted:

- Amendments to the Regulations: Social Assistance Act, 1992
- Review of the Social Assistance Act, 1992
- Social Grants Appropriation Act, 2000

#### *Social Assistance Regulation (Social Assistance Act as amended)*

Information from other sources provides that during 2000/2001, the Department of Social Development reviewed the procedure for assessing people for the Disability Grant and proposed amendments to the Regulations of the Social Assistance Act of 1999.<sup>19</sup> The amendments to the Social Assistance Regulations came into effect on 1 December 2001.<sup>20</sup>

The amendments include the introduction of assessment panels for disability grants and care dependency grants. These panels will improve access to social assistance grants by applicants, who do not have easy access to a District Surgeon. The three-month limitation on the payment of arrears has been removed. The beneficiaries will no longer be penalised for the delays in the processing of their applications. The procedures for review of eligibility for grants have been simplified. Beneficiaries are required to submit an affidavit stating that they are still alive and that they do not have other sources of income. Only those beneficiaries with other sources of income will be subjected to further review. Beneficiaries with permanent disabilities are no longer required to undergo medical reviews every five years, unless there is an indication on their medical report that their condition is likely to improve.

The income means for the Care Dependency Grant was increased, and applicants are required to declare the income of the parents only, rather than that of the entire household. The amendments make requirements for people to be properly informed about decisions made with respect to their grant and grant applications.<sup>21</sup>

Prior to 1998, disability pensions could be terminated only after an annual medical review and where the person concerned was less than 100 percent disabled. The new

<sup>19</sup> <http://www.gov.za/yearbook/2001/social.html> Site visited on the 05/03/02.

<sup>20</sup> *Ibid.*

<sup>21</sup> Department of Social Development, Progress Report, March 2002, 8.

1998 regulation provided for the automatic lapsing of temporary disability grants granted before 1998. The regulations and the way they were administered did not properly consider temporary status or period of disability.

The other legislative developments during the reporting period was the Social Assistance Bill. However the department did not report on this piece of legislation.

### **Department of Labour**

The Department of Labour reported that the Unemployment Insurance Bill was instituted in 2000.

#### *Unemployment Insurance Bill*

The Bill aims at extending the coverage to all workers in the labour market, and avoiding the exclusions of the past. The Bill also linked maternity benefits from the unemployment benefits, ensuring that female employees do not lose employment benefit days once they are on maternity leave. The Bill further proposes that, domestic workers and high-income earners be included as contributors and beneficiaries of the unemployment insurance fund.

The department further reported that in terms of the UIF 63 of 2001 everybody who contributed to the fund qualified for benefits, thus nobody was discriminated against. The problem however was with accessing the benefits, because most people from groups disadvantaged by past discriminatory laws did not have banking/savings accounts, and as a result they were given non-negotiable cheques upon claiming unemployment benefits from the fund. Beneficiaries with savings accounts had to wait for seven days for the funds to be cleared by the banks; those without savings accounts were forced to seek assistance from dealers who deducted commissions for cashing the cheques. Beneficiaries also had to wait in long queues to collect their cheques.

Beneficiaries in rural areas had to walk long distances or spend money travelling to reach the offices. The beneficiaries now receive the benefits on the same day and those without savings accounts are paid in cash, the fund contracted the Cash Payment Services Company to ensure that beneficiaries received their money in cash instead of cheques. Offices have also been increased to accommodate beneficiaries in rural areas. Refugees and asylum seekers do not qualify for benefits under the Act.

## Provincial Sphere

### Provincial Departments of Social Development

The respective provincial departments did not report on any legislative measures enacted during the reporting period, except for Regulation 11 under the Social Assistance Act 59 of 1992 as amended. The North West reported that Regulation 11 allowed beneficiaries who applied for social assistance grants to be back-paid depending on the application dates.

## 4. BUDGETARY MEASURES

### National Sphere

#### National Department of Social Development

**Table 2 Budget for the National Department**

Year	Total revenue in Rand(s)	Total allocation in Rand(s)	Allocation as a % of GDP/GGP	Per capita allocation in Rand(s) after inflation adjustment	Projected expenditure	Actual Expenditure
2000/2001	-	383 265 000	0.04	-	-	382 046 000
2001/2002	-	2 334 847 000	0.23	-	2 334 847 000	-

The dash (-) in all the tables denotes that the information requested was not made available to the Commission.

#### *Variance(s)*

In accounting for variances the department reported that its operational budget remained stable over the period 2000/2001 and 2001/2002 and that the variances in the department's budget over the period in the table above reflect the variations in the Special Allocations or Conditional Grants to the department. An amount R2 billions was appropriated in 2000/2001 for the payment of arrears. As a result of adjusted appropriation, an amount of R50 million was provided for the disaster relief in 2000/2001.

There were variations in the Poverty Relief Allocation for the period 2000/2001, R120 million and R50 million for the respective financial years. The Conditional Grant for the improvement of social security varied over the period, depending on the nature of the projects for which the funds were allocated. The allocation for HIV/AIDS varied over the periods, in 2000/2001, R5.62 million was allocated, the allocation increased to R14.9 million in 2001/2002.

The department reported that even though there was no under or over spending during the reporting period, the budget allocation was not adequate to enable the department to implement all its programmes and projects effectively. To address the problem of

budget inadequacy, the department established an Expenditure Review Task Team, to closely monitor over and under expenditure in all programmes and also redirect unused funds to priority areas. Cost saving measures in administration were introduced. The department also implemented the Early Warning System to monitor expenditure. Monthly expenditure reports were discussed at EXCO meetings to address signs of over or under expenditure.

The table below shows the budgetary allocations made by the NDoSD for the various programmes

**Table 3 National budgetary allocation**

<b>Programme</b>	<b>Year</b>	<b>Total allocation in Rands</b>	<b>Actual expenditure in Rands</b>
Social Security	2000/2001	147 272 000	148 370 000
	2001/2002	2 112 226 000	-
Old Age Pension Grant	2000/2001	12 291 619	12 450 854
	2001/2002	14 190 833	-
Social Assistance	2000/2001	24 225 000	21 901 000
	2001/2002	10 096 000	-
Disability Grant	2000/2001	3 928 056	3 978 943
	2001/2002	4 534 991	-
Poverty Alleviation	2000/2001	157 678 000	157 678 000
	2001/2002	50 000 000	-

*Variance(s)*

The department indicated that the allocation in the table above only refers to the allocation for the social security function and excludes the actual payment of social grants. The department indicated that the allocation for the Old Age Pension Grant as a proportion of the total budget allocation remained constant during the reporting period. The proportion represented by the welfare service budget in 2001/2002 has been distorted by the special allocation of R20 billion for arrears payments to social grants beneficiaries. The under expenditure was in the area of conditional grants where provinces and departments were not ready to receive their allocations. These amounts were rolled over to the subsequent financial years.

The department reported that the budget allocation for the Poverty Alleviation Programme in 2000/2001 was R120 million, plus the rollover funds from 1999/2000. The roll over from 1999/2000 was for projects funded but which were not ready to receive the final payments as well as funds that had been committed for the Integrated Rural Development Programme. In 2001/2002 the department had a provisional allocation of R203 million.

## Provincial Sphere

### Provincial Departments of Social Development

**Table 4 Allocations of Provincial Departments**

Province	Year	Total allocation in Rands	Actual expenditure in Rands
Western Cape	2000/2001	2 273 821 000	2 201 479 000
	2001/2002	2 401 622 000	2 377 548 000
Northern Cape	2000/2001	6 342 700 000	6 544 460 000
	2001/2002	6 716 530 000	6 103 138 000
Mpumalanga	2000/2001	1 214 328 000	1 320 880 000
	2001/2002	1 580 218 000	1 531 229 000
Eastern Cape	2000/2001	99 077 000	79 294 000
	2001/2002	87 584 000	87 668 000
North West	2000/2001	1 792 707 000	1 778 660
	2001/2002	2 048 396 000	2 041 815
Gauteng	2000/2001	647 733 000	2 626 920 000
	2001/2002	2 934 062 000	3 017 507 000
Limpopo	2000/2001	2 335 253 000	382 036 623
	2001/2002	243 809 000	243 876 000

The Western Cape Department (WCD) reported that the allocated budget was adequate. The phasing out of the State Maintenance Grant, the staggering process in the filing of vacancies and the non implementation of the re-design of district service delivery model contributed to the under spending by the WCD in 2000/2001. Conditional Grants were not utilised during 2001/2002, the unspent funds however were to be rolled over to the next financial year. The WCD reported that strategic business plans, were put in place to improve spending. The WCD further indicated that some funds could not be utilised mainly because there were no policies in place. The Northern Cape Department (NCD) reported that the budget allocation for transfer payments, payments for social grants and old age pension grants was less than the projected budget requested.

Mpumalanga Department (MD) reported that it was under funded in the 2000/2001 financial year. The MD had to overspend due to the budget inadequacy. The MD further reported that to address the problem of over and under spending, they were developing self-sustainability projects to also broaden the scope and extend funding to projects not previously funded. The Free State Department (FSD) reported that the budget, which was allocated for the FSD, was inadequate. To address the budget inadequacy, bilaterals were held with the Provincial Treasury to highlight the problem, hence there was no over or under spending for the period under review.

The Eastern Cape Department (ECD) reported that the budget for the department was not adequate. To address budget inadequacy, the Treasury was approached with motivational letters requesting additional funding for posts for the period 2000/2001. Gauteng reported that there was over spending during the period 2000/2001. In 2001/2002 the department overspent on the allocated budget, this may be attributed to the unforeseen increase in the number of beneficiaries for social security.

**SOCIAL SECURITY****Table 5 Allocation for social security**

Province	Year	Total allocation in Rands	Actual expenditure in Rands
Western Cape	2000/2001	1 681 875 026	1 681 875 026
	2001/2002	1 909 220 027	1 909 220 027
Northern Cape	2000/2001	526 589 000	-
	2001/2002	582 666 000	-
Mpumalanga	2000/2001	1 117 468 000	1 079 044 000
	2001/2002	1 298 565 000	1 370 251 000
Eastern Cape	2000/2001	3 740 586 580	-
	2001/2002	4 921 637 000	-
North West	2000/2001	1 558 964 000	1 558 964 000
	2001/2002	1 747 552 740	1 747 552 740
Gauteng	2000/2001	2 108 798 000	2 059 147 000
	2001/2002	2 306 431 000	2 396 500 000
Limpopo	2000/2001	2 335 253 000	-
	2001/2002	2 438 309 000	-
Free State	2000/2001	1 104 497 000	1 085 424 000
	2001/2002	1 321 207 000	1 297 328 000

The North West Department (NWD) reported that the budget allocations for the social security programme was adequate and there was no over or under spending. The Northern Cape Department (NCD) reported that the budget for social security was inadequate. The social security unit overspent on its allocated budget, but such overspending did not affect the realisation of the right of access to social security. To address the problem of budget inadequacy the NCD made recommendations to the Treasury for additional funding.

MD reported that the budget allocated for social security was not adequate, thus the MD overspent on direct transfer payments. To address budget inadequacy, cost curtailment measures were introduced and the Provincial Cabinet and Provincial Treasury were informed of the budget inadequacy. The overspending had no impact on the realisation of the right of access to social security. Measures were put in place to address the overspending and the MD adjusted projections and increased allocations to the MD for the subsequent year.

**OLD AGE PENSION GRANT****Table 6 Allocation for old age pension grant**

<b>Province</b>	<b>Year</b>	<b>Total Allocation in Rands</b>	<b>Actual Expenditure in Rands</b>
Western Cape	2000/2001	884 209 085	884 209 085
	2001/2002	993 027 000	970 937 799
Northern Cape	2000/2001	2 732 790 000	2 683 580 000
	2001/2002	2 785 180 000	2 687 480 000
Mpumalanga	2000/2001	729 201 000	851 257 000
	2001/2002	745 995 000	914 384 000
Eastern Cape	2000/2001	2 467 323 000	-
	2001/2002	2 696 265 032	-
North West	2000/2001	1 042 501 000	1 042 501 000
	2001/2002	1 130 756 000	1 130 756 000
Gauteng	2000/2001	1 449 773 000	1 466 863 000
	2001/2002	1 488 886 000	1 545 311 000
Limpopo	2000/2001	1 955 651 000	2 433 623 000
	2001/2002	2 014 283 000	2 014 742 000
Free State	2000/2001	707 466 000	720 250 000
	2001/2002	788 626 000	787 577 000

Gauteng reported that the budget for the Old Age Pension Grant was inadequate and as a result the department had to overspend. However none of the Old Age Pension Grant beneficiaries were denied access to social grants and all grants were received. The North West reported that the budget allocations for the Old Age Pension Grant was adequate and there was no over or under spending. The Northern Cape reported that the budget for Old Age Pension Grants was inadequate. To address the problem of budget inadequacy the (NCD) made recommendations to the Treasury for additional funding.

**SOCIAL ASSISTANCE****Table 7 Allocation for social assistance**

<b>Province</b>	<b>Year</b>	<b>Total Allocation in Rands</b>	<b>Actual Expenditure in Rands</b>
Western Cape	2000/2001	3 465 000	3 465 000
	2001/2002	6 215 000	1 104 991
Northern Cape	2000/2001	2 823 200	2 189 000
	2001/2002	2 836 900	2 703 970
Mpumalanga	2000/2001	3 427 200	3 125 400
	2001/2002	5 298 900	4 848 900
Gauteng	2000/2001	5 000 000	8 960 000
	2001/2002	3 808 000	7 310 000
Limpopo	2000/2001	2 850 300	-
	2001/2002	2 992 500	-
Free State	2000/2001	5 200 000	8 735 430
	2001/2002	5 200 000	6 587 230

Gauteng reported that the expenditure on social assistance decreased over the last financial year, however the expenditure was expected to increase as changes in the qualifying requirements make it easier to qualify for Social Relief. The North West

reported that the budget allocations for the social assistance programme, was adequate and there was no over or under spending. Mpumalanga reported that the budget for social assistance was adequate in terms of meeting existing commitments. The MD indicated that the budget for Social Assistance was inadequate and as a result the department had to over spend for the programme.

