

JOINT SUBMISSION ON

SOUTH AFRICAN SOCIAL SECURITY AGENCY BILL

(B 51 – 2003)

**As presented to the Portfolio Committee on Social Development
Public Hearings**

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CONGRESS OF SOUTH AFRICAN TRADE UNIONS (COSATU)

NATIONAL EDUCATION HEALTH & ALLIED WORKERS UNION (NEHAWU)

BLACK SASH

SOCIO-ECONOMIC RIGHTS PROJECT, COMMUNITY LAW CENTRE (UWC)

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1. EXECUTIVE SUMMARY OF RESPONSE TO THE DRAFT BILL

Government proposes to establish a new Social Security Agency to address the manifold problems of the current social assistance delivery system. Whilst we applaud efforts to improve the delivery of social grants, we express strong reservations about the model adopted in the South African Social Security Agency Bill. We argue that most of the purported benefits of a new agency could be more efficiently realised through changes to the current administrative system and by strengthening the department's administration and resource capacity.

We are also wary of initiating major institutional reconfiguration at a time when government is still considering its response to the Taylor Committee's proposals for a comprehensive and integrated social protection system.

Problems of the current system

The current social assistance delivery system is beset by a number of administrative deficiencies, including:

- Poor management, distribution and development of human resources;
- Poor organisation of work
- Inadequate infrastructure and IT support systems;
- Regulatory barriers to take up, such as stringent means-testing or complex eligibility requirements;
- Specific Public Service regulations which slow down service delivery
- Variations in access to social grants across provinces as a result of provincial discretion in budgeting and resource allocation;
- Assignment of the administration of the Social Assistance Act to Provinces- Proclamation 7 of 1996.
- High levels of fraud, administrative failures and lack of provision of facilities that have not been addressed by outsourcing delivery to private contractors;
- Long delays in grant approval and arbitrary suspension or termination of grants;
- A lack of binding national norms and standards; and
- A failure to provide sufficient public education and information on social grants and eligibility criteria.

These problems inhibit access to social assistance, despite the fact that such access is constitutionally guaranteed for those who are unable to support themselves and their dependants. As a result, they make the Department of Social Development vulnerable to legal challenges. Already, the *Mashava* case has challenged the assignment to provinces of responsibility for administration of the Social Assistance Act.

Proposals in the Bill

The Department proposes to remove the administration of social assistance from the Public Service by transferring the staff, assets and liabilities of relevant sections of the DSD to a new Social Security Agency, designed “to ensure the efficient and effective management, administration and payment of social security grants”.

However, there is little evidence that this move would resolve the administrative problems impeding access to social assistance. Weaknesses of the Agency proposal are that:

- It is unrealistic to expect that the new Agency would be better equipped to ensure staff capacity and performance without additional resources and improved managerial direction. The essential staff needs – effective training and performance assessment – can be achieved without the creation of a new Agency.
- Creating an Agency will be extremely costly and very time-consuming further deflecting away from the central challenge at this time of service delivery.
- The ability of the Agency to handle the vast amounts of money that would need to be administered by it, have not been shown by any proposal thus far.
- No research in the South African context, on service delivery agencies has been forthcoming to show that the Agency is a better administrative structure than existing departmental functions. Research has not been made public, and primarily what we are lead to understand reflects an international experience, especially revolving around an Australian model.
- Agencies which are IT based (SARS etc) are fundamentally different to service delivery agencies, and the track record shows that service delivery agencies in our country do not have any edge over existing departmental functioning. In fact in many cases they are worse. In addition duplication will continue on specific functions, all of which increases the costs.
- The lack of binding national guidelines governing the interpretation and application of regulations will continue to permit inconsistent application of the legislation.
- The Agency is likely to eclipse the Ministry as the dominant policy-making body, on social grant administration. This has happened in other service delivery agencies.
- An Agency would have no greater capacity to attract skilled personnel.

Agentisation and the Integrated Public Service

Agentisation of public service provision will fragment the public service and move us away from the vision of a unitary public service. What is critical is that at the time of this Bill coming before Parliament, government is moving towards an inter-grated public service, inter-grating Province and Local government and its service delivery functions. This project, initiated by the Presidential Co-ordinating Council through the Minister for Public Service and Administration, is already two years into its work. It has completed the project on integration of remuneration and benefits between Provincial and Local Government. It has a draft policy document on an integrated public service as well as an internal draft on an over-arching Public Administration Legislation.

