

promote self-sufficiency and independence.

10.4.2.2 Social security should protect societal members from and compensate for, the financial consequences of a number of social contingencies or risks, including those preventative and rehabilitative measures. It should ultimately aim at societal solidarity, and at the full development, equality and participation of persons with disabilities (UN Committee on Economic and Social Rights - General Comment No. 3. Para 11)

10.4.3 Definition of disability

10.4.3.1 In light of the differing definitions and measurements of disability used in the various pieces of legislation regarding social security, it is suggested that a broad concept of disability be used. This could be adapted for more specific definitions in each scheme, dependent upon the purpose and coverage of each. Obviously the definitions must be 'operationalised' in the assessment tools, which must accurately translate the concepts within the purpose into simple and measurable criteria.

10.4.3.2 It must also be stressed that the system should not define beneficiaries according to the disability, but should rather determine provisioning in response to need.

10.4.4 Purposes and eligibility criteria

Within the broad concept of social security mentioned above, there could be specific purposes of each of the social security measures. For example, the purpose of COIDA could be to provide for the compensation of an injured person or his/her dependants for work-related incidents resulting in injury, death, or an occupation disease, in order to enable their full rehabilitation, retraining and re-integration into the labour market.

10.4.4.1 Persons with disabilities, physical, sensory, mental and intellectual, who cannot provide for their basic needs, should be eligible for the disability grant. In addition, it is suggested that persons with chronic illnesses, including HIV/AIDS, should also qualify for the grant.

10.4.4.2 Eligibility should not be based on the person's "incapacity" to work, as often their lack of work is due to the poor economic climate and prejudice in the work place, as opposed to their physical or mental inability to perform the job.

10.4.4.3 Eligibility should be determined by a Needs-based Assessment. This should replace the current means testing.

10.4.5 Assessment procedures

10.4.5.1 The assessment procedure should encompass a "needs-assessment" which considers not only the type and severity of disability or illness, but other social, economic, physical and environmental factors. Persons with the same disability can have very different needs, depending on all these factors and on the support structures and resources available to them.

10.4.5.2 The assessment should also focus on the applicant's capabilities, rather than only on the degree of disability, as well as their potential for re-training and re-employment. Relevant training and reintegration measures should also form part of the package of social security.

10.4.5.3 The International Classification of Impairment, Disability and Handicaps (ICIDH-2), which is currently being developed by the World Health Organisation, may be useful in indicating the main categories and indices for measurement.

10.4.5.4 The assessment form must include all the disability categories, i.e. physical, mental, sensory and intellectual (currently it only includes physical and mental).

10.4.5.5 An appeal mechanism (such as a Review Tribunal) is necessary for those rejected applications, and must consist of relevant intersectoral representatives.

10.4.6 Targeting

10.4.6.1 The issue of means testing versus universal provisioning is complex and represents the contradiction, or struggle, between the fundamental rights to social security and the available resources.

10.4.6.2 Obviously resources are not infinite and personal or company income tax systems are exhaustible as sources of financing for social security systems. Thus efficient allocation of resources to suit the presenting needs of the population is required. In the face of limited resources, some form of targeting measure, to identify the most in need, is essential. However, this must be viewed within the rights-based framework as stipulated by the South

African Constitution and the various international instruments, which stress the basic rights of persons with disabilities to social security and social assistance, with progressive realisation and within the constraints of available resources.

10.4.6.3 It is suggested that a thorough system of ‘needs-assessment’ as described above, would include analysis of a person’s financial situation and their need. Some threshold level of income, in relation to need, would have to be determined. It is suggested that the Disability Sector and economists undertake this.

10.4.6.4 It is important that the tools of targeting be sensitive and accurate in determining “need” versus purely a medical diagnosis emphasising categories of disability.

10.4.6.5 This assessment should be undertaken at regular intervals, so as to re-assess the level of need and to adjust the benefits accordingly. Sudden termination of grants is strongly discouraged. There should be adequate warning of the gradual ‘phasing’ out of payments.

10.4.7 Benefits

10.4.7.1 A system making use of a needs-based assessment as described above, would then provide a sliding scale of benefits, to suit the range of presenting needs within available resources. This should incorporate cash transfers and other indirect forms of social security.

10.4.7.2 The provision of cash transfers is an essential means to alleviate poverty, to smooth the income cycle, to meet those special needs due to the disability, and to overcome barriers that many persons with disabilities face in maximising their development and potential. For these reasons the disability grant and the CDG must be maintained and kept at their current level, if not increased.

10.4.7.3 The Committee recommends persons with disabilities and in poverty receive basic income as a first step in the package of benefits. Thereafter, consideration should be given to their special needs and provision be made in the form of “topping up” in relation to cash benefits, in-kind benefits and other essential services.