## DISABILITY GRANTS

**Table 8 Allocation for disability grants**

Province	Year	Total allocation in Rands	Actual expenditure in Rands
Western Cape	2000/2001	585 799 337	585 799 337
	2001/2002	635 867 000	657 640 651
Northern Cape	2000/2001	140 397 000	201 096 000
	2001/2002	200 759 000	208 185 000
Mpumalanga	2000/2001	211 576 000	226 945 000
	2001/2002	226 204 000	-
Eastern Cape	2000/2001	847 171 000	-
	2001/2002	1 176 495 151	-
North West	2000/2001	383 986 000	383 986 000
	2001/2002	391 232 624	391 232 624
Gauteng	2000/2001	419 717 000	397 408 000
	2001/2002	414 078 000	460 309 000
Limpopo	2000/2001	379 602 000	-
	2001/2002	424 026 000	-
Free State	2000/2001	245 328 000	211 536 000
	2001/2002	284 675 000	285 864 000

Gauteng reported that the allocated budget was not adequate for the Disability Grant programme as a result of the increase in the uptake that was not anticipated. Hence the department overspent on the allocated budget. The North West reported that the budget allocations for the Disability Grant Programme was adequate and there was no over or under spending. The Northern Cape reported that the Disability Grant allocation was inadequate. To address the problem of budget inadequacy the NCD made recommendations to the Treasury for additional funding. In responding to variances for the Disability Grant, Limpopo reported that in 2000/2001 the deficit was as a result of under funding by the Provincial Treasury. In 2001/2002 the savings were as a result of beneficiaries who did not collect their grants. The budget for the programme was inadequate and to address the inadequacy of the budget, the department designed a model for costing of beneficiaries and submitted the results to the Provincial Treasury to validate the departmental budget.

**POVERTY ALLEVIATION PROGRAMMES****Table 9 Allocation for poverty alleviation**

Province	Year	Total Allocation in Rands	Actual Expenditure in Rands
Western Cape	2000/2001	11 250 000	11 250 000
	2001/2002	10 959 000	10 959 000
Northern Cape	2000/2001	5 000 000	-
	2001/2002	2 657 000	-
Mpumalanga	1999/2000	3 159 748	3 159 748
	2000/2001	9 700 000	9 700 000
Eastern Cape	2000/2001	1 486 480	-
	2001/2002	6 530 000	-
Gauteng	2000/2001	12 478 000	-
	2001/2002	12 411 000	-
Limpopo	2000/2001	5 085 000	-
	2001/2002	5 400 000	-

Limpopo reported that there were no variances for the Poverty Alleviation Programme. The budget for the programme was inadequate because the department had designed a model for costing of beneficiaries to the Treasury to validate the departmental budget. The department further reported that there was no over or under spending on the programme. The Eastern Cape reported that poverty alleviation projects targeted populations from previously disadvantaged communities, the unemployed and female headed households. The poverty alleviation projects were allocated small amounts of funds, which did not allow projects to progress through developmental stages to the point of sustainability. The only measures that were taken by the ECD to address the inadequacy was to approach the Provincial Treasury, to increase the budget for the 2001/2002 financial year.

Gauteng reported that there was under spending for the poverty alleviation programme. The North West reported that the budget allocation for the poverty alleviation programme was adequate and there was no over or under spending. The Northern Cape reported that the budget allocation for the poverty alleviation programmes was inadequate. To address the problem of budget inadequacy the NCD made recommendations to the Treasury for additional funding. The department further reported that in making budgetary allocations for poverty alleviation programmes the needs of the vulnerable and marginalised were taken into account. A large percentage of the total poverty alleviation funds were allocated to projects in rural areas. Persons living in informal settlements were particularly targeted for food security projects. Mpumalanga reported that the budget for poverty alleviation programmes was sufficient in terms of the number of projects funded but insufficient to deal with the need for income security.

## **5. OUTCOMES AND INDICATORS**

### **INCOME INDICATORS**

#### **National Sphere**

##### **National Department of Social Development**

The NDoSD reported that there were 6 726 730 persons with incomes inadequate to provide minimum food and shelter; 1 494 829 was the total number of households with incomes inadequate to provide minimum food and shelter; 1 648 104 was the total number of households with no source of income; 23 819 458 was the number of persons with no source of income; 3 741 603 was the number of households with income below poverty line; 16 837 214 was the number of persons with income below the poverty line; 4 374 817 was the number of persons receiving social security (social assistance); 3 421 107 was the number of households relying on social security (social assistance); 2 469 561 was the number of persons receiving social assistance and 2 469 561 was the number of households relying on social assistance.

#### **Provincial Sphere**

##### **Provincial Departments of Social Department**

*The number of persons with income inadequate to provide minimum food and shelter*

In Mpumalanga the total was 1 151 899 and out of that number 466 796 were males and 685 107 were females. In the Western Cape the total number is 2 795 530 with 2 431 144 from urban areas and 364 386 from rural areas and consisting of 1 273 males and 1 521 676 females. The Northern Cape reported that, 17 250 was the total number of persons with inadequate income. In the Free State the total number of persons with inadequate incomes was 150 270, with 95 332 persons in urban areas and 54 938 in rural areas, consisting of 106 365 males and 43 906 females. In Gauteng 538 403 was reported to be the total number of persons with inadequate incomes.

*The number of households with incomes inadequate to provide minimum food and shelter*

The MD reported that 369 717 households had incomes inadequate to provide minimum food and shelter, 116 108 consists of households in rural areas and 253 609 are households in urban areas, of that number 118 818 are female-headed households. The Western Cape reported that the total number of households was 357 670 and out of that number 126 040 are female headed households 286 786 are households in urban areas and 70 884 are households in rural areas. In the Northern Cape there are 19 011 households with inadequate income to provide for minimum food and shelter. The FSD indicated that 76 060 was the total number of households with an inadequate income, of that number 41 783 were households in urban areas and 43 277 in rural areas, with 63 386 males and 64 543 females. Gauteng reported that 561 917 households had incomes inadequate to provide minimum food and shelter.

*The number of persons with no source of income*

In Mpumalanga 820 212 persons had no source of income, 312 883 of that number were males and 507 329 were females. In the Western Cape 1 807 301 were reported to be without income, of that number 780 805 were males and 1 026 496 were females. In urban areas the number was 1 625 015, 182 286 consists of persons in rural areas. The Northern Cape had 2780 persons with no source of income. In Free State the number of persons with no source of income was 1 554 685, out of that number there were 684 057 males and 873 628 females, with 1 092 499 people in urban areas and 465 186 in rural areas. Gauteng reported 1 773 687 persons with no source of income.

*The total number of households with no source of income*

In Mpumalanga 74 390 households have no income, of that number 23 673 are households in urban areas and 50 717 in rural areas. Female headed households with no income are 20 698 in the Western Cape, the total number being 50 855. There are 48 946 households in urban areas and 1 909 in rural areas. The total number of 171 178 households has no source of income in the Free State, the total number consists of 72 905 households in urban areas, 25 368 households in rural areas, 81 981 males and 79 378 females. In Gauteng 389 927 households had no source of income.

*The number of persons with income below the poverty line*

In Mpumalanga it was reported that the total number of persons with an income below the poverty line was 1 151 899, out of that number 466 792 were males and 685 107 were females. Free State reported that 2 127 827 was the total number of persons without income, with 963 537 males and 1 445 568 females, of that number 1 515 396 were persons in urban areas and 612 431 were persons in rural areas. The Western Cape reported that 2 795 530 was the total number of persons with income below the poverty line, 2 431 144 of those people was from urban areas and 364 386 was from rural areas. The total number of persons with income below the poverty line consists of 1 273 854 males and 1 521 676 females. The Northern Cape reported that 642 persons were living below the poverty line and 538 403 people were reported in Gauteng.

*The number of households with income below poverty line*

In Mpumalanga the number of households with income below poverty line is 369 717. In urban areas the number is 116 108 and 253 609 in rural areas. In the Western Cape the total number of households with income below the poverty line was reported to be 357 670 of that number are 286 786 households in urban areas, 70 884 households in rural areas and 126 040 female headed-households. The Free State reported that the total number of households was 174 333, consisting of 145 367 males and 143 921 females. Households in urban areas were 114 688 and 59 645 in rural areas. In Gauteng 561 917 households have incomes below the poverty line.

## GRANT INDICATORS

### National Sphere

**Table 10 National grant indicators**

	Total	Rural	Urban	Female-Headed Households
Number of persons eligible for disability grants	1 208 105	559 353	648 752	-
Number of persons receiving disability grants	714 091	330 591	383 428	-
Number of persons eligible for old age pension grants	2 132 359	987 282	1 145 077	-
Number of persons receiving pension grants	1 936 553	896 624	1 039 929	-
Number of persons benefiting from poverty alleviation programmes	149 157	140 410	44 747	-
Number of households benefiting from poverty alleviation programmes	33 146	23 202	9 944	727 (flagship programmes)

The dash (-) in all the tables denotes that the information requested was not made available to the Commission.

### Provincial Sphere

**Table 11 Provincial grant indicators**

	Province	Total	Rural	Urban	Female-Headed Households
Number of persons eligible for disability grants	Mpumalanga	13003	-	-	-
	Northern Cape	-	-	-	-
	Western Cape	-	-	-	-
	North West	6575	-	-	-
	Free State	173102	-	-	454934
Number of persons receiving disability grants	Mpumalanga	35320	-	-	-
	Northern Cape	-	-	-	-
	Western Cape	91782	-	-	-
	North West	63648	-	-	-
	Free State	45537	-	-	-
Number of persons eligible for old age pension grants	Mpumalanga	123 805	-	-	-
	Northern Cape	-	-	-	-
	Western Cape	-	-	-	-
	North West	42000	-	-	-
	Free State	138404	-	-	454934
Number of persons receiving pension grants	Mpumalanga	135045	-	-	-
	Northern Cape	-	-	-	-
	Western Cape	148370	-	-	-
	North West	169505	-	-	-
	Free State	115169	-	-	-
Number of persons benefiting from poverty alleviation programmes	Mpumalanga	3224	90%	-	-
	Northern Cape	966	360	360	313
	Western Cape	2151	-	-	-
	Free State	6246	-	-	-
Number of households benefiting from poverty alleviation programmes	Mpumalanga	3224	90%	-	-
	Northern Cape	966	360	360	313
	Western Cape	-	-	-	-
	Free State	800	-	-	-

The Eastern Cape did not respond to the outcomes section. The department reported that the information requested was not available from their provincial office.

## INFRASTRUCTURE INDICATORS

### National Sphere

**Table 12 National Infrastructure Indicators**

	<b>Total</b>	<b>Rural</b>	<b>Urban</b>
Number of social grants payout points	8 200	6 150	2 050
The average distance to social grant payout point	5km	-	-
The average time taken by the beneficiaries at social grants payout points before they receive payment	2hrs	-	-
Number of beneficiaries who reside within the following distances from social grant payout points:			
a) 5 km radius	2 754 780	-	-
b) Greater than 5km radius	1 441 455	-	-
c) Greater than 25 km radius	576 582	-	-
d) Greater than 50 km	48 048	-	-
Number of old age homes	481	360	121

### Provincial Sphere

The respective departments reported that the total number of social grant payout points was 356 in the Western Cape, 143 in Gauteng, 198 in Mpumalanga, 243 in the Northern Cape which consisted of 109 in rural areas and 134 in urban areas. The average walking distance to the social grant payout points was reported to be 5km in the Northern Cape and the Western Cape. In Gauteng the majority of beneficiaries reside within a 5-10 km radius from a pay-point. In Mpumalanga it was reported that the average walking distance was 20km. The Western Cape reported that 30 minutes was the average time taken by beneficiaries at social grant payout points before receiving payment, the Northern Cape reported that the average time taken by beneficiaries at social grant payout points was 1 hour in urban areas and 30 minutes in rural areas. In Mpumalanga the average time taken is 1-3 hours. Gauteng reported that beneficiaries waited for less than 2 hours for their payments.

In the Northern Cape 106 000 beneficiaries reside within 5km radius from social grant payout points. In the Western Cape 70 percent of beneficiaries reside within 5km radius from the social grant payout point, 20 percent reside within a distance greater than 5km radius and 5 percent reside within a distance greater than 25km and 50km radius.

## 6. NATIONAL ACTION PLAN (NAP)

### National Sphere

**Table 13 National Action Plan**

	<b>Total</b>	<b>Rural</b>	<b>Urban</b>
Number of households denied social assistance due to administrative procedure	-	-	-
Number of children between the ages of 7-18 who have been denied social assistance as a result of the phasing in of the child maintenance grant	1 924 188	-	-
Number of children who cannot be accommodated at children's homes and places of safety due to the lack of facilities and accommodation	1 853 982	-	-
Number of payout points that do not have access to water	5 576	-	-
Number of payout points that do not have access to toilet facilities	5 248	-	-
Number of payout points that do not have facilities for the disabled and the infirmed	6 478	-	-
Number of old age homes	415	-	-
Number of persons in old age homes	29 200	-	-

### Provincial Sphere

The Western Cape reported that there are 6 pay-out points without access to water, 6 without access to toilet facilities and a total of 23 pay-out points with no facilities for the disabled and the infirm, 17 in rural areas and 6 in urban areas.

The section below is given particular attention, as it deals specifically with social services provided for children. Basically, it is concerned with programmes pertaining to child welfare.

## **SOCIAL SERVICES FOR CHILDREN**

### **1. POLICY, PROGRAMMES AND PROJECTS**

#### **National Sphere**

The NDoSD was required to provide information on the measures (policy, legislative, budget) instituted to realise the right to social services for children as well as the outcome of such measures. In responding to the policy section the department reported that the National Integrated Strategy for Children Affected by HIV/AIDS, Secure Care Programme and the Transformation of the Child and Youth Care System were instituted during the reporting period.

#### *National Integrated Strategy for Children Affected by HIV/AIDS*

The department reported that the National Integrated Plan for Children Affected by HIV/AIDS, is a plan through which the department implements the Home Based/Community Based Care Programme. Thus the Home Based/Community Based Care Programme is a collaboration between the Departments of Health, Education and Social Development aimed at encouraging community participation in taking care of children. Furthermore it focuses on families and children infected with and affected by HIV/AIDS. The programme thus identifies orphans and vulnerable groups, facilitates access to social grants and material assistance such as food, clothing and shelter.

The department further reported that the programme facilitates alternative care and the establishment of child care committees and provides counselling and support and training for caregivers and volunteers. In 2000 the department established six project sites in six provinces (Northern Cape, Limpopo, Free State, Eastern Cape, North West Province and Mpumalanga)<sup>22</sup> for the Home Based/Community Based Care, by the end of 2001 the sites had expanded to 49 pilot sites. While aiming at shifting the emphasis of care to the community, the intention is to ensure access to care and follow-up referral system. Up to so far, 55 integrated projects sites have been established. Limpopo has established a consortium of churches, which assists with care, outreach, counselling and support to families by HIV/AIDS.<sup>23</sup> The department further extended the programme to 185 sites by the end of March 2002.

#### *Secure Care Programme*

The department reported that the programme caters for children at risk and those who are in conflict with the law. During the reporting period 15 Development Quality Assurance Assessments and 12 case audits were conducted in 2001/2002 to evaluate compliance with minimum norms and standards for children's residential care facilities. Facilities not in full compliance with were given advice and assistance to meet the required standards.