The Social Security Agency Bill reflects no understanding of this major shift in governance that will be taking place over the next 5 – 10 years. Again it reflects a dislocated approach to service delivery, whilst government policy on the other hand is looking to improving service delivery as its main stated aim through the integration of the Public Service. Here we deal with a Bill that seeks to take such an important function outside of the Public Service.

Review of Public Entities by Government

DPSA jointly with National Treasury has developed a business plan to review all public entities. In the submission of the Minister for Public Service & Administration she clearly outlines that Public Entities created in terms of their own legislation has led to fragmentation of regulatory frameworks, accountability frameworks, conditions of service and service delivery.

Further that Government has noted problems that characterize Public Entities and that these in the main relate to: -

- Governance arrangements
- Enabling Acts and Regulations that are not providing the necessary details or guidance to Public Entities
- Public entities that operate with no clear reason for separation from National departments
- Public Entities that perform functions and/or pursue objectives that are not in line with the specific mandate of that Public Entity
- Difficulties for government to intervene in Public Entities due to their autonomous accounting authority
- Accounting Authority comprising of honorary and non-executive persons some of whom lack the relevant corporate governance skills
- Salary grades appear to be based on market related salaries, often based on profit making organisations rather than government institutions

- Executive management teams that comprise of ex-employees of Government Departments and earn substantial packages relative to work performed. In some instances salary packages are not linked to performance contracts
- Procurement processes that are at times not transparent or equitable.

The review is expected to address the following substantive issues: -

Role of Public Entities in their current form with a view to enhance the coherent functioning of the different parts of government

Appropriateness of the PFMA, Public Service Act and other related legislation including enabling acts

Review and propose appropriate corporate governance practices that would enable compliance with PFMA

Critically to develop a criteria for the classification of Public Entities and for assessment of proposals relating to the restructuring, merger or closure of Public Entities, to enhance service delivery

The review will be completed in May 2004

Given that there is this major project it would be unwise to proceed until the outcome of the review is complete so that it can inform any future institutional changes that may be necessary in the DSD.

Improving Service Delivery

Fragmenting the resources of the State in favor of agentised and commercialised systems of delivery, have resulted in a weakening of the state and a weakened delivery systems in many developing countries. In developed countries the results of this form of service delivery have been at best mixed.

Improving social assistance delivery requires the following to be addressed:

- The role of private partners in service delivery;
- Systemic weaknesses in conditional grants;
- Management skills ;
- Procurement Systems; and
- Fiscal constraints.

There is a logical sequence of steps that should be followed to improve service delivery, including such key tasks that:

- Establishes the invalidity of the assignment of the Social Assistance Act to provinces;
- Centralises social assistance delivery within the Social Development Ministry; If necessary establishing a dedicated unit within the directorate with ring fenced funding and the ability to attract suitable personnel;

- Gives to the Minister of Social Development clear responsibility for social assistance, poverty alleviation, children, and social security integration;
- Where necessary, delegate social assistance delivery functions to the provincial sphere of government;
- Develops a focused human resources strategy through negotiation with the trade unions to improve service efficiency and staff capacity;
- Develops and implements national norms and standards for social assistance delivery;
- Locates the social assistance budget at a national level, with allocations for social grants in the form of conditional grants to the provinces; and
- Carefully monitors the impact on social security access of the above steps.

The essential goal of these steps is to establish a nationally organised social security system with standardised management, budgeting and communications systems.

Government should also engage in a broad consultative process on the Taylor Committee recommendations, including the institutional arrangements proposed in the report of the Taylor Committee. This has never taken place yet we experience a piecemeal approach to certain institutional proposals in the Taylor recommendations.

Given the momentous nature of the institutional change that the Agency represents, the fact that this has never been raised by the Department of Social Development in the Health & Welfare Sector bargaining council, is a breach of Resolution 7 of 2002 on the restructuring of the Public Service. This resolution has the status of a contractual agreement between Government and the unions admitted to the Public Service Co-ordinating Bargaining Council.

Resolution 7 stipulates that Government through its departments have to bring any proposal on restructuring in their respective department's to a joint task team who have to then consider the proposals. This has never been done.