10.4.7.4 It is recommended that the Grant-in-Aid be re-examined and its usefulness and relevance determined. In addition, a brief analysis of the Department of Social Development’s provisioning of “personal assistants” should be undertaken. Some scope of choice in personnel by the beneficiary would be advised.

10.4.7.5 Changes in thinking over recent years have led to a lower emphasis on institutional care for those with disabilities. It is widely recognised that effective de-institutionalisation requires adequate support at a community level. In the case of residential care, a major barrier to discharge is that many patients have no effective family links and, if discharged, would be without shelter. This process must therefore be properly resourced.

A submission to the Committee from the Department of Health expressed concern for those with mental disabilities particularly. In their instance, co-ordination is essential between the Department of Health, Labour (which runs protective and sheltered workshops) and Prisons (as many as 30% of prisoners may suffer from mental illnesses).

10.5 Short-term measures

- Suggested immediate amendments to the Social Assistance Act and regulations and to the Department of Social Development’s administrative structures.
- Remove the clause of “permanent home care” for eligibility of the CDG.
- Extend the CDG to children with moderate disabilities and those in special schools or day centres.
- Revamp the current medical and assessment forms. Include sensory and intellectual disabilities. The disability sector could assist with this process.
- Utilise a multi-disciplinary panel for assessments.
- A disability representative should be present on all the boards examining claims for insurances.
- Develop clear eligibility criteria and guidelines for assessors.
- Remove the criteria of spouse’s income in the means test. Only the income of the person with the disability should be measured, not the “household” income.
- Provide free health services to persons with disabilities.
- Establish a review process for cases at regular intervals.
- Establish an appeal mechanism.

- Increase the back-pay to 6 months.
- Speed up the time of processing claims for grants and insurances.
- Educate the public on the social security available to them.

10.6 Recommendations

In general, policy should stay focused on improving the preconditions for equal participation, even as more general efforts at bolstering the capacity for governance and administration in the system of social protection move forward. The emphasis should be on promoting independent living, not institutional care. Specific and *achievable* policy recommendations are needed to promote action and not just further deliberation.

- Retain existing social assistance disability benefits until such time as income support measures are universally implemented, with the real value of the current disability grant being taken into account as well as other government measures.
- In-kind benefits should be de-linked from cash benefits. If people with disabilities take jobs and become disqualified from receiving public income support, they should not be required to give up access to non-cash support. De-linking cash and non-cash benefits may help to reduce the strength of the welfare trap around the means test.
- The present disability definitions are for various reasons unacceptable, as they are constructed in such a way (a) as to serve as a disincentive to work; and (b) that they overemphasise capacity for labour market participation, and do not take into account social and labour market barriers, as well as broader social and environmental factors. It is, therefore, proposed as a short-term measure that the said definitions be amended so as to reflect an interactive approach, which takes into account both medical condition and social and environmental factors.
- It is further proposed that the definitions be widened in order to include four main categories of disability, namely physical, mental, sensory and intellectual disability.
- It is also suggested that the ICIDH-2 approach to the definition of disability could be helpful, as it stresses three main elements, namely: (i) anatomical malfunctioning; (ii) the impairment of normal human functions as a result of the condition; and (iii) the question whether the condition hamper or impair the ability to socially integrate.
- An amended definition should serve two main purposes, namely, firstly, to identify whether the person concerned is indeed covered according to the revamped (wider) definition and, secondly, to identify the appropriate range and level of transfers (cash or in-kind benefits, goods and/or services) required to address the needs of the particular person according to the particular kind of disability suffered by the individual.
- Provision should be made for the purchasing of *essential* assistive devices. Procedures for acquiring simple assistive devices should be simple and costs should be subsidised.
- Simplify administrative procedures. Although administration needs greater resources and capacity building, it should also be an aim of government to reduce bureaucratic complexities that further complicate applications for social assistance and impede access to entitlements.
- Establish a series of quantitative indicators and benchmarks in consultation with civil society. These benchmarks can provide measurable targets for policy as well as standards by which civil society can monitor the progress of reforms.
- It is recommended that the regulatory environment and enforcement of the Social Assistance Act and its concomitant regulations be adapted in order to comply with the tenets of administrative justice as required by the Constitution, the statutory law, and well-founded common law principles. It is further recommended that officials responsible for dealing with matters pertaining to grants, for example, when approving, turning down or reviewing applications, be made aware of the obligations on the state and the rights of applicants in this regard.

- The discriminatory elements in the provisioning of grants and insurance coverage should be removed. In particular is it recommended that the citizenship restriction for purposes of entitlement to social assistance grants be removed. All that should be required is lawful residence in South Africa.

In order to avoid further unnecessary fragmentation, it is recommended that administrative and institutional arrangements concerning people with disabilities be included in a new national framework developed for social security delivery.