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<sup>22</sup> Department of Social Development, Annual Report, 2000/2001, 69.

<sup>23</sup> Department of Social Development, Progress Report, March 2000, 10.

### *Transformation of the Child and Youth Care Programme*

The department reported that the programme is based on the White Paper and aims at developing a child and youth care system that protects the rights of children, 30 projects were established during the reporting period. The department continued to support a number of projects, which were instituted prior to the reporting period. The national department provided all provinces with funds to extend the range in early intervention programmes which included appointment of Assistant Probation Officers and family finders and the expansion of One Stop Early Intervention Centres.

### **Provincial Sphere**

#### *National Integrated Strategy for Children Affected by HIV/AIDS (Home Care/Community Based Care Programme)*

Mpumalanga, the Eastern Cape, Limpopo, Western Cape, North West and the Free State reported that the National Integrated Strategy for Children Affected by HIV/AIDS was instituted during the reporting period. The Western Cape reported that the programme made special provision for children infected and those affected by HIV/AIDS in both residential care and foster care settings. The department further reported that it was hard to place children infected with HIV/AIDS into foster care, hence the programme started by concentrating on children affected by HIV/AIDS.

The North West reported that the programme provided a model of Home Based/Community Based Care on the indigenous care models to care for the sick by community selected care-givers. In Free State the programme was piloted in the district of Motheo in Welkom. The Free State established safety nets in Welkom for children infected and affected by HIV/AIDS.

#### *Transformation of the Child and Youth Care System*

The Eastern Cape reported that it instituted the Transformation of the Child and Youth Care System. The Western Cape reported that child offenders/children in conflict with the law were subjected to house arrests. The project was initiated with the sole purpose of keeping children away from prisons and police cells. Gauteng reported that children in conflict with the law were assessed through the programme, three centres were established for these children to be assessed.

#### *Secure Care Programme*

Gauteng established four Secure Care Centres to provide alternative care for neglected, exploited and abused children. The Western Cape reported that pilot projects at children's homes were instituted, the projects were based on the Funding Policy and the Norms and Standard Policy. The project aimed at advancing the rights of vulnerable children who required special support. The department further reported that the first phase of the project was successful in six children's homes.

In responding to constitutional obligations, the Eastern Cape reported that the Transformation of Child and Youth Care System Policy recognises the degree to which a child could be responsible for crimes and strives to mete rehabilitation and

punishment accordingly. The Transformation Policy protects the right to social services for children, in that Secure Care Centres undergo developmental quality evaluation, the policy also ensures the increase in the number of secure care centres, diversion programmes, developmental assessment of all children awaiting trial. To promote and fulfil the right to social services, the policy provides for the assessment of all arrested children within 48 hours and ensuring that the arresting officers advise the children of their rights on arrest.

In catering for the vulnerable groups, Mpumalanga reported that through Operation Nakekela the department was able to identify child-headed households and also provides services such as food parcels, counselling and life skills programmes to these children. The Free State reported that the instituted policies did not cater for the needs of children in child-headed households. The department further reported that homeless people and (children living in the streets) were catered for under different services, which included shelter, drop-in programmes and the reunification with families.

Mpumalanga reported that, homeless people, refugees and asylum seekers benefited from the social relief programmes. Children with disabilities benefited from the Care Dependency Grant and girl-children were part of the overall focus on children. The Eastern Cape reported that the Children's Homes approved during the reporting period focused on admitting children infected with HIV/AIDS.

In responding to implementation difficulties, the national department reported that the early stages of implementing the Home Based/Community Based Care Programme were slow as a result of limited capacity at the provincial level and the identification of Vulnerable and Marginalised Group was not easy as communities and households were reluctant to disclose the HIV/AIDS status. The department further reported that the lack of co-ordination between the Provincial Health and Social Development Departments at project level hampered the implementation of projects. The department also reported that financial constraints affected the implementation of already existing programmes. The Victim Empowerment Programme, which had established 100 projects, was facing financial constraints and could not be further implemented.

To address the implementation difficulties in the case of the Home Based Community Based Programme, the involvement of NGOs and FBOs expanded the delivery capacity because the FBOs and NGOs were in a better position to identify communities and children in need of care and assistance.

The provincial departments responded to the question of implementation difficulties and Mpumalanga reported that it faced problems because of insufficient resources. The Foster Care Programme could not be implemented in relation to extended families due to the interpretation of Guardian in the Child Care Act of 1993. The Northern Cape, North West and Free State reported that staff shortage and financial constraints were the problems.

The Free State reported that children in child-headed households were not adequately catered for under the instituted policy measures, mainly because child headed households were not reported as a vulnerable group deserving special consideration to the NDoSD before the beginning of 2001. The Integrated Strategy for Children

Infected and Affected with HIV/AIDS Programme was not properly managed by the consortium that was rendering the services and did not receive attention.

The department further reported that it was difficult to implement the programme because statistics on girl-children who take care of their siblings in the absence of adults was reported to be unknown and also on children living in informal settlements were not easy to find due to the non-existence of a proper structure to find and locate addresses and offices of the department were not accessible to children living in rural areas due to the geographic distance between towns.

To address the difficulties experienced during the implementation of policies, programmes and projects, the MD participated in the deliberations at national level to give inputs on the issue of legally placing children in foster care with extended members of their families. Volunteers were recruited and trained through the NPOs and CBOs. Provisions were made by Free State to appoint more personnel and funds were also made available to subsidies programmes.

Research was also conducted on the origin of child headed households in co-operation with the Departments of Health and Education. The North West reported that the department was developing infrastructure at a district level, more staff was appointed and training was offered on policy implementation. In the Eastern Cape the National Treasury was approached to approve the finance package of the programmes to address difficulties enable effective implementation.

KwaZulu Natal did not provide complete and relevant information to enable a proper analysis of policies, programmes and projects instituted during the reporting period.

## **2. LEGISLATIVE MEASURES**

### **National Sphere**

The national department reported that during the reporting period, the Child Care Act was reviewed, the Probation Service Amendment Bill was also reviewed and the Advisory Board on Social Development Act, 3 of 2001 was enacted.

### **Provincial Sphere**

#### *Child Justice Bill*

Mpumalanga reported that it participated in the processes of developing the Child Justice Bill. The North West reported that it was planning for the implementation of the of the Child Justice Bill, which would cater for the youth awaiting trial and providing several options for sentencing and establishing Child Justice Centres.

### *Child Care Act*

Gauteng reported that the provisions of the Child Care Act were implemented.

### *Social Assistance Regulations*

The Western Cape reported that amendments were made to the Regulations with effect from December 2001.

The Northern Cape, Mpumalanga, Limpopo, KwaZulu-Natal reported that no legislative measures were instituted during the reporting period.

## **3. BUDGETARY MEASURES**

### **National Sphere**

The national department reported that the budget was as follows:

**Table 1 Budget for the National Department**

Year	Total revenue in Rand(s)	Total allocation in Rand(s)	Allocation as a % of GDP/GP	Per capita allocation in Rand(s)	Projected expenditure	Actual expenditure
2000/2001	-	383 265 000	0.04	-	-	382 046 000
2001/2002	-	233 484 700	0.23	-	233 484 700	-

The dash (-) in all the tables denotes that the information requested was not made available to the Commission.

The variances in the national department's budget over the period in the table above reflect the variations in the special allocations or conditional grants to the department. The department's operational budget has remained relatively stable over the period. The variations in the special allocations or conditional grants are as follows:

- The Social Grants Appropriation Act, 2002 appropriated R2 billion in 2001/2002 for the payment of arrears.
- The Adjustment Appropriation provided for an additional R50 million for disaster relief in 2001/2002.
- There were variations in the Poverty Relief Allocation for the period 2000/2001 to 2002/2003, R120 million and R100 million, for the respective financial years.
- The conditional grant for the improvement for the improvement of social security varied over the period, depending on the nature of the projects for which the funds were allocated.
- The allocation for HIV/AIDS varies over the period: R5.62 million in 2000/2001; R14.9 million in 2001/2002; and R50.19 million in 2002/2003.

It should be noted that about 90 percent of the funds are for transfer to the provinces. The department reported that the budget was not adequate and as a result the department was unable to implement all its priorities effectively. The department indicated that the allocation for the past three years was small for personnel and

operational costs. This limited the capacity to manage the spending of relatively large conditional grants.

To address the budget inadequacy, the department appointed an Expenditure Review Task Team, to monitor over and under spending in all programmes. Unused funds were redirected to priority areas. The department also introduced cost-saving measures in administration. The department reported that there was no under or over spending in 2000/2001 and 2001/2002.

To address over and under spending the department has implemented the Early Warning System to monitor expenditure. Monthly expenditure reports are discussed at EXCO meetings and decisions are made to address any signs of over or under spending.

**Table 2 National budgetary allocation**

<b>Programme</b>	<b>Year</b>	<b>Total allocation in Rands</b>	<b>Actual expenditure in Rands</b>
Poverty Alleviation	2000/2001	157 678 000	157 678 000
	2001/2002	50 000 000	-
Child Support Grants	2000/2001	902 137 000	913 824 000
	2001/2002	104 152 900	-
Care Dependency Grants	2000/2001	208 564 060	197 995 000
	2001/2002	240 319 740	-
Foster Care Grants	2000/2001	206 740 000	209 418 000
	2001/2002	238 684 000	-
Secure Care Facilities	2000/2001	1 223 000	231 000
	2001/2002	-	-

*Variance(s)*

To account for variances for the poverty alleviation programme, the department reported that the allocation in 2000/2001 was R120 million plus the rollover from 1999/2000. In 2001/2002 the department had a provisional allocation of R203 million.

The department reported that in making the allocation to the projects consideration is given to vulnerable and marginalised groups. In responding to whether the budget was adequate. The department reported that the budget was adequate to fund the programme and the spreading of the allocation over a three year period. This also allowed the department to manage the programme more effectively. The department also reported that there was no over or under expenditure in the current reporting period.

To address the under and over spending the department established a National Manager and a Finance and Administration Manager, additional staff was appointed. The administration systems were streamlined and the monitoring and reporting on the Poverty Relief Programme were improved. All of this has assisted in addressing the problems of underspending.

In accounting for variances for the CSG(CSG) the department reported that there has been an increase in the budget allocation for the CSG each year to cater for the increase in take up rate for the grant. The department further reported that Gauteng and the Western Cape have had a take up rate higher than the original projection,

thereby placing considerable pressure on the social security budgets of these provinces. In all years except 2001/2002 an over expenditure was projected for the CSG budget.

The department reported that the budget allocation for the CSG was not adequate, this being based on the projected expenditure for the CSG. To address this problem the provincial departments negotiated with their respective Provincial Treasuries to acquire additional funds through the Adjustments Estimates. These shortfalls were brought to the attention of the National Treasury. Not all provinces were successful in securing additional funds to cover the shortfalls, and this resulted in the delay in the payment of approved applications for the CSG. Limpopo was one of the provinces that did not secure additional funds for the programme. The department reported that there has been over spending on the CSG and the Care Dependency Grant (CDG).

The department, in accounting for variances for the CDG reported that there was projected over spending on the CDG. The variation between the provinces has been prevalent but the problem of overspending was more pronounced in the Northern Cape.

In responding to considerations being given to the needs of vulnerable and marginalised groups, the department reported that the CDG targets children from low income groups, children in female headed households, children in rural and informal settlements. These groups are least likely to afford care and support services needed by children with severe disabilities.

The department further reported that the budget for the CDG was not adequate, hence there was overspending on the overall allocation for the CDG. To address the problem of budget inadequacy, the provincial departments negotiated with the Provincial Treasury to acquire additional funds through the Adjustments Estimates. The provincial departments in some instances, where it was possible redirected funds from other programmes, to the programmes which had insufficient funding. The national department has brought these shortfalls to the attention of the National Treasury.

To account for variances for the Foster Care Grant the department reported that there has been a steady increase in the take up rate for the Foster Care Grant, hence the need to increase the budget allocation for the grant. The increase in the take-up rate may be indicative of the increasing number of children in need for foster care as a result of HIV/AIDS.

The department reported that the needs of the marginalised and vulnerable are taken into account, in that in the past the allocations for the Foster Care Grant were based on previous take-up rates for the grant. Over the past two years it has become necessary to take into account the impact of HIV/AIDS. Through the Home Based/Community Based Care Programme, the department has become aware of the increasing number of children in rural areas and in informal settlements who are in need of care and who should be assisted through the Foster Care Grant. Changes in the practices of Magistrates with regard to foster care by relatives with low income are also expected to increase the demand for the Foster Care Grant.

The budget allocated for the Foster Care Grant was inadequate and as a result the department has overspent. There are, however variations between the provinces, the allocations were adequate in some provinces.

The department reported that the needs of the most vulnerable were taken into account, even though not every child had access to secure care facilities. The centres in the various provinces operate close to capacity, there were over 2000 children awaiting trial in prison and in police cells. The Western Cape experienced a great deal of pressure on its facilities. In the Northern Cape and North West two facilities were established and one facility was established in Mpumalanga, Limpopo, and the Free State. The department is however of the view that by expanding the number of secure care facilities and places of safety will not adequately address the needs of children awaiting trial.

The department further reported that the budget was adequate for the programme. However there was underspending on the budget. The underspending reflects administrative delays in obtaining invoices from the North West and Mpumalanga, rather than not spending the funds.

To address the underspending, the national department made a number of interventions in these provinces to obtain invoices and also ensured that the funds could be rolled over so that the relevant provincial departments could be reimbursed.

**Table 3 Allocation for Provincial Departments**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	-	-
	2001/2002	-	-
Free State	2000/2001	1 301 566 000	1 259 433 000
	2001/2002	1 518 700 000	1 482 166 000
Gauteng	2000/2001	2 647 733 000	2 626 920 000
	2001/2002	2 934 062 000	3 017 507 000
KwaZulu Natal	2000/2001	3 486 760 000	1 244 210 520
	2001/2002	-	-
Limpopo	2000/2001	1 174 190 000	1 741 900 000
	2001/2002	2 959 740 000	2 997 400 000
Mpumalanga	2000/2001	1 214 328 000	1 320 880 000
	2001/2002	1 580 218 000	1 531 229 000
Northern Cape	2000/2001	6 34 270 000	6 544 460 000
	2001/2002	6 716 530 000	6 103 138 000
Western Cape	2000/2001	2 273 821 000	2 273 821 000
	2001/2002	2 401 622 000	2 401 622 000

Mpumalanga reported that it was under funded in the 2000/2001 financial year, as a result the department overspent on the allocation but this was done after informing the Treasury. The budget had an impact on the realisation of the right to social services in that expenditure on other programmes was curtailed to provide for the budgetary shortfall on social security. Subsidies could not be extended to more NGOs rendering services to children, neither could increases be effected. To address the problem of over and under spending the department applied the 85/15 principle to Medium Term Expenditure Framework allocations.