The consequences of not improving the social security delivery system are serious for beneficiaries' access to social security rights. It makes the Department of Social Development vulnerable to constitutional challenges for failing to achieve the reasonable implementation of the social assistance programmes.

Corrective measures that should be undertaken

- Set aside the Assignment powers that were given to Provinces through Proclamation 7 of 1996, in order that powers are recentralised in the department. The assignment of the Social Assistance Act is now subject to the Constitutional challenge in the Mashava case.
- Set up a dedicated unit in the department for the delivery of social assistance along the lines of the dedicated units that are to be found in other Departments. This unit would have its own organogram, its own Human Resource Management with a focus on the improvement of service delivery of social assistance and would be resourced and ring fenced in respect of financing, and having its own head reporting directly to the Minister.
- At Provincial level a similar arrangement would apply with a Provincial Director accountable to a National Director
- Where necessary after the passing of the Social Assistance Bill, delegate social assistance delivery functions to the provincial sphere of government
- Ring fence protection for social grant allocations, so that they are not subject to the vagaries of Provincial budgeting priorities in respect of how provinces deal with the equitable share of budgetary allocations to the Provinces
- Within the context of resolution 7 of the Public Service Co-ordinating Bargaining Council, on the restructuring of the Public Service, fill the massive staff shortages in the DSD
- Put in place the necessary set of binding national guidelines governing the interpretation and application of regulations so as to put a stop to inconsistent application of legislation. National norms and standards for social assistance delivery
- Fast track, together with the DPSA, changes to those specific Public Service Regulations that give rise to the hindering of flexibility and ability to take efficient decisions. Where those regulations impact on organised labour these would have to go to the PSCBC.
- Given that the old state tender board no longer exists, both DPSA and the National Treasury should speed up proposals on draft regulations on procurement and these can be decentralised to the Provinces.

- With the money that has already been allocated, put in place the essential staff needs of effective training and performance assessment. As part of this a focused human resource strategy negotiated with organised labour to improve service efficiency and staff capacity. This would include the deployment of national task teams to provinces to work with improving the human resource capacity of provincial staff.
- Make available (requested since February 2003) the research that motivates for an Agency. There needs to be open and proper discussions on the business case with stakeholders, and the research put to empirical research testing, and international experience.
- Place the South African Social Security Agency Bill before NEDLAC

2. INTRODUCTION

Access to social assistance for those who cannot afford to support themselves and their dependants is a right enshrined both in the Constitution and in legislation.¹ However, in its groundbreaking decision in *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC), the Constitutional Court held that in order to fulfil socio-economic rights (such as social security rights), reasonable legislative and other measures must be adopted. The Court went on to say:

Mere legislation is not enough. The State is obliged to act to achieve the intended result and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the Executive. These policies and programmes must be reasonable both in their conception and their implementation...An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the State's obligations.²

There have been a number of reports and studies documenting the range of problems experienced in the implementation of social security programmes.³ South Africa's first democratic government inherited a welfare system that was fragmented, inequitable and administratively inefficient. This was an inevitable consequence of a system administered by 14 different departments for the different population groups and homelands. In 1996, government appointed the Committee for the Restructuring of Social Security (CRSS), headed by Rev Frank Chikane. The brief of this Committee was to make recommendations on the reform of current social security systems. These included information and payment systems and technology, the restructuring of human resources management systems, and the development of systems to eliminate fraud and corruption. The main recommendation of the CRSS related to the establishment of a *nationally organised* social security system with standardised management, budgeting and communications systems.

It is clearly a constitutional imperative that the inadequacies in social assistance delivery be urgently resolved. A failure to do so will inevitably expose the Department to legal challenges.⁴ The critical question is whether the proposed

¹ The Social Assistance Act No. 59 of 1992

² *Grootboom*, para. 42.

³ See, for example, the research report entitled, 'Social security transfers, poverty and chronic illness in the Eastern Cape: An investigation of the relationship between social security grants, the alleviation of rural poverty and chronic illnesses including those associated with HIV/AIDS – A case study of Mount Frere in the Eastern Cape.' School of Public Health (University of the Western Cape), Social Disadvantage Research Centre (Oxford University), the Economic Policy Research Institute, 21 May 2002.

⁴ There have already been a range of cases relating to the administration of the Social Assistance Act, and the regulations promulgated under this Act. See, for example, the cases of *Ngxuza*, *Bushula*, *Mahambehlala*.