In accounting for variances Limpopo reported that there were no variances. The Eastern Cape and Limpopo reported that the allocated budgets for the programme were inadequate. No over or underspending was experienced in Limpopo as a result of the inadequate budget.

To address the problem of budget inadequacy an amount of R650 000 was allocated from the departmental budget to cater for the projects that did not meet the requirements of the conditional grant. The department gave attention to the developing the self-sustainability of projects in order to broaden the scope by extending funding to projects not previously funded.

In accounting for variances, the Western Cape reported that during the reporting period there was underspending. The R1,5 million conditional grant for the Criminal Justice System and the R430 000 for the Victim Empowerment Programme, received from the NdoSD was not spent because the grants were transferred at a late stage of the financial year. The department received R10 million from the casino bid fees for poverty relief and this amount of money was not utilised as there was no poverty desk in place.

In 2000/2001 underspending was due to the staggering process in the filling of vacancies and the non-implementation of the Re-design of District Service Delivery Model. In 2001/2002 the non-utilisation of the i.r.o. Conditional Grant was the reason for the underspending, the computerization of the registry was not effected and the help desk was not established.

The department reported that the budget allocations were adequate, however to address budget inadequacy savings in programmes were utilised to defray excess expenditure in other programmes. The department also reported that strategic plans, business plans and measurable objectives had been put in place to improve spending.

To account for the variances the Gauteng Department reported that the funds were insufficient for the period 2000/2001. The department further reported that the budget was inadequate and the uptake for the grant was higher than anticipated and the funds were insufficient. The department received insufficient funds. The budget was not adequate for the CDG.

The department reported that the majority of people in the Eastern Cape are poor and live in rural areas. The poverty programmes are allocated small amounts of funds, which do not allow projects to progress through the developmental stages to the point of sustainability. No measures were taken by the department to address budget inadequacy, except for the planned submission to the Provincial Treasury for the budget for the year 2001/2002.

The Free State reported that in 2000/2001 a conditional grant to the value of R1,5 Million was received for the conversion of the Monument Place of Safety into a One stop Youth Justice Centre. Due to the long tender process, only R470 000 was spent. A request to the Provincial Treasury to roll over the amount of R1 030 000 was approved, of this amount R680 000 was spent in 2001/2002. The remaining funds will be spent in the current year, provided that the roll over request is approved. The department further reported that there was no special consideration for vulnerable and

marginalised groups as the admission of children in a secure care facility is based on the fact that they are in conflict with the law. The department indicated that the budget was adequate.

The Free State reported that for both the CDG Foster Care Grant, variances reflected overspending during the reporting period, due to the under estimation of the growth rate in both the CDG and the Foster Care Grant. The budget for both the Care Dependency Grant and the Foster Care Grant was not adequate, to address this problem funds were shifted from a saving to cover the shortfall. To address the problem of under and overspending the department has allocated enough funds for both the CDG and the Foster Care Grant.

## POVERTY ALLEVIATION PROGRAMMES

**Table 4 Allocation for poverty alleviation**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	1 486 480	-
	2001/2002	6 530 000	-
Free State	2000/2001	7 800 000	7 800 000
	2001/2002	3 680 000	3 680 000
Gauteng	2000/2001	-	12 478 000
	2001/2002	-	-
KwaZulu Natal	2000/2001	-	-
	2001/2002	-	-
Limpopo	2000/2001	17 200 000	-
	2001/2002	11 100 000	-
Mpumalanga	2000/2001	9 700 000	9 700 000
	2001/2002	4 350 000	-
Northern Cape	2000/2001	5 000 000	5 000 000
	2001/2002	2 657 000	2 657 000
Western Cape	2000/2001	10 959 000	10 959 000
	2001/2002	5 600 000	5 600 000

In accounting for variances Mpumalanga reported that the Poverty Alleviation Programme is supported through the conditional grants funded from the national department and Limpopo did not account for any variances. In as far as the adequacy of the budget was concerned, Mpumalanga, and the Northern Cape reported that the budget was inadequate. KwaZulu Natal did not provide information on the programme except to report that the funds for the programme are received from the national department.

**CHILD SUPPORT GRANT****Table 5 Allocation for the child support grant**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	141 600 000	-
	2001/2002	69 071 619	-
Free State	2000/2001	40 321 000	42 269 532
	2001/2002	104 132 000	103 163 327
Gauteng	2000/2001	75 469 000	61 270 000
	2001/2002	195 527 000	220 948 000
KwaZulu Natal	2000/2001	50 112 000	41 923 472
	2001/2002	656 975 000	504 237 170
Limpopo	2000/2001	83 556 000	83 556 000
	2001/2002	239 470 000	239 470 000
Mpumalanga	2000/2001	68 436 000	-
	2001/2002	143 367 000	-
Northern Cape	2000/2001	45 360 000	17 204 000
	2001/2002	30 003 000	36 109 960
Western Cape	2000/2001	32 574 601	32 547 601
	2001/2002	127 325 000	127 325 000

*Variance(s)*

Gauteng reported that the funds were insufficient for 2000/2001 and the Western Cape reported that there were no variances to account for. The Eastern Cape, Limpopo and Gauteng reported that the budget allocated for the programme was inadequate. However, the Western Cape and KwaZulu Natal had an adequate budget.

**CARE DEPENDENCY GRANTS****Table 6 Allocation for care dependency grants**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	32 000 000	-
	2001/2002	51 229 539	-
Free State	2000/2001	-	-
	2001/2002	-	-
Gauteng	2000/2001	14 000 000	16 766 000
	2001/2002	22 000 000	25 317 000
KwaZulu Natal	2000/2001	36 702 000	16 513 210
	2001/2002	88 770 000	76 456 318
Limpopo	2000/2001	17 742 000	17 742 000
	2001/2002	31 380 000	31 380 000
Mpumalanga	2000/2001	6 703 000	5 201 564
	2001/2002	7 707 000	15 992 753
Northern Cape	2000/2001	3 187 000	4 307 000
	2001/2002	6 306 000	5 929 000
Western Cape	2000/2001	19 772 807	19 772 807
	2001/2002	28 274 000	28 274 000

**FOSTER CARE GRANTS****Table 7 Allocation for foster care grants**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	70 819 000	-
	2001/2002	103 164 159	-
Free State	2000/2001	18 743 000	34 662 932
	2001/2002	24 055 000	45 657 267
Gauteng	2000/2001	59 550 000	61 270 000
	2001/2002	63 865 000	73 649 000
KwaZulu Natal	2000/2001	30 701 000	15 075 886
	2001/2002	44 609 000	105 244 951
Limpopo	2000/2001	16 121 000	16 121 000
	2001/2002	25 124 000	25 124 000
Mpumalanga	2000/2001	12 804 000	10 338 465
	2001/2002	10 930 000	13 275 924
Northern Cape	2000/2001	22 608 000	-
	2001/2002	29 382 000	-
Western Cape	2000/2001	88 032 917	88 032 917
	2001/2002	96 700 000	96 700 000

Limpopo reported that there were no variances. The budget was inadequate for the programme for both Limpopo and Gauteng. As a result Gauteng had to overspend, Limpopo was not faced with any over or underspending.

**SECURE CARE FACILITIES****Table 8 Allocation for secure care facilities**

Province	Year	Allocation in Rands	Expenditure in Rands
Eastern Cape	2000/2001	4 970 705	525 282 617
	2001/2002	6 909 000	649 585 215
Free State	2000/2001	1 500 000	-
	2001/2002	1 030 000	-
Gauteng	2000/2001	55 869 000	54 763 316
	2001/2002	69 251 709	69 258 768
KwaZulu Natal	2000/2001	21 985 000	21 985 000
	2001/2002	-	-
Limpopo	2000/2001	6 519 000	17 742 000
	2001/2002	7 321 000	31 380 000
Mpumalanga	2000/2001	3 200 000	1 436 316
	2001/2002	3 227 544	2 483 078
Northern Cape	2000/2001	9 027 000	-
	2001/2002	4 403 000	-
Western Cape	2000/2001	43 623 706	11 293 100
	2001/2002	52 116 424	4 409 400

## **4. OUTCOMES AND INDICATORS**

### **SOCIAL GRANTS**

#### **National Sphere**

The national department reported that 3 308 467 children were eligible for the CSG, 1 574 927 children, were receiving the CSG. Children eligible for Foster Care Grant were reported to be 319 354, 90 680 children were receiving the Foster Care Grant. The department reported that 276 776 children were eligible for the CDG and 42 474 children were receiving the CDG. The department further reported that 15 778 children were eligible for care at children's homes, secure care and places of safety and 13 815 children were receiving care at children's homes, secure care and places of safety.

#### **Provincial Sphere**

##### *Children eligible for assistance through the Child Support Grant*

The MD reported that the total number of children eligible for assistance through the CSGs was 240 660. Out of that number 69 519 were children from rural areas and 171 141 from urban areas. The number of African children eligible for assistance through the CSG amounted to 228 820, coloured 9 577, Indian 166 and white 2 097. The Western Cape reported that the total number of children eligible for assistance through the CSG was 180 000, 1 7250 in the Northern Cape and 346 888 in Free State. In KwaZulu-Natal 745 000 children were eligible for assistance through CSGs. In Limpopo 286573 children were eligible for assistance through the CSG. The Gauteng Department reported that 244 762 was the total number of children eligible for assistance through the CSG, of the total number 228 857 were from urban areas and 17269 were from rural areas. The highest number of children eligible for assistance were reported to be Africans, with a total number of 238 813, followed by whites with a number of 563, then 510 coloureds and 48 indians.

##### *Children receiving assistance through the Child Support Grant*

In Mpumalanga, the total number of children receiving assistance through the CSG was 92 522. In the Western Cape 140 000 children were receiving assistance through the CSG, 19 011 in the Northern Cape, 100 974 in Free State, 467 000 in KwaZulu Natal, 181 864 in Gauteng and 286 573 in Limpopo.

##### *Children eligible for assistance through the Foster Care Grant*

The number of children eligible for assistance through the Foster Care Grant was reported to be 2780 in the Northern Cape, 20 467 in Free State, 62657 in Limpopo and 80 760 in Gauteng. KwaZulu Natal reported that there were 12 706 grants in payment for approximately 25 000 children. The number was unknown in the Western Cape and in Mpumalanga.

*Children receiving assistance through the Care Dependency Grant*

The number of children receiving assistance through the CDG was 1400 in Mpumalanga, 642 in the Northern Cape, 1 823 in Free State, 5 437 in Limpopo, 4 264 in Gauteng and 4 381 in the Western Cape. In KwaZulu Natal 12 395 children had access to the CDG.

*Children eligible for assistance through the Care Dependency Grant)*

The Free State reported that the number of children eligible for assistance through the CDG was 41 542. In KwaZulu Natal the number of children eligible for assistance through the CDG was reported to be between 21 872 and 78 815. In Limpopo 5 437 children were reported to be eligible for assistance through the CDG. Gauteng reported that 27 355 children were eligible for assistance through the CDG, of that number 26 744 were from urban areas and 609 were from rural areas, 10007 children were reported to be female, 25 357 were africans, 523 coloureds, 150 indians and 1 077 whites.

*Children receiving care at children's homes and secure care facilities*

The number of children receiving care at children's homes and secure care facilities was 366 in the Northern Cape, 395 in Mpumalanga, 3 058 in the Western Cape. In KwaZulu Natal 3058 children were receiving care at children's homes and secure care facilities, 1 824 were children in urban areas and 1 234 were from rural areas. In the Free State 1 065 children were receiving care at secure care facilities.

## **ECONOMIC INDICATORS**

The respective government departments were asked to answer questions relating to statistics on the number of children in households with incomes below the poverty line, the number of children assisted through social assistance, and the number of children relying solely on social assistance.

### **National Sphere**

In responding to these questions, the national department reported that 8 207 770 children were in households with income below the poverty line, 1 882 126 children were assisted through social assistance, 1 709 103 children were receiving social assistance and 1 042 553 children relied solely on social assistance.

### **Provincial Sphere**

The MD reported that 776 406 children were in households with incomes below the poverty line, 95 325 children were assisted through social assistance and the number of children relying solely on social assistance was unknown. The Northern Cape indicated that there were 17250 children in households with incomes below the poverty line, 19 091 were receiving social assistance and 30 000 were relying solely on social assistance.

The Western Cape only provided that 73 495 children were assisted through social assistance and the number of children in households with income below the poverty line as well as the number of children relying solely on social assistance was unknown. The Free State Department reported that the statistics were not kept. Gauteng reported that the number of children in households with incomes below the poverty line were 538 403. Children in rural areas were reportedly pegged at 19 930 and 518 473 in urban areas.

## **INFRASTRUCTURE INDICATORS**

### **National Sphere**

The NDoSD reported that the total number of social grant payout point was 8 200, of that number 6 150 payout points were in rural areas and 2 050 in urban areas. The average distance to social grant pay-out points is 5km and the average time taken by beneficiaries at social grants pay-out points before they receive payment is 2 hours. The number of beneficiaries who reside within a distance of 5km radius was reported to be 2 754 780 (57 percent), 1 441 455 (30) was the number of beneficiaries who reside within a distance greater than 5km radius, 576 582 (12 percent) was the number of beneficiaries who reside within a distance of 25 km radius and 48 048 (1percent) was the number of beneficiaries who reside within a distance of 50km.

## Provincial Sphere

The table below represents the infrastructure indicators in the provinces:

**Table 9 Infrastructure Indicators**

	Province	Total	Rural	Urban
Number of social grants pay-out points	Mpumalanga	198	-	-
	Western Cape	356	-	-
	Northern Cape	243	109	134
	Free-State	256	31%	69%
	KwaZulu-Natal	2003	-	-
	Limpopo	1764	-	-
	Gauteng	143	-	-
The average distance to social grant pay-out point	Mpumalanga	20km	-	-
	Western Cape	5km	-	-
	Northern Cape	5km	5km	5km
	Free-State	7km	10km	5km
	Limpopo	5km	-	-
	Gauteng	-	-	-
The average time taken by the beneficiaries at social grant pay-out points before they receive payment	Mpumalanga	1-3hrs	-	-
	Western Cape	30 min	-	-
	Northern Cape	1hr	5km	5km
	Free-State	2hrs	10km	5km
	Limpopo	2hrs	-	-
	Gauteng	2hrs	-	-

Number of beneficiaries who reside within the following distances from social grant payout points:

a) 5 km radius	Western Cape	70%	-	-
	Northern Cape	106 000	-	-
	Free-State	-	-	-
	Limpopo	566712	-	-
b) Greater than 5km radius	Western Cape	20%	-	-
	Northern Cape	-	-	-
	Free-State	-	-	-
c) Greater than 25 km radius	Western Cape	5%	-	-
	Northern Cape	-	-	-
	Free-State	-	-	-
d) Greater than 50 km	Western Cape	5%	-	-
	Northern Cape	-	-	-
	Free-State	-	-	-

The dash (-) in all the tables denotes that the information requested was not made available to the Commission.

The Eastern Cape Department reported that the information on indicators was not available in their provincial system. Mpumalanga reported that the information on indicators was unknown to their department.

## 5. NATIONAL ACTION PLAN (NAP)

The NAP is indicated in the table below:

### National Sphere

**Table 10 National Action Plan**

	<b>Total</b>	<b>Rural</b>	<b>Urban</b>
Number of households denied social assistance due to administrative procedure	4 404 049	-	-
Number of children between the ages of 7-18 who have been denied social assistance as a result of the phasing in of the child maintenance grant	1 963	780	1 183
Number of children who cannot be accommodated at children's homes and places of safety due to the lack of facilities and accommodation	5 576	-	-
Number of payout points that do not have access to water	5 248	-	-
Number of payout points that do not have access to toilet facilities	6 478	-	-
Number of payout points that do not have facilities for the disabled and the infirmed	28	3	25
Number of secure care facilities	-	-	-

In reporting about the pay-out points, the department, indicated that 68 percent of the pay-out points did not have access to water, 64 percent did not have toilet facilities and 79 percent did not have facilities for the disabled and the infirmed.

## Provincial Sphere

**Table 11 National Action Plan**

	Province	Total	Urban	Rural
Number of households denied social assistance due to administrative procedure	Gauteng	-	-	-
	Northern Cape	-	-	-
	Mpumalanga	-	-	-
	Western Cape	-	-	-
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Limpopo	-	-	-
Number of children between the ages of 7-18 who have been denied social assistance as a result of the phasing in of the child maintenance grant	Gauteng	-	-	-
	Northern Cape	13313	-	-
	Mpumalanga	-	-	-
	Western Cape	-	-	-
	KwaZulu Natal	-	-	-
	Limpopo	-	-	-
	Free State	-	-	-
Number of children who cannot be accommodated at children's homes and places of safety due to the lack of facilities and accommodation	Gauteng	-	-	-
	Northern Cape	-	-	-
	Mpumalanga	-	-	-
	Western Cape	-	-	-
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Limpopo	-	-	-
Number of pay-out points that do not have access to water	Gauteng	-	-	-
	Mpumalanga	59	-	-
	Western Cape	6	6	-
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Limpopo	-	-	-
	Northern Cape	2%	69%	31%
Number of pay-out points that do not have access to toilet facilities	Gauteng	-	-	-
	Mpumalanga	51	-	-
	Western Cape	6	6	-
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Northern Cape	17%	69%	31%
	Limpopo	-	-	-
Number of payout points that do not have facilities for the disabled and the infirmed	Gauteng	-	-	-
	Mpumalanga	-	-	-
	Western Cape	23	17	6
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Northern Cape	80%	69%	31%
	Limpopo	-	-	-
Number of secure care facilities	Gauteng	-	-	-
	Mpumalanga	1	0	1
	Western Cape	5	1	4
	KwaZulu Natal	-	-	-
	Free State	-	-	-
	Northern Cape	2	2	0
	Limpopo	-	-	-

Gauteng in the policy section reported that 52 children's homes rendered services to 3000 children, 800 children were afforded services at 6 places of safety and 6000 children were in foster care.

## 6. CRITIQUE

The State has an obligation to respect, protect promote and fulfil the access right to social security and social assistance.<sup>24</sup> The Maastricht guidelines give a clear explanation of the four obligations. The obligation to respect means that the State must not thwart the efforts of individuals to realise the right and must also remove barriers to the realisation of the rights. The obligation to protect requires that the State take measures to prevent third parties from violating the rights of affected parties.

The obligation to promote requires the State to raise awareness about the existence of the rights that people can be able to exercise them. The obligation to fulfil requires the State to make direct provision, which may involve budgetary measures, where individuals are not, on their own, able to realise the rights. In addition to the obligations, the State has a duty to take action that is reasonably calculated to realise the enjoyment of any given socio-economic right and the duty to achieve specific targets in order to meet set standards in the enjoyment of the rights.

A positive obligation is imposed upon the State by section 27 of the Constitution and the extent of the obligation is defined by three key elements, which are the obligation to “take reasonable legislative and other measures, to achieve the progressive realisation of the right; and within available resources.”<sup>25</sup>

### *Reasonable Measures*

In the *Grootboom* case it was stated that a reasonable programme had clearly to allocate responsibilities and tasks to the different spheres of government and to ensure that the appropriate financial and human resources were available.<sup>26</sup> Each sphere of government must accept responsibility for ensuring that laws, policies, programmes and strategies are adequate to meet the State’s obligation. The national government bears an important responsibility in relation to the allocation of national revenue to the provinces and local government on an equitable basis.<sup>27</sup>

A reasonable programme must be balanced and flexible and make appropriate provision for short, medium and long term needs. To be reasonable measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. The measures should respond to the needs of those most desperate to pass the test of reasonableness. Policies and programmes must be reasonable both in their conception and their implementation. A reasonable programme that is not implemented reasonably will not constitute compliance with the State’s obligations. Reasonable programmes do not exclude the significant segment of society.<sup>28</sup>

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<sup>24</sup> Section 7(2) of the Constitution of the Republic of South Africa, Act 106 of 1998.

<sup>25</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

<sup>26</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) 1190 para (39).

<sup>27</sup> *Ibid* at para (40).

<sup>28</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC) 1191 para (42-44).

### *Progressive Realisation*

The Committee on Economic, Social and Cultural Rights provides that the concept of *progressive realisation* reflects a recognition of the fact that the full realisation of socio-economic rights cannot be achieved all at once in a short space of time. However, the concept imposes a duty on the State to move as expeditiously and effectively as possible towards the realisation of economic and social rights. The Limburg principles define *progressive realisation* to mean that the State must move as expeditiously as possible towards the realisation of the rights. The State, therefore does not have the right to defer indefinitely efforts to ensure the full realisation of the right, it has to take immediate steps to fulfil the obligation and realise the right and in realising the right available resources have to be effectively utilised.<sup>29</sup> The realisation of the right is not dependant on the increase in resources and as such cannot only be affected by an increase in resources but also by the development and tapping of broader societal resources necessary for the realisation by everyone of the rights recognized in the Covenant.<sup>30</sup>

### *Within available resources*

The obligation of the State to take reasonable legislative and other measures, *within its available resources*, to achieve the realisation of the right,<sup>31</sup> means that the State is not expected to do more than its available resources permit.<sup>32</sup> According to the Limburg principles, a State party is obliged to take measures to the maximum of its available resources and “*its available resources*” refers to both the resources within a State and those available from international community through international co-operation and existence.<sup>33</sup> The Limburg Principles further provide that, in determining whether adequate measures have been taken for the realisation of the rights recognized in the Covenant attention should be paid to equitable and effective use of and access to the available resources.<sup>34</sup>

The South African government cannot deviate from the commitments made at Copenhagen through the Copenhagen Declaration. The government is also under an obligation to ensure that the provisions of New Partnership for Africa’s Development (NEPAD) are implemented and do not remain on paper.

### *The Copenhagen Declaration*

The World Summit on Social Development held in Copenhagen, March 1995 adopted a Declaration and Programme of Action, which presented a new consensus on the need to put people at the centre of development. The world’s leaders pledged and agreed on ten commitments,<sup>35</sup> to make the conquest of poverty, the goal of full

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<sup>29</sup> Article 21 of the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, 1986.

<sup>30</sup> Articles 23 and article 24 of the Limburg Principles.

<sup>31</sup> Section 27(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>32</sup> *Grootboom* case.

<sup>33</sup> Article 26 of the Limburg Principles.

<sup>34</sup> Article 27 of the Limburg Principles.

<sup>35</sup> The ten commitments of the Copenhagen Declaration are: the eradication of absolute poverty by a target date to be set by every country; supporting full employment as a basic policy goal; promoting social integration based on the enhancement and protection of all human rights; achieving equality and

employment and the fostering of social integration overriding the objectives of development.

NEPAD also aims at eradicating poverty in Africa and placing countries on a path of sustainable growth and development and at the same time to participate actively in the world economy and body politics. The programme is anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world. Amongst other things, the goals of the programme are to reduce the proportion of people living in poverty by half between 1990 and 2015.

The current social security system in South Africa is fragmented and incoherent. It is due to past policies that the system is so fragmented. However, it cannot be accepted that even with the new constitutional dispensation the system is still fragmented and denies those most in need of assistance their constitutional rights. The Constitution provides that *everybody has the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance*. In as far as social assistance is concerned, the State only provides five forms of social assistance namely, the Old Age Pension Grant; the Disability Grant; CSG; the Foster Care Grant and the CDG. These grants cater for the elderly, persons with disabilities and children below the age of seven.

The social insurance schemes like the Unemployment Insurance Fund (UIF) are restricted predominantly to those in formal employment those in informal employment are not catered for. Persons who do not qualify for the social grants and those who are denied access to social insurance, are thus denied their constitutional right to social security and social assistance.

Even though everybody has the right to have access to social security,<sup>36</sup> the fact of the matter is that not everybody is afforded access to social security or basic social services. The state has an obligation to respect, protect, promote and fulfil the right of access to social security,<sup>37</sup> the reality is that the State has not fully complied with its obligation as set out in the Constitution and other binding international instruments. Therefore, it can be concluded that the State has not fully realised the right to social security.

However, it can be deduced that the State is gradually advancing the right, through mechanisms that have been put in place such as policies, programmes, projects and legislation that enable it to fulfil the right. In as far as policy and legislation are concerned, the Committee of Inquiry into a Comprehensive Security System was formed to look into a comprehensive social security system for all and to transform the existing present incoherent system. The Child Care Act is also being reviewed and redrafted to include provisions of social security for children.

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equity between women and men; accelerating the development of Africa and the least developed countries; ensuring that structural adjustment programmes include social development goals; increasing resources allocated to social development; creating “an economic, political, social, cultural and legal environment that will enable people to achieve social development”; attaining universal and equitable access to education and primary health care; and Strengthening co-operation for social development through the United Nations.

<sup>36</sup> Section 27 and section 28(1)(c) of the Constitution Act 108 of 1996.

<sup>37</sup> Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

## **Policies, Programmes and Projects**

The reporting by government departments has improved tremendously, and there is also an indication that the departments both Nationally and Provincially are dedicated to ensuring that the rights are progressively realised. Be that as it may there are still barriers to the realisation of the right of access to social security and the right to social assistance.

During the reporting period the State instituted policies, programmes and projects. Some of the policies were very good and aimed at improving the lives of people, however when it came to implementing the policies, most of them were not effectively implemented. The National Department failed to report on the Ten Point Plan and the Financing Policy.

### *Ten Point Plan*

In January 2001 the Minister of Social Development identified areas to be addressed over a five-year period, in order for the State to comply with constitutional obligations and to enable everyone the right of access to social security. The following are the ten priority areas to be addressed:

1. Restoration of the ethics of care and human development into all departmental programmes. This includes the rebuilding of families and communities;
2. Developing and implementing an integrated poverty eradication strategy that provides direct benefits to those who are in greatest need, within a sustainable development approach;
3. Development of a comprehensive social security system that links contributory and non-contributory schemes and priorities the most vulnerable households;
4. Responding to the brutal effects of all forms of violence against women and children as well as effect strategies to deal with the perpetrator;
5. Providing a range of services to support the community-based care and support for people living with HIV/AIDS as well as those affected, such as AIDS orphans;
6. Developing a national strategy to reduce youth criminality and unemployment within the framework of the National Crime Prevention Strategy;
7. Making social welfare services accessible and available to people in rural, peri-urban and informal settlements as well as ensuring equity in service provision;
8. Redesigning services to people with disabilities in ways that promote their human rights and economic development;
9. Basing social welfare work on a commitment to co-operative governance that includes working with different spheres of government and civil society; and
10. Training, educating, re-deploying and employing a new category of workers in social development to respond to the realities of South Africa's crisis. Review the training and re-orientation of social service workers to meet the development challenges of South Africa and link these to our regional and global demands.<sup>38</sup>

The State should be commended for initiating and adhering to the Ten Point Plan. It is two years since the inception of the plan and so far, the State has conformed to

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<sup>38</sup> <http://www.welfare.gov.za/Documents/Doc%202001/Annual%20Report/road.htm> site visited on the 27/07/01.

developing a comprehensive social security system by introducing the Committee of Inquiry into a Comprehensive Social Security System. The Home Based/Community Based Care Programme demonstrates the commitment of government to providing services and support to people infected and affected by HIV/AIDS. The programme has been effectively implemented because it expanded from 6 to 185 project sites. The State is encouraged to support the extended family structure and strengthen links with Faith Based Organisations and Community Based Organisations.

### *Financing Policy*

Though the Financing Policy was adopted in 1999 a rapid review of the Financing Policy was initiated in February 2001,<sup>39</sup> with the aim of transforming the sector through changing the approach to the subsidizing of national councils and other non-governmental organisations. The rapid review found that a more comprehensive approach was required to accelerate the transformation of the sector. The department has been tasked to undertake a major review process, with the aim of developing a comprehensive transformation programme, which includes:

- developing national norms and standards for service delivery;
- a human resource plan and human development strategy;
- costing of welfare services;
- a programme for improving welfare infrastructure;
- revised policy and legislation; and
- designing a monitoring evaluation programme.<sup>40</sup>

### *Norms and Standard Policy*

The Norms and Standard Policy was initiated in 2000 and forms the basis for the re-engineering of service delivery in the area of social assistance. The programme aims at improving the efficiency and effectiveness of the administration of social assistance. Other than forming the basis for re-engineering service delivery, it is not clear how the department plans to re-engineer the service delivery and improve the efficiency and effectiveness of the administration of social assistance. Since its inception the project has not been effectively implemented. Evident to this is the re-registration process that denied most beneficiaries access to social assistance grants and the fact that the majority of eligible beneficiaries for social assistance do not have access to social assistance grants.

### *Flagship Programme for Unemployed Women with Children under the Age of Five*

The Flagship Programme for Unemployed Women is a very good programme which, caters for women as well as children. Good as it is, the programme has its shortfalls, the programme excludes unemployed women who have no children and children above five years of age. Children below the age of five also benefit from the CSG, unlike children above the age of seven who are also excluded from the flagship programme. Persons in need of social assistance need not necessarily have to benefit from all the social assistance programmes, however they cannot be excluded from all

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<sup>39</sup> Department of Social Development, Annual Report, 2000/2001, 68.