Social Security Agency will solve these problems or simply perpetuate or even exacerbate them.

A further question that arises from the draft legislation is, to what extent is the Department of Social Development abdicating its constitutional responsibilities in placing one of its central functions, social assistance, in the hands of a Board, who will have to oversee the functions of the Agency. Unlike certain other agencies of the state, the proposed Agency has the vital role of giving effect to the constitutional right of everyone to have access to social assistance in terms of section 27 of the Constitution.

2.1 Ideological and conceptual Issues

We are currently constructing a National Democratic State with a developmental agenda. This means that any arm of the State must contribute to this developmental agenda.

At the same time our country has since democracy been subjected to the same ideological challenges thrust upon us by schools of thought from the neo-liberal movement. These schools of thought suggest a particular type of public service and public sector, one in which the State would play a lesser role and the Private Sector a greater role.

With regards to management of the Public Service/Sector this school of thought introduces new-managerialism into the governance and function of the Public Service. This means amongst others a separation of policy from function. This was most clearly reflected in the earlier drafts of the Agency Bill.

That the consultants who were contracted are key proponents of this school of thought is reflected in the proposed institutional arrangement.

Any institutional arrangement needs to reflect the spirit of the RDP, incorporate the recommendations of the Chikane Commission and lay the basis for the recommendations of the Taylor Committee to be realised. Ultimately the institutional arrangement must be a major component a new Comprehensive Social Security System, offering comprehensive social protection.

What we must avoid is a situation that has developed with other institutional arrangements, of becoming more distant from the Ministry and developing their own life with growing policy scope over administration and finances. .

2.2 Process Issues

In January and February 2003 at extremely short notice we were called to a meeting by the Department of Social Development (DSD) to be briefed on what was then called the National Social Security Agency Bill.

At that meeting we raised conceptual, ideological and practical problems relating to the proposed Agency, and weaknesses in the Social Assistance proposals.

For the sake of this input we make references where necessary to the Social Assistance Bill.

We have met the DSD between February and September on a number of occasions on the draft legislation, made a very lengthy submission in June on the Agency Bill and in July, made a further submission to the Cabinet Cluster, immediately prior to the Cabinet Legkotla.

At no time have we ever received a written or verbal response on the content of our documents. Equally in February 2003, we made it very clear to the DSD, that our discussion related to the draft legislation and policy matters only. That it in no way substituted the contractual responsibility of the DSD in terms of Resolution 7 of 2002, of the Public Service Bargaining Co-ordinating Council, to submit the proposed restructuring of the DSD to the Bargaining Council.

Seven months later, and after the Portfolio Committee has questioned DSD officials on this, they have still not responded and are in material breach of the agreement between government and organised labour. In September the National Executive Committee of NEHAWU resolved to declare an immediate dispute with the DSD through the Health & Welfare Sectoral Bargaining Council.

Organised Labour requested NEDLAC that the draft Bill be submitted to the Developmental Chamber. The Department denied that such a Bill existed even though it had previously been presented to Portfolio Committee on Social Development. Subsequently and just over a month later the Bill was Gazetted. At no time has the DSD followed up on the request of the Developmental Chamber of NEDLAC to table the Bill which given its content it is required to do so by Law.

At no time has any of the research on the proposed Agency been made available despite repeated promises by the DSD since February 2003.

Timing

Bringing such an important piece of legislation before Parliament at a time when the life of the parliament is coming to a close, pressurised by elections, makes for poor legislative decision making and inevitably will effect the quality of the Bill.

Changes to the Bill

Given that the Bill is changing at times in 48-hour intervals, denotes something is wrong. It would have been better to have a comprehensive redraft, following out of broader consultative processes and then brought back a reworked Bill at a later stage after it had passed the State Law Advisor's as well.

It is with disbelief that we are commenting in these public hearings on a Bill that is still not complete with additions being deliberated on some 72 hours previously, drafts of which have yet to be placed before the Portfolio Committee.

Inter-departmental responses

Given that three departments are engaged with this Bill, we have yet to receive a co-ordinated and collective input by the three departments. A written input by the National Treasury was only received some four days ago. Clearly from the National Treasury input there are two striking issues on the institutional arrangements. One is the complete lack of detail on the Agency except for a single reference and the second is the complexity of the transitional arrangements which have yet to be discussed in the Portfolio Committee at the depth that is required if legislation is to adequately capture transitional arrangements.