<sup>40</sup> *Ibid.*

the programmes neither. The State should ensure that a person in need of social assistance is afforded the right to social assistance.

#### *Review Policy*

The Review Policy aims at addressing shortfalls and inconsistencies in the Social Assistance Regulations. The most significant amendments were the appointment of Disability Assessment Panels for applicants who had no access to district surgeons and the amendment of the accrual date of grants from the date of application to the date of approval. The policy also provides for the abolition of the assets test for social grants, simplification of procedures for regular review of beneficiaries to lessen the burden of beneficiaries, clarifying the distinction between temporary and permanent disability.

#### *The National Integrated Plan for Children Affected by HIV/AIDS and the Home Based /Community Based Care Programme*

The department reported that the early stages of implementing the Home Based Community / Based Care Programme were slow as a result of limited capacity at the provincial level and the identification of Vulnerable and Marginalised Group was not easy as communities and households were reluctant to disclose the HIV/AIDS status.

The department further reported that the lack of co-ordination between the Provincial Health and Social Development Departments at project level hampered the implementation of project. The very same department reported that the programme has been expanded to 185 sites as at 31 March 2002 from the initial 6 sites that were established in 2000. This information gives an impression that all is well and also shows that the lives of those affected by HIV/AIDS are being improved and government respects and fulfils the rights of vulnerable people. It is highly impossible that a programme can experience difficulties with implementation and at the same time be extended to other sites without addressing the problems. It is thus difficult to understand how the department expanded its project sites when in fact there were problems experienced with the implementation of the programme.

#### *Transformation of the Child and Youth Care System*

Policies such as the Transformation of the Child and Youth Care System were specifically enacted to protect the rights of child offenders and ensure alternative accommodation, instead of prisons. Even though the policy programme exists, child offenders are still kept in prisons as awaiting trialists, therefore not much protection has been afforded to children nor has there been the fulfilment of the right to social services.

### *Poverty Alleviation Programme*

The national department failed to give a detailed explanation about the Poverty Alleviation Programmes<sup>41</sup> and none of the provinces targeted by the Poverty Alleviation Programme bothered to give information about the programme. Most poverty alleviation programmes/projects are located in the three provinces with the highest rate of poverty, namely the Eastern Cape, Limpopo and KwaZulu-Natal. The projects are mostly based in rural areas and informal settlements.<sup>42</sup> The poverty relief programme targets the women, youth, children and the disabled.

In Gauteng a programme (Zivuseni) to combat poverty was initiated but the department failed to report on the programmes. The Zivuseni Poverty Alleviation Programme was launched in March 2002. The programme is funded by the Gauteng provincial government and seeks to contribute towards social upliftment and empowerment of disadvantaged communities by providing short-term poverty relief to poor and vulnerable people residing in the Gauteng province.

The programme has two main objectives, to alleviate poverty by promoting activities that put emphasis on the renewal, preservation and maintenance of community assets. The second objective is to build local capacity through the development of local skills in an effort to brake the poverty cycle. Unemployed women, people with disabilities and the youth in Gauteng within the Metropolitan areas such as Johannesburg, Ekurhuleni and Tshwane, and within the three district councils, Sedibeng, West Rand and Motsweding are the beneficiaries of the Zivuseni programme.

### *Child Support Grant*

Whilst the introduction of the CSG has not only been financial support for children, to ensure that children are not subjected to hunger, malnutrition and poverty, it has also afforded families with a source of income. However, serious challenges still remain for government. Through the introduction of the CSG it has been children below the age of seven who have had the benefit of the grant. Children above the age seven have not had any assistance. Therefore, the State has not promoted nor fulfilled the right of all children to social security. Though the CSG is a very good programme it has failed to include those in desperate of the grant and as such cannot pass the test of reasonableness as outlined in the *Grootboom* case.<sup>43</sup>

The Constitution defines a child as a person under the age of 18 years. The fact that the CSG should be extended to all children was reflected in the third economic and social rights report.<sup>44</sup> Thus it is unconstitutional for children between the ages of seven and 18 to be denied access to social security. The Committee on the Rights of the Child also recommended that South Africa expand the CSG to all children.<sup>45</sup>

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<sup>41</sup> The main aim of the Poverty Alleviation Programme is to reduce poverty by assisting communities in a range of development projects. The projects are funded through a special allocation of the Poverty Relief, Infrastructure and Job Creation Fund from the National Treasury.

<sup>42</sup> Department of Social Development, Progress Report, March 2000, 13.

<sup>43</sup> see para (42-44) of the *Grootboom* case.

<sup>44</sup> South African Human Rights Commission, Third Economic and Social Rights Report, 1999/2000, at 59 and 75.

<sup>45</sup> *Ibid.*

The respective government departments did not report much about children living on the streets. These children are denied access to most social services provided by the State. They do not have access to the CSG and all the other forms of assistance such as the poverty alleviation programmes and projects that are afforded to all the children in the country. These children are unable to benefit from the Primary School Nutrition Programmes because they do not go to school and they cannot even access basic health care services. They cannot access the CSG because there is no care-giver and they also do not have the necessary documentation, such as birth certificates.

Refugee children are denied access to the CSG mainly because they are not citizens of South Africa and do not have the necessary documentation. In responding to the question relating to Vulnerable and Marginalised Group most government departments reported that these children were not entitled to the CSG. Be that as it may, Article 23 of the African Charter on the Rights and Welfare of the Child provides that State parties to the Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the Charter and other international human rights and humanitarian instruments to which the States are parties. South Africa has to ensure that whatever benefits that it gives the children, who are its citizens, it must give to all children, including those who are refugees on its territory.<sup>46</sup>

There is also no justification for the urban and rural distinction for beneficiaries of the CSG. To qualify for the CSG, care-givers of beneficiaries in rural areas should have an income of R13 200 per annum, whereas beneficiaries in the urban areas only qualify if caregivers have an income of R 9 600 per annum or below. The Foster Care Grant and CDG beneficiaries are not subjected to the urban and rural distinction. Beneficiaries are discriminated against on the basis of their location.

Eligible beneficiaries for the CSG found it difficult to access the social assistance grants due to the documentation requirements, such as identity documents and birth certificates.<sup>47</sup> This is an indication that there is minimal collaboration between the Department of Social Development and the Department of Home Affairs. Rural villages in almost all the provinces were disadvantaged in respect of availability and access to social welfare services. Many of the children were not aware that they could apply for grants. Those that were aware knew that they would require the intervention of a social worker to assist them in accessing the right and alleviate their plight. Children in child-headed households have not been in a position to initiate the process of applying for child care grants because they do not have the assistance of an adult.<sup>48</sup>

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<sup>46</sup> Article 2(1) of the *Convention on the Rights of the Child* provides that State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status.

<sup>47</sup> Nelson Mandela Children's Fund Report, on A Study into the Situation and Special Needs of Children in Child Headed Households, 2001.

<sup>48</sup> Nelson Mandela Children's Fund Report, on A Study into the Situation and Special Needs of Children in Child Headed Households, 2001.

Children with minor disabilities are also denied access to the CDG. The CDG provides for certain contingencies such as severe disability in childhood, while failing to provide for childhood chronic illnesses. These groups of children and their families have extra costs and burden due to the health condition that greatly reduce their chances of development and equal opportunities in life.<sup>49</sup>

Children without parental care due to HIV/AIDS are left in the care of the extended family.<sup>50</sup> As a result of the increase in the number of AIDS related deaths, the extended family becomes more extended and unable to provide the traditional support and protection to children. “The United Nations Children’s Fund reported in July that AIDS was pushing a large number of children into hazardous labour even in South Africa. A June 2001 report by the Mandela Children’s Fund found that a number of young girls were forced to engage in prostitution.<sup>51</sup> These children engage themselves in income-generating activities to support their families and in the process, they become vulnerable to exploitation and worst forms of child labour.<sup>52</sup> Acting as a breadwinner for their homes some are even unable to go to school because they are unable to pay for school fees.<sup>53</sup>

The only form of social security enjoyed by children is social assistance, afforded by the State in the form of grants. Basic health care services and the Primary School Nutrition Programme are some of the basic social services afforded to children by the State. Most vulnerable children are not included in the social security system. The policies and programmes instituted by government do not take into account children living in the streets as well as their needs. Children living in the streets, refugees and asylum seekers are also denied access to the CSG.

What comes out clearly in all the responses is that the only Vulnerable and Marginalised Group catered for without failure are the aged, the disabled and children. All the other vulnerable are catered for by the Poverty Alleviation Programmes, which in most instances is not effectively implemented because of budgetary and resource constraints. In all the responses it is indicated that refugees and asylum seekers cannot access social assistance because they are non- citizens.

The measures instituted do not cater for homeless persons. Most departments did not indicate on how the Home Based Care and Community Based Care Programme was going to be implemented.

#### *Constitutional Obligations*

In responding to the constitutional obligations to respect, protect, promote and fulfil the right of access to social security, the NDoSD reported that to promote the right in question, the Social Grant Awareness Campaign was instituted to inform potential beneficiaries about social grants. Print and radio media were used to raise awareness

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<sup>49</sup> Child Health Policy Institute, A Rights-Based Approach to Child Health, 2000 8.

<sup>50</sup> Human Rights Watch World Report, Children’s Rights, 2002 see <http://staging.hrw.org/wr2k2/children.html> site visited on the 26/08/02.

<sup>51</sup> Human Rights Watch World Report, Children’s Rights, 2002 see <http://staging.hrw.org/wr2k2/children.html> site visited on the 26/08/02.

<sup>52</sup> Human Rights Watch World Report, Children’s Rights, 2002 see <http://staging.hrw.org/wr2k2/children.html> site visited on the 26/08/02.

<sup>53</sup> Human Rights Watch World Report, Children’s Rights, 2002 see <http://staging.hrw.org/wr2k2/children.html> site visited on the 26/08/02.

about social grants. In addition to that, the department held Imbizos in the various provinces. The Imbizos were held to demonstrate the department's commitment to efficient, effective and people-orientated service delivery. The Charter on the rights and responsibilities of the beneficiary was instituted to respect the right and the charter provides that beneficiaries of social grants are entitled to receive services with dignity and respect. The Charter also encourages beneficiaries to report instances of degrading treatment.

#### *Vulnerable and Marginalised Groups*

In as far as Vulnerable and Marginalised Group were concerned the NDoSD reported that the appeals panel, was able to assess appeals of older persons and people with disabilities who have been refused applications for social assistance grants in the Western Cape, Eastern Cape and Free State. The Northern Cape, however, reported that no discrimination is applied in application and approval of grants.

Most provinces did not respond to the section on Vulnerable and Marginalised Group except for the Western Cape and Gauteng. The Western Cape and Gauteng reported that women in the various provinces benefited from the Flagship Programme for Women with Children under the age of five years, as their needs were best catered for under the programme. The Western Cape indicated that no specific provision has been made for the homeless but adequate linkage exist with private welfare organisations and community structures that make provision for the homeless within the service areas of each of the 14 district offices of the department. In Gauteng the needs of the homeless were addressed through the subsidies for shelter paid by the department. Refugees and asylum seekers had no access to social security mainly because they were not South African citizens. The only provision provided to them was assistance through the Social Relief Programme.

#### *Implementation Difficulties*

In responding to implementation difficulties, the MD indicated that the shortage of personnel, the lack of adequate infrastructure at pension payout points, fraud and the restrictive criteria used to determine recipients of the disability grant were some of the factors that contributed to the difficulties in implementing the instituted policies, programmes and projects. Gauteng and the Northern Cape also indicated that budgetary constraints and the lack of infrastructure had an impact on the implementation of policies and programmes.

The Western Cape reported that the database of Socpen and Allpay did not match to ensure an even-flowing pay out process. The shortages of staff at the district offices, and the inadequate liaison with the Department of Health were the difficulties experienced by the department in implementing the instituted policies. The Eastern Cape reported that the difficulties that the department was faced with, in the implementation of the policies were budgetary constraints and the inability to get correct addresses for the purpose of notifying beneficiaries to re-register.

To address these difficulties the MD developed an improved payout plan. The department approved an organisational structure which made provision for improved staffing of the social security function. In Gauteng the measures that were introduced

were an audit on all the Poverty Alleviation Projects, the decentralised service offices were engaged in reprioritising the budget and monitoring the effectiveness of programmes and projects.

The Western Cape Department reported that to address the implementation difficulties, the district office staff registered all beneficiaries of the State grants and such information was captured into the Socpen system. Better communication channels were established with all levels within the Department of Health. Poverty diversion programmes were established to make provision for work skills training and employment opportunities for women. The Eastern Cape Department reported that the budget problem was addressed, which was the main cause for implementation difficulties.

### **Legislative Measures**

Most social security legislation in South Africa is exclusionary and does not accommodate the needs of the most vulnerable and marginalised people. The self-employed, informally-employed, the long-term unemployed, poor people as well as the non-nationals are amongst the categories of persons denied access to social security. The Constitution provides that “everyone” who is unable to support himself, should be provided with appropriate social assistance by the State, however the Social Assistance Act only covers the disabled, the elderly and children. People who are unable to support themselves and who do not fall within the categories of persons specified by the Social Assistance Act do not have any form of social security from the State and this is a contravention of the provisions of the Constitution.

#### *Unemployment Insurance Act*

The State has to be commended for reforming the unemployment insurance law and repealing the 1966 Act,<sup>54</sup> which excluded the most vulnerable members of the Republic. The UIF63 of 2001 is a step in the right direction, even though there are still gaps within the Act.<sup>55</sup>

The UIF63 of 2001 was enacted to replace the UIF of 1966, with the purpose of establishing an unemployment insurance fund, to which employers and employees contribute and from which, employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits. The other purpose of the Act is to alleviate the harmful economic and social effects of unemployment.

Even though the Act has included a large number of people to benefit from the Unemployment Insurance Fund, there are some people who are excluded from the Act. The Act fails to take into account the harsh reality of the high rate of unemployment in this country, which forced a large number of people to join the informal labour market in order to escape poverty. The persons excluded from contributing and benefiting from the Unemployment Insurance are from the informal sector. Some of these people have never entered into the arena of a formal working environment e.g. school leavers, and those who were once workers and have since been unemployed because of retrenchments.

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<sup>54</sup> UIF30 of 1966.

<sup>55</sup> UIF63 of 2001.

The exclusion of employees employed for less than 24 hours a month with a particular employer is questionable, because it denies the most vulnerable the right to have access to social security. It is common practice in South Africa that black women in particular domestic workers, often work for a different employer everyday of the week. Although these workers work for five days in a week, they are effectively excluded from the protective ambit of the UIA and the Basic Condition of Employment Act only because they work less than 24 hours a month for a particular employer.<sup>56</sup>

The Department of Labour is also not moving towards a goal of instituting policies aiming at creating work for all and ensuring that the public is self-reliant and not dependent on the State.