The silence of the Department of Public Service & Administration (DPSA) is of this is of great concern. They have yet to appear before the Portfolio Committee, yet this is the Principle Department for Governance & Administration.

Organised Labour

The restructuring of the Public Service is governed by an agreement signed between DPSA on behalf of government and organised labour, in the Public Service Co-ordinating Bargaining Council (PSCBC), set up by the Public Service Act. This agreement has by admission of the DSD not been honoured. A legal dispute has been resolved by one of the main unions involved in the service delivery of social assistance grants. The very workers who administer the social assistance payments have never been consulted yet legislation is being finalised.

This is a gross undermining of government contractual undertakings, undermines the spirit of Batho Pele and exposes the real intentions of the DSD on how it sees, to quote an official of the DSD, “ the Agency dealing with Labour.”

Further a framework agreement between the Minister on behalf of DSD with the main union in service delivery had been reached this year which outlined relations and mechanisms to deal with policy & legislation amongst others. This agreement now hangs in doubt due to the conduct of the DSD on this Bill. Clearly trust has been breached.

Transitional Mechanisms

The complexity of these transitional mechanisms requires changes in: -

- intergovernmental systems
- changes to the equitable share formula
- changes to systems delivery
- complex personnel transitional issues

Parliament has yet to be shown any transitional mechanism, yet Parliament is being rushed into passing a Bill without any clear appreciation of the complexities of the transition.

Public Hearings

In terms of the Procedural Guide for Committee Section, closing dates for submissions is two – three weeks from the date of advertising the Public Hearings. In this case the adverts were placed in the newspapers over the weekend of 13/14 September, with a deadline of 18 September of written submissions, meaning in effect 4 working days to complete a submission.

In addition since being put in the government gazette on 25 July 2003, the content of the Bill has continuously changed. Therefore making a submission based on the public document, government gazette, places those organisations that are unaware of what has subsequently happened in the Portfolio Committee on Social Development at a distinct disadvantage and prejudices their input.

It is our submission that the Bill has materially changes since it was gazetted on the 25 July to the extent that civil society inputs based on that gazette will be prejudiced by subsequent developments.

3. ANALYSIS OF THE PROBLEMS IN THE ADMINISTRATION OF SOCIAL GRANTS

A key feature of the delivery of social grants in South Africa has been the assignment of the administration of the Social Assistance Act to the Provinces in 1996.⁵ Many of the problems described below in the administration of social grants can be substantially attributed to the lack of a *nationally organised* social security system with standardised management, budgeting and communications systems (as per the CRSS recommendation).

3.1 Implementation problems in social grants administration

The problems experienced in the administration of social grants can be broadly categorised as the following:

3.1.1 Human resources

Problems in this regard include:

- Ineffective human resource management in the department

Key to the human resource (HR) problems in the department is the manner in which work is shaped by management. The mistake that is repeatedly made in the Public Service is to change the structure instead of dealing with the actual HR problem. This is directly attributable to poor styles of management, and a culture of avoidance. The reshaping of the organisation of work is a major problem. The lack of effective human resource management (HRM) in the department has led to a lack of career pathing, loss of skills in the department, poor employment practices, which in turn has had a negative impact on allocation of decision making powers. Support mechanisms for staff are largely absent leading to a lowering of moral, insecurity and job dissatisfaction.

This is due partly to the fact that the human resource development (HRD) strategy for the Public Service was only finalised during 2002, which includes an internship framework and a scarce skills strategy. This strategy in turn has had to be taken forward by the Public Service Sector Education & Training Authority (PSETA).

- Resource and personnel distribution disparities

⁵ Proc. R7 of 1996.

There exists a large disparity in the nature of resources and personnel distribution between and within provinces. Thus the ratio of staff to beneficiaries varies from 1: 2 951 (Eastern Cape) to 1: 802 (Northern Cape). In certain provinces many of the offices are better-resourced in human capacity terms and facilities, while others are severely lacking.⁶

➤ Inadequate training and capacity building

The HRM plan that exists in the department has been weak. The Department's ten-point plan called for fundamental transformation of the department to meet the objectives of the plan. By its own admission, the department in its 1999-2001 report proposed that far more needed to be done to broaden the skills base, and institute career pathing for operational and support staff.⁷ The Strategic Plan of the Department 2002-2005 provides for executive support, HRM and sector education and training.