### *Vulnerable and Marginalised Groups*

#### *Social Insurance for persons infected with HIV/AIDS*

The Medical Schemes Act<sup>57</sup> does not allow the exclusion of persons living with HIV/AIDS from membership of private medical aid schemes.<sup>58</sup> Contrary to that, life cover and disability insurance policies are not easily accessible to persons infected with HIV/AIDS. A Person infected with HIV/AIDS and who has his insurance policy approved upon application for life cover or disability insurance, is required to pay high premiums.<sup>59</sup> These insurance company policies are unfair and discriminate against persons living with HIV/AIDS. Some of the policies contain exclusion clauses, which allow the insurer to deny the insured payment when it is discovered that the cause of death was HIV-related. In some instances persons infected with HIV/AIDS do not die of AIDS-related diseases but die as a result of a car accident. The car accident as a cause of death makes no difference to the insurance companies as long as the insured is living with HIV.

The State has not complied fully with its constitutional obligations to promote and fulfil the right of access to social security and to afford everybody access to the right in question.

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<sup>56</sup> EML Strydom et al, *Essential Social Security Law*, Juta 2001, 241.

<sup>57</sup> Medical Schemes Act 131 of 1998.

<sup>58</sup> HIV/AIDS and the Law a Resource manual, 2001, 147.

<sup>59</sup> <http://wwwserver.law.wits.ac.za/cals/alp/resource/docs/pdfs/ch13.pdf> HIV/AIDS and the Law Resource manual, 2001 site visited on the 04/03/02.

### *Social Assistance for Persons infected with HIV/AIDS*

A person who is HIV positive qualifies for a disability grant, only if he/she has a CD4 cell count below 50, and a major opportunistic disease.<sup>60</sup> This therefore means that persons infected with HIV/AIDS who do not have an income, cannot be assisted by the State grants unless their CD4 count cell is below 50. The harsh reality is that most people infected with HIV/AIDS are from poverty-stricken, vulnerable and marginalized communities, where the rate of unemployment is also high. When people are unable to support themselves they have the right to social assistance.

### *Refugees and Asylum seekers*

The International Labour Organisation (ILO) Convention encourages the extension of benefits to non-nationals; non-nationals are excluded by social security legislation. The Social Assistance Act<sup>61</sup> restricts the payment of social grants to South African citizens only.<sup>62</sup> The State has failed to enable non-nationals access to social security, their right to social security is not respected nor protected promoted or fulfilled.

## **Administrative Action**

### **National Sphere**

The NDoSD reported that the re-registration process, the incorrect classification of Disability Grant beneficiaries and the suspension of social assistance grants without informing the beneficiaries were other instances of administrative action which caused gross violations of the right to social security and social assistance.

The re- registration process was intended to weed out ghost beneficiaries, corruption by public servants and the public.

The State violated the right to administrative action,<sup>63</sup> and the provisions that, the beneficiary has a right to be furnished with written reasons when an application has been refused, when an application has taken longer than a reasonable period of time to be processed, and when there has been no response to a complaint or problem after writing within the 90-day appeal.

Grant recipients were suspended without warning or hearing, and were required to re-apply for the grants. A large number of social security beneficiaries were removed from the list of beneficiaries of grants without their proper notification, some were not reinstated into the process because their applications were either lost without trace or were simply not processed. They were not paid arrears for grants, which they had lost in the process or through the rejection of their new application.<sup>64</sup> The State's attempt

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<sup>60</sup> <http://wwwserver.law.wits.ac.za/cals/alp/resource/docs/pdfs/ch12.pdf> HIV/AIDS and the Law, Resource manual, 2001 site visited on the 04/03/02.

<sup>61</sup> S3(c) of the Social Assistance Act 59 of 1992.

<sup>62</sup> EML Strydom et al, *Essential Social Security Law*, Juta, 2001, 252.

<sup>63</sup> Section 33 of the Constitution of the Republic of South Africa Act 108 of 1996, provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and everyone whose right has been adversely affected by administrative action has the right to be given written reasons.

<sup>64</sup> <http://www.lrc.co.za/4Pub/1998-1999.PDF> site visited on the 10/02/02.

to eliminate and fight fraud and corruption caused hardship and suffering for most South African grant beneficiaries.<sup>65</sup>

To address this problem a new set of Regulations under the Social Assistance Act were promulgated, and they repealed the three month-limitation on the accrual of arrear social grant benefits. The regulations came into effect on the 1<sup>st</sup> of December 2001. In February 2002 the President of South Africa, indicated that the government will ensure that the pensioners who did not obtain their pensions because of delays in their registration get what was due to them. An additional appropriation of R2 billion was made available to the Department of Social Development to provide back payments to the elderly citizens.<sup>66</sup>

### **Provincial Sphere**

Mpumalanga, Free State, the Eastern Cape reported that there were no administrative actions taken by the departments, which could have resulted in the violation of the right to social security. Information gathered from other sources indicated that The Northern Province (Limpopo) and the Eastern Cape grant beneficiaries were the most affected by the arbitrary administrative action. In Limpopo 92 000 welfare recipients of pension and disability grants, were unfairly terminated by the province's welfare department.<sup>67</sup> In the Eastern Cape, applications for social assistance were often lost without any trace, pensioners waited more than a year before they could receive financial assistance from government.<sup>68</sup>

### **Maladministration and/or Corruption**

#### **National Sphere**

The department reported that there were two official complaints of maladministration and corruption in the department relating to the realisation of rights during the reporting period. One official faced criminal charges of theft and fraud relating to the Poverty Relief Programme. The official was found guilty of theft of about R200 000 and fraud and was sentenced to eight years imprisonment. Another official faced disciplinary charges for failing to declare a conflict of interest in the approval of a poverty relief project of R4 million and for authorising payments to certain poverty relief projects without delegated authority. The official was found guilty and was dismissed.

#### **Provincial Sphere**

The Free State reported that there were three complaints of fraud and corruption against the department during the reporting period.<sup>69</sup> Mr X was charged with theft of old age pension grant money and he was demoted and transferred. Mr Y was charged with fraud and misuse of his official position. He was charged with fraud and found

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<sup>65</sup> *Ibid.*

<sup>66</sup> Department of Social Development, Annual Report, 2000/01.

<sup>67</sup> <http://www.lrc.co.za/4Pub/1998-1999.PDF> site visited on the 10/02/02.

<sup>68</sup> <http://www.lrc.co.za/4Pub/1998-1999PDF> site visited on the 10/02/02.

<sup>69</sup> [http://mpumalanga.mpu.gov.za/social\\_services\\_folder/operation\\_buyisa.html](http://mpumalanga.mpu.gov.za/social_services_folder/operation_buyisa.html) site visited on the 15/04/02.

not guilty by the court of law. Disciplinary action was taken against him by the department. Mr Z was charged internally and found not guilty for the charge of theft of pension money. In the North West, ghost beneficiaries and fraud practices were reported to be rampant.

The MD reported that three officials were dismissed after disciplinary action was taken against them for committing fraud. The MD of Social Services launched a fraud elimination campaign in August 2001. The Campaign known as Operation Buyisa (bring back) aimed at addressing the high prevalence of fraud within the system in the province, wherein unknown children and those who did not qualify for the disability grant were registered.

The Eastern Cape reported that there were no complaints of maladministration and or corruption. However, information from other sources reveals that in Idutywa, syndicate fraud was uncovered. In Centane, Tsomo and in Lady Frere persons drawing grants fraudulently, were identified and they were under investigation.<sup>70</sup> In October 2000 the Eastern Cape formed the Network Against Corruption as a measure to address and prevent corruption.<sup>71</sup>

The Public Finance Management Act of 1999 has been passed by the State to fight corruption.<sup>72</sup> The NDoSD is in the process of developing an Anti-Corruption and Fraud Prevention Strategy. The strategy will be used as a tool to deal with fraud and corruption within the department.<sup>73</sup>

In all its efforts to eradicate fraud and corruption the State has not instituted any measures to deal with migrant workers who have access to social assistance grants when in fact they are not entitled to such grants. The budget allocated for the social security programme is shared with the neighbouring States. A number of migrant workers from the neighbouring states on a monthly basis cross borders to collect their social security benefits.<sup>74</sup> It is not clear as to whether during the re-registration process, the department was able to identify and separate nationals from people who were once migrant workers during the apartheid period since social security legislation in South Africa only affords social security to South Africans.

### **Budgetary Measures**

The budget plays a crucial role in the implementation of programmes and projects which is basically the delivery of services. The responses from the respective departments reflect that budgetary allocation has been inadequate and as such make the implementation of instituted programmes difficult. In as far as children were concerned the budget allocated for children was minimal in the sense that it did not reflect on the First Call to Children. The provincial inequalities also influence access to the programmes and projects provided. This is largely because some provinces are rich and some are poor and provinces have the responsibility of delivering services.

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<sup>70</sup> <http://www.ecprov.gov.za/speeches/welfare/2000/socialsecurity.htm> site visited on the 15/04/02.

<sup>71</sup> *Ibid.*

<sup>72</sup> <http://www.ecprov.gov.za/documents/report/2000/corruption.htm> site visited on the 15/04/02.

<sup>73</sup> Department of Social Development, Annual Report, 2000/01, 120.

<sup>74</sup> <http://www.kwazulu.net/Welfare/Bud%20Speech/Poverty.htm> site visited on the 15/04/02.

The department experienced implementation difficulties, which to a large extent were caused by resource constraints. The resource constraints have had an impact on the realisation of the right and in actual fact they hampered on the realisation of the right in question. The budget inadequacy was also highlighted in all the responses from the respective departments and the measures introduced by the different departments to address budget inadequacy were far from solving the problem. This aspect needs to be critically looked at and addressed by the NDoSD, the Treasury and provincial departments. It can therefore be concluded that the State is not complying with provisions of Chapter three of the Constitution in particular section 41(1)(h).<sup>75</sup>

It is important that section 41 is highlighted because from the information provided by government departments both at nationally and Provincially, it is clear that this section is not adhered to. The respective departments are not assisting and supporting one another, if the national department was assisting and supporting provincial departments, provinces would not be overspending on their allocated budgets for the programmes and there would be no material or substantive difference in terms of sustainability and service delivery in the Eastern Cape, KwaZulu-Natal and Limpopo. The national department should engage with provincial departments and also try and help with funding and influence the budget allocation.

The Committee on the Rights of the Child made recommendations to South Africa's first report to the Committee. The recommendations stipulate that South Africa should pay full attention to the full implementation of article 4 of the Convention by prioritising budgetary distributions to ensure the implementation of the economic, social and cultural rights of children to the maximum extent of its available resources and, where needed, within a framework of international co-operation.<sup>76</sup>

The right of access to social security has not been adequately respected, protected, promoted and fulfilled,<sup>77</sup> it is not fair that when people in all provinces have access to social assistance and inhabitants and residents of the Eastern Cape, KwaZulu-Natal and Limpopo are denied access due to the fact that their provinces are not able to implement policies because of financial constraints or any other reason. People should be afforded full and equal enjoyment of rights for everyone is equal before the law and has the right to equal protection and benefit of the law.<sup>78</sup>

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<sup>75</sup> Section 41 of the Constitution provides that:

- (1) all spheres of government and all organs of state within each sphere must
- (h) co-operate with one another in mutual trust and good faith by
  - i. fostering friendly relations
  - ii. assisting and supporting one another
  - iii. informing one another of, and consulting one another on, matters of common interest
  - iv. co-ordinating their actions and legislation with one another

<sup>76</sup> See [www.unhchr.ch/tbs/docs.nsf](http://www.unhchr.ch/tbs/docs.nsf) site visited on the 27/07/01.

<sup>77</sup> Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>78</sup> Section 9 of the Constitution Act 108 of 1996.

## **National Sphere**

### *Budget Adequacy*

The NDoSD reported that the budget was adequate for the Poverty Alleviation Fund and there was no over or under spending for the reporting period. However the budget allocations budget was inadequate for the Old Age Pension Grant and the Disability Grants during the reporting period and inadequate for the social security programmes only for the period 2000/2001. As a result the department had to overspend on the respective programmes. The department further reported that there was under spending for the social assistance programme.

The inadequate budget allocations had an impact on the realisation of the right in question, in that the processing of social grant applications was delayed. The under expenditure had no material impact on the realisation of the right to social assistance. To address the problem of overspending, the national and provincial departments held discussions with the National Treasury to make adjustments to budget appropriation, where there was an indication of overspending.

The national department also appointed a National Programme Manager and a Finance and Administration Manager as well as additional staff to the National Project Office to assist in solving the problem of overspending. The National department further reported that there were no special measures required to address the under spending as the programme was subject to expenditure monitoring.

### *Vulnerable and Marginalised Group*

The NDoSD indicated that the needs of the vulnerable and marginalised were given consideration and were targeted through the Women's income generating project, the Food production projects for people in rural areas, the income generation projects for communities affected by HIV/AIDS, the dual purpose centres for older persons' income generation activities and children in need of care, the youth development programmes in nodal points of the Urban Renewal Programme and the Social Finance Programme for no or low income groups with no access to formal credit institutions.

The national department further indicated that the funding of alternative care for older persons was directed to Mpumalanga and the Free State. The establishment of substance abuse programmes targeted rural town in the Eastern Cape, Mpumalanga and KwaZulu-Natal. Refugees and asylum seekers benefited from the relief funds managed by the Refugee Relief Board.

## **Provincial Sphere**

### *Vulnerable and Marginalised Groups*

In as far as Vulnerable and Marginalised Group were concerned, the Western Cape reported that refugees and asylum seekers were afforded access to social security through the social relief programme. The department further reported that no specific provision was made for homeless persons, however they had access to social relief programmes. Through links and collaboration that exist between the WCD, private

welfare organisations and community structures cater for homeless persons within each district office.

Limpopo reported that applicants for the Old Age Pension Grant and the Disability Grant were subjected to a means test before they could qualify as beneficiaries. Persons living in rural areas and informal settlements were given poverty pockets. However, refugees and asylum seekers were not included in the poverty relief programmes. Gauteng reported that vulnerable and marginalised groups, in need of temporary material assistance, were offered vouchers, but for a period not more than six months.

The Northern Cape reported that 80 percent of the total poverty alleviation budget was aimed at female-headed households. The poverty alleviation programme was aimed at all previously disadvantaged racial groups. Homeless persons, refugees and asylum seekers were not targeted during the reporting period. The NCD further reported that homeless persons would be targeted during the 2002/2003 funding cycle.

### **Indicators/Outcomes**

The level of reporting by the various government departments has been very poor in the outcomes section. The information provided does not assist in assessing whether the right is progressively been realised or not.