Most training in the head office has been done at senior management level (Grades 9 to 12). The indicator of the lack of adequate training going on in the department is reflected in total expenditure by programme. With the exception of administration, all other skills development programmes are massively under-spent. Welfare service transformation and development implementation support, are the biggest under-spenders. (Annual report 2001-2). Training in the area of management development has received the least number of beneficiaries.

3.1.2 Inadequate infrastructure, safety and IT support systems

Welfare offices in poor districts do not have access to suitable office accommodation and equipment. There is a shortage of pay points. Currently 8 723 pay points exist nationally servicing 3 942 451 people. There is a lack of adequate infrastructure at pay points, which results in long queues (varying in time from 67 minutes to 5 hours). Many paypoints do not have help desks, and conditions are often extremely uncomfortable for beneficiaries at these points. There are an increasing number of "loan sharks" harassing people at the pay points with little apparent effort to control the situation. Safety at pay points is a problem. Even though police and security personnel are stationed at most points their numbers are inadequate and there is unequal access to security at paypoints.

⁶ 'Old Age Pensions and the Challenges posed to the State: South Africa's Dilemma', Research Report, Nadel Human Rights Research and Advocacy Project, 1999, p 27.

⁷ 'The Road to Social Development: Unity in Action for Change' 1999 - 2001, Department of Social Development.

3.1.3 Regulations

Sometimes the regulations governing access to social grants are unduly complex and place barriers in the way of social grant recipients accessing grants to which they are entitled.

Means testing

Effective means testing requires applicants to present a range of documentary evidence of their eligibility. Depending on the grant this may include an identity document, a birth certificate, an affidavit of income, medical records, etc. It can be very difficult for poor families to establish their eligibility to the satisfaction of the state and because the costs involved in doing so can be substantial, the burden is most onerous for those households with fewest resources.

Means testing is also associated with the imposition of strict rules about who is and who is not eligible. These rigid, “one size fits all” restrictions on access to grants can exclude a large number of people who might normally be eligible. For example, those with chronic illnesses may be excluded from receiving disability grants if they do not meet specific medical criteria – even if their illnesses prevent them from working.

Costs of applying for grants

The costs involved in applying for social grants (travel to centres, copying of documents, identity photographs etc) limit access to these grants even before an application is made.

Unclear eligibility conditions

In addition, many of the eligibility conditions in the regulations are unclear and are subject to varying interpretations by welfare staff in different districts and provinces. For example, the care dependency grant (CDG) is limited in its scope and purpose, and suffers from unclear eligibility criteria. The Social Assistance Act (1992) does not define ‘severe disability’ nor ‘permanent home care’, leading to subjective interpretation by officers. The assessment procedure for the CDG is purely medical, and does not consider the socio-economic situation, the child’s environment and the availability and accessibility of resources, nor the holistic needs of the child. The lack of guidelines and training in the use of the present tool, result in a lack of consistency in the assessment procedure and subjective interpretation by Medical Officers. The current assessment tool also has serious limitations in measuring the impact of childhood disability and the consequent activity limitations and participation restrictions.

The need for clear, well-defined regulations

Effective access to social grants therefore depends on streamlined regulations under the Social Assistance Act, which keeps the burden on grant recipients to a minimum. To achieve this requires clear national policy decisions and guidance on what eligibility conditions are essential for the various grants.

Certain Public Service regulations remain a reason for sections of the Public Service arguing to opt out of the Public Service. In the case of the current proposal, this has been a major reason for wanting to set up the Agency. The current regulations in the Public Service reflect two streams of Public Service thinking: new-managerialism thinking and developmental thinking. This gives rise to contradictions within the Public Service and the regulations are a reflection of this, thus becoming an obstacle for delivery.

Where the developmental approach has been used, (regulations governing the conditions of service), these have been simplified into collective agreements. The opposite applies to those regulations that are meant to promote the efficient, economic and effective use of resources and those which are meant to improve the management and functioning of departments, sub-departments, branches, offices and institutions. In particular, the organisation, procedure and methods of work, supervision, simplification of work and the elimination of unnecessary work are the most restrictive areas and do not greatly assist in terms of service delivery.

3.1.4 Dependence on Home Affairs for crucial eligibility documents

In the Mount Frere study, the failure to obtain the necessary documents (bar-coded ID documents and birth certificates) was the single most cited explanation for a failure to access the child support grant.⁸

3.1.5 Budgeting procedures and constraints

Currently the funding for social grants falls within the equitable share allocated to each province. This allows for provincial discretion in allocating funds for what is a constitutional and statutory entitlement. The provincial assignment has resulted in provincial variations in access to social grants and consequent inequities.

⁸ "Changes in caregivers, due to poverty shocks or HIV/AIDS-related deaths, complicate the documentation required for successful application for the Child Support Grant." (Samson 2002: 15).

Certain provinces under-budget for social grants, resulting in long delays in the payment of beneficiaries, sometimes, extending to years.

Under-budgeting of services

On average, 90% of Provincial Budgets are spent on social grants, which leaves very little money over for the range of support services and subsidies to welfare organisations. (DSD Strategic Plan 2002). This results in chronic under-budgeting for the range of services that the DSD is supposed to carry out, leading to greater internal conflict with communities and NGO's.

The problem with conditional grants is they are mainly for new programmes and cannot be integrated into the department's budget once the conditional grant ceases. At the same time, conditional grants have played a role in putting in place specific infrastructure.

In the case of NGO's, the shift to a more restrictive macro-economic policy in 1996/7, and a far more restrictive fiscal policy, has meant that NGO's have been severely hampered in carrying out their mandates. This has led to a loss of skilled staff due to subsidies being cut and a reduction in conditions of service.

The absence of norms and standards due to the assignment of the Act to the Provinces, has meant that realistic budgets particularly for support services have not been possible. As with all service delivery departments, the relationship between policy and financing and the division of revenue is critical.

Provincial power assignment and financial management

The overarching constraint is the assigning of power to the provinces and the manner in which provincial finances are managed. The reality is that often grants are not approved because a Province has run out of finances for that particular responsibility. This has happened often, where the Province will legitimately argue that the funds are insufficient, and that these funds have to compete with other provincial budget priorities. The political will to revisit Proclamation 7 has been lacking even though DSD can see the consequences of continuing with it. DSD's own argument is that it should be taken back to the national level, (Social Assistance as a National Function – 2002), albeit in the form of an Agency.

3.1.6 Payment contracts

Introduced as an alternative service delivery mechanism, the contracting out of social assistance payments has failed to rectify the department's internal problems it was experiencing through public service delivery.

Fraud, inexperience and varied performance

High levels of fraud have continued in provinces. The current figure of R2 billion (DSD 2001/2) in fraud and litigation has not been stemmed through the outsourcing of functions, rather it has allowed further loopholes to emerge due to the introduction of new stakeholders into the system. The inexperience of contractors has in certain circumstances (e.g. in the Eastern Cape), led to public service officials having to train these private companies. By the department's own records, standards in delivery varies from province to province, and this can also be with the same contractor.

Beneficiaries most often do not encounter department officials but instead encounter employees of the payment company. These employees are often not sufficiently informed about the documentation required, the means testing, and the links between the various grants, and the Batho Pele principles.

The most damning proof that the system of contracting does not work comes yet again from the DSD, in its report, *Social Assistance as a National Function* (2002). On the policy option to outsource more functions by the Provinces it states: "This option has already been tried out in terms of payment disbursement and it is less than desirable." Yet when the unions and civil society raised their objections to this form of alternative service delivery in the 1990s, the Department dismissed such arguments.

3.1.7 Lack of binding national norms and standards

Even though the problems experienced in the various provinces are similar they are by no means equal.⁹ For instance, on average, it took between three and six months to process an old age pension grant in the Western Cape while in the Eastern Cape a similar application could take between one and two years.¹⁰ Many applicants face long waiting periods before knowing if their applications are successful. For many, obtaining a social grant is a question of life and death and they hover between survival and starvation while waiting for a grant.¹¹ This does not accord with the constitutional values of human dignity and equality. These problems can only be addressed through binding national norms and standards.