The creation of indicators provides an opportunity to identify problems as well as progress. The question then is, how do departments measure progress in as far as realising the right to social security? The instituted policy, legislation or budgetary measures may not necessarily realise the right of access to social security. Thus indicators serve as an indication of whether the right has been realised or not, and whether the instituted measures have a positive or negative impact on the lives of people or persons accessing the right to social security.

Furthermore, the purpose of indicators is to capture the willingness and the capacity of government to protect and promote human rights,<sup>79</sup> Governments ought to monitor the realisation of human rights,<sup>80</sup> and indicators are designed to monitor the performance of government.<sup>81</sup> Indicators are a useful tool for assessing the implementation of rights entrenched in the Constitution and international instruments.

Reasonableness and effectiveness of instituted measures is weighed against information provided in the outcome section. The outcome section should serve as proof that the instituted policy measures, legislation and budgetary allocation are sufficient and reasonable and provide effective realisation of the right to social security. Failure to respond to the outcome section is an indication that the instituted measures are not reasonable and effective, and that the state is not willing to realise the right to social security.

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<sup>79</sup> Asbjorn Eide. Catarina Krause, Allan Rosas, *Economic, Social and Cultural Rights*, Netherlands, 1995, 390.

<sup>80</sup> Asbjorn Eide. Catarina Krause, Allan Rosas, *Economic, Social and Cultural Rights*, Netherlands, 1995, 391.

<sup>81</sup> *Ibid.*

It is disturbing to note that the national department reported that the total number of children eligible for the CSG was 3 308 467 and only 1 574 927 were receiving the grant, this therefore clearly indicates that a total number of 1 733 540 children were denied access to the grant. In as far as the Foster Care Grant is concerned, the number of children who do not have access to the Foster Care Grant is higher than the number of children in receipt of the grant, because the total number of children who are eligible for the grant is 319 354 and those in receipt of the grant is 90 680, leaving out 228 674 children with no access to the Foster Care Grant. The national department further reported that 276 776 children were eligible for the CDG and only 42 474 children were receiving the grant leaving 234 302 children without access to the grant. How can the implementation of programmes be reasonable if a large number of children are not afforded the right to social assistance?

It is not acceptable that social security beneficiaries, who in most instances are the elderly are expected to wait for an average period of two hours at pay-out points before receiving their grants, when in fact 68 percent of the pay-out points have no access to water, 64 percent have no toilet facilities and 79 percent have no facilities for the disabled and the infirmed. This not in the spirit of the Batho Pele programme, which advocates that people need to have access to a decent public service based on the principle of equal and improved service delivery to the physically, socially and culturally disadvantaged. A decent service would be one with proper infrastructure and where people are treated with respect and their dignity is protected.

The national department reported that the number of beneficiaries eligible for disability grants was 1 208 105 and only 714 091 received the grant leaving 494 014 without the grant. A total number of 195 806 persons were denied access to the old age pension grant because only 1 936 553 persons of the 2 132 359 eligible were receiving the grant.

The poverty alleviation programmes are not reaching out to those most in need of assistance. The National Department reported that 149 157 persons were benefiting from the poverty alleviation programme and 33 146 households were benefiting from the programme when in fact 1 648 104 households had no source of income and 23 819 458 persons had no source of income, on the other hand 3 741 603 households have an income below the poverty line and 4 374 817 persons had an income below the poverty line.

## **7. RECOMMENDATIONS**

The security system should provide a platform for the creation of a compulsory scheme that will afford everyone the right of access to social security. There is a need for legal reform and a comprehensive social security system. The provisions of the present social security legislation deny the most vulnerable members of our society access to social security. Persons who are excluded from both social assistance offered by the State as well as from social insurance need some form of social security.

The system should not exclude the informally-employed, the unemployed and the self-employed from accessing and enjoying the right to social security. Banks should be easily accessible and allow everyone to open savings accounts. People should be

enabled to have access to social insurance and take up life cover policies and disability policies. The Department of Labour should institute and effectively implement policies and programmes thus advance the rights of everyone especially workers who are not covered by pension and provident funds. Where a person is unable to support himself and his family, he must be afforded social assistance by the State.

There is a need for the State to enable non-citizens, refugees and asylum seekers access social security. The social assistance scope of coverage for persons infected with HIV should be wide enough to enable the unemployed persons to qualify for disability grants even though their CD4 cell count is not below 50 and there is no major opportunistic disease. The disability grant will enable them to sustain themselves and escape the poverty. Each individual has the right to enjoy an adequate standard of living and to have his dignity respected and protected.

Government has to implement the policies that are in place. The provisions of the White paper<sup>82</sup> as well as the Ten Point Plan have to be effectively and diligently implemented, to ensure that everyone, especially the vulnerable and the marginalized have access to social security. The State has to regulate the private social insurance schemes and ensure that insurance companies or third parties do not violate the rights of the people. By so doing the State would be discharging the obligation to respect and protect the rights of people from infringement by third parties. The State should be seen advancing and promoting the rights of everyone irrespective of whether persons are HIV positive or not, and enable everyone to enjoy proportionally the right of access to social security.

The CSG needs to be extended to all the children regardless of their age. The scope of coverage of the grant should be wide enough to cater for the special needs of children. A child infected with HIV/AIDS needs constant medical attention and as such should be provided with more than the R130 grant.

There is a need for government to institute policies and programmes to ease the plight and hardships faced by children in child-headed households as well as children who live the streets (homeless children). The State has to introduce more measures of reducing and preventing child-headed households. The State has already instituted the Home Based/Community Based Programme, however there is a need for measures to cater for the extended family structures. By the same token, the fact that it is not the sole responsibility of government to realise the rights of everyone including children, to social security and social services is recognised. Institutions such as the Faith Based Organisations and NGOs have played a role in assisting children to enjoy the right to basic social services as well as in helping government realise the rights in question.

It is therefore recommend that the department should strengthen ties and working relations with Community Based Organisations as well as Faith Based Organisations. These groups could play a crucial role in identifying and providing services to vulnerable and marginalised groups. The extended family structures should also be recognised and supported by the department. Most children without parental care due

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<sup>82</sup> White Paper for Social Welfare 1997.

to HIV/AIDS are left in the care of the extended family.<sup>83</sup> Due to the increase in the number of AIDS-related deaths, the extended family becomes more extended and unable to provide the traditional support and protection to children.<sup>84</sup>

These extended family structures need income support to be able to fulfil the role of parents. More than anything, families have an obligation to take care of their own, if they are unable, the State has to provide means of enabling them to fulfil their familial obligations. The inability of the extended family to take care of its contributes to the alarming increase of child-headed households.

### *The Basic Income Grant (BIG)*

It is recommended that the State introduce the BIG or any other measure, which will enable the poorest of the poor who are excluded from social security and social assistance to escape poverty and have some form of income. This income to households will enable everyone to meet basic subsistence needs and be able to live in accordance with human dignity.

South Africa has a high rate of poverty and inequality. Most South Africans live in poverty-stricken areas and do not have access to basic social services and social assistance. Poverty is one of the serious challenges facing South Africa and this, to a large extent was caused by past discriminatory and racial policies. The low wages earned by those employed deprives them of a decent standard of living in the midst of rampant unemployment. It is against this background that the BIG was proposed by Cosatu as a measure to reduce poverty and afford human beings a decent standard of living.<sup>85</sup>

The BIG sets out that a sum of R100 per month be paid to everyone in the country including children who are not in receipt of another grant like the CSG. The grant would thus be universal and avoid the costs and administrative burden associated with means testing. The grant would be retrieved from the tax system from middle income earners and higher income earners.

The summary of the recommendations is as follows:

- The State should adhere to and comply with constitutional provisions as well as international instruments such as the CRC and the ICESCR which have been respectively ratified and signed by South Africa.
- Policies and programmes especially those meant to alleviate poverty, should be implemented effectively and diligently.
- There should be mechanisms in place to address current problems that make the implementation of policies and programmes difficult.
- Budgetary constraints and overspending should be addressed by the National Treasury, National and Provincial Departments.

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<sup>83</sup> Human Rights Watch World Report, Children's Rights, 2002 see <http://staging.hrw.org/wr2k2/children.html> site visited on the 26/08/02.

<sup>84</sup> *Ibid.*

<sup>85</sup> Cosatu 7<sup>th</sup> National Congress Resolutions, Socio-economic Resolutions.

- The CSG should be extended to cover all children from 0-18 years<sup>86</sup>
- The CDG should be accessible to children with minor disabilities as well as those with chronic illnesses.
- All beneficiaries of the CSG should be treated equally and not be discriminated against on the basis of their location. The total income of caregivers should be R 9 600 per annum in or less all areas.<sup>87</sup>
- Children in all situations and circumstances should have access to all forms of social assistance afforded to children. There should be ways of ensuring that children who do not attend school have access to feeding programmes, health care services and the CSG. This will ensure that children in the streets and children who head households all enjoy the right of access to social security and social assistance.
- Refugees and asylum seekers should be afforded the right of access to social security and social assistance refugee children should have access to the CSG or other forms of social assistance.
- The Department of Home Affairs should be easily accessible and within reach to enable people to have access to birth certificates and identity documents.
- There should also be co-operation between the Department of Home Affairs and the Department of Social Development.
- It would be helpful to have officials of the Department of Home Affairs at each pay point station to issue out temporary birth certificates and identity documents, that will enable grant applicants to benefit from the social grants
- It cannot be over-emphasised that the recommendations that are made each year should be taken into account and put into good use, by the various government department.

## CONCLUSION

The apartheid regime catered for the needs of white South Africans and protected them against contingencies by way of social insurance and where it failed by means of social assistance and black people were excluded from social security.<sup>88</sup> However the new Constitution<sup>89</sup> affords everyone the right to have access to social security, including if they are unable to support themselves and their dependants appropriate social assistance.<sup>90</sup> The fundamental right to human dignity, equality and freedom underpins this right. The right to equality provides that everyone is equal before the law and has the right to equal protection and benefit of the law. The right to social

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<sup>86</sup>The Committee on the Rights of the Child recommended that the CSG programme should be expanded or alternative programmes developed to support disadvantaged children up to the age of 18 years who are still in school, and take effective measures to ensure the continuation of support programmes for economically disadvantaged families.

<sup>87</sup> Recommendations by the Committee on the Rights of the Child, that South Africa should ensure efforts to make possible the implementation of the principle of non-discrimination in article 2 of the Convention, particularly in relation to vulnerable groups.

<sup>88</sup>MP Olivier, MC Okpaluba, N Smit, M Thompson *Social Security Law, General Principles* Butterworths 1999, 21.

<sup>89</sup> The Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>90</sup> Section 27(1) of the Constitution of the Republic of South Africa, Act 108 of 1996.

security in section 27 appears to be comprehensive with regard to the scope of social protection, however social legislation is limited in its application.<sup>91</sup>

Though the State has an obligation to respect, protect, promote and fulfil the right of access to social security,<sup>92</sup> the reality of the matter is that the State has not fully complied with its obligations as set out in the Constitution and binding international instruments. Most vulnerable and marginalised groups are excluded from social security legislation mainly because they do not form part of the formal workforce of the country. Those excluded from social security legislation are the unemployed, informally-employed, migrant workers and non-citizens.<sup>93</sup> Therefore, it can be concluded that the State has not fully realised the right to social security.

It can however be safely concluded that the State is gradually advancing the right, through mechanisms that have been put in place such as policies, programmes, projects and legislation that enable the fulfilment of the right in question. In as far as policy and legislation are concerned, the Committee of Inquiry into a Comprehensive Security System was formed to look into a comprehensive social security system for all and to transform the existing incoherent system. The Child Care Act is also being reviewed and redrafted to include provisions of social security for children.

The State has displayed its commitment to achieving and ensuring that the right to social security is progressively realised through the programmes instituted in various government departments. The Poverty Alleviation Programmes, the Food Security Programmes, the Free Basic Water Service Programme, the Free Health Care Services for the Aged are some of the programmes that are implemented. The only form of social security enjoyed by children is social assistance, afforded by the State in the form of grants. Basic Health Care Services and the Primary School Nutrition Programme are also some of the basic social services afforded to children by the State.

Even though the State has a responsibility to guarantee its subjects a basic standard of living, it cannot accept sole responsibility for meeting the basic needs, hence there should be shared responsibility. Social security does not mean that people should entirely depend on the State, however the State is under an obligation to ensure that people are in a position to access social security. The State has an obligation to encourage its subjects to take responsibility for their own welfare through private savings and private insurance, hence there should be legislation that governs and regulates the use of private savings and private insurance schemes.

Wilfred Jenks, the former Director-General of the International Labour Organisation made a statement to the effect that “nothing in the history of social policy has transformed the life of the common man more radically than the assurance that, in the event of loss of income through accident, poor health, unemployment, death of the breadwinner or any other misfortune, he will not be forced into destitution.”

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<sup>91</sup> MP Olivier, MC Okpaluba, N Smit, M Thompson *Social Security Law, General Principles* Butterworths 1999, 22.

<sup>92</sup> Section 7(2) of the Constitution of the Republic of South Africa, Act 108 of South Africa Act 108 of 1996.

<sup>93</sup> MP Olivier, MC Okpaluba, N Smit, M Thompson *Social Security Law, General Principles* Butterworths 1999, 31.

One of the principles of social security is the principle of solidarity which promotes the spirit of mutual support amongst fellow men. The concept of ubuntu is found in the White Paper, the concept provides for the caring of each other's well being and promoting the spirit of mutual support. South Africa has a high rate of unemployment and as long as unemployment is not reduced, those excluded in terms of the previous form of social security system cannot be adequately drawn into the economic and social mainstream. All those in need of social security should be able to gain access.

It has almost been five years since the White Paper was passed, the White Paper provided that every member of society who finds him or herself in need of care will have access to support, however not everybody in need of social assistance is afforded such assistance.

## **ABBREVIATIONS**

<b>BCEA</b>	Basic Conditions of Employment Act
<b>BIG</b>	Basic Income Grant
<b>CDG</b>	Care Dependency Grant
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CSG</b>	Child Support Grant
<b>DoL</b>	Department of Social Development
<b>ECD</b>	Eastern Cape Department
<b>FBO</b>	Faith Based Organisation
<b>FSD</b>	Free State Department
<b>FSG</b>	Foster Care Grant
<b>ICESRC</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organisation
<b>KZND</b>	KwaZulu-Natal Department
<b>MP</b>	Mpumalanga Department
<b>NAP</b>	National Action Plan
<b>NDoSD</b>	National Department of Social Development
<b>NCD</b>	Northern Cape Department
<b>NGO</b>	Non Governmental Organisation
<b>NWD</b>	North West Department
<b>UIA</b>	Unemployment Insurance Act
<b>UIF</b>	Unemployment Insurance Fund
<b>WCD</b>	Western Cape Department