The process of formulating policy on social grants through the MINMEC is ineffective for the purposes of standardising access to a uniform set of social assistance benefits. National norms should relate to issues such as standard processing and payment periods, uniform regulatory agreements with payment contractors, review and appeal procedures etc. The lack of binding national norms and standards leads to a situation where beneficiaries in different provinces and districts wait for varying lengths of time for their grants to be

⁹ Research conducted by the Nadel Human Rights Research and Advocacy Project.

¹⁰ "Old Age Pensions and the Challenges posed to the State: South Africa's Dilemma" Nadel Human Rights Research and Advocacy Project, 1999, p 27.

¹¹ *Ibid.*, p. 31.

processed. This is exacerbated by the differing resources, infrastructure and staff capacity between provinces, and between urban and rural districts.

Policy is currently enforced through a series of “gentlemen’s agreements.” What is thus lacking is a legally enforceable agreement to ensure the implementation of policy. The national norms and standards project cannot be implemented due to provinces blocking it, claiming independence and inadequate funds in their provincial budgets to implement them.

3.1.8 Inadequate community outreach and education programmes on the social grants and the conditions for eligibility.

One of the major problems identified in research and community based workshops is that many communities are still not adequately informed and are unaware of their entitlements to social security, as well as the mechanisms of how to access various grants.¹²

The impact of this lack of knowledge is two-fold in nature. Firstly, in some instances communities have no knowledge of certain grants and, therefore, cannot benefit from a critical state programme to assist those in need. In most instances the communities that do not know about the grants are those communities most in need of social assistance. What makes the situation even more intolerable is that in some areas not only do the communities not know about the various grants that are available, but also the local officials themselves lack the adequate knowledge of some of the grants.

Secondly, in some communities people have general knowledge of various social grants, as they know that different grants exist and that certain people are eligible for them, but they do not know how to access these grants. There is no sustainable support for communities after they have received the initial information on social assistance. The provision of information on what grants exist is not followed up with accessible information on how to obtain the assistance and what mechanisms are available to assist in obtaining support.

Effectively this lack of knowledge and education means that in reality the obligations found in the Constitution, legislation and case law regarding the right to social assistance is not a reality for many South Africans.

3.2 Impact of the unreasonable implementation of the social grants programme

The impact of these problems on beneficiary’s access to social assistance rights is profound. These range from low take-up rates, long queues in very uncomfortable conditions, delays in the approval and payment of grants, and the

¹² Workshops facilitated by the Nadel Human Rights Project during 2001 entitled “Women’s access to health care and social security”.

arbitrary suspension and termination of grants.¹³ The Department has itself identified and acknowledged these problems on various occasions.¹⁴

The assignment of the Act to the Provinces has been challenged in the *Mashava* case¹⁵. Social assistance is a hard cash delivery system, which is demand related and linked to statutory and constitutional entitlements. It is accordingly inappropriate to allow room for provincial discretion's and variations. The provincial assignment has resulted in inequity as the system allows provinces to exercise non-uniform budget discretion through manipulating access to the grant system. It is implicit within the constitutional and legal framework that uniform national standards have to apply to access to social security (e.g. when can grants be stopped, the assessment process etc.). The fudged boundaries and responsibilities between the national and provincial spheres of government in the delivery of social assistance rights allows the provinces to vacillate over improved service delivery.

4. EVALUATION OF THE ESTABLISHMENT OF A PROPOSED SOCIAL SECURITY AGENCY

4.1 Nature of the proposed Agency

The Department has proposed the establishment of a Social Security Agency as contained in the draft South African Social Security Agency Bill. Cabinet apparently agreed in principle to an Agency during October 2002 and again in July 2003 at the Cabinet Lekgotla. The draft Agency Bill was presented for the first time to civil society stakeholders during January 2003. The key objective of the proposed Agency "is to ensure the efficient and effective management, administration and payment of social security grants."¹⁶ The Bill makes provision for the transfer of the staff, assets and liabilities of the national and provincial departments involved with social security functions.¹⁷ The effect of the Bill is to remove the administration of social assistance grants from the public service, specifically the national Department of Social Development and the relevant provincial departments responsible for the administration of social assistance grants.

¹³ On the constitutional implications of these problems in the administration of social security grants, see: S. Liebenberg, 'The right to social assistance: The implications of *Grootboom* for policy reform in South Africa' 17 *South African Journal on Human Rights*, 232 at 241 – 247.

¹⁴ See, for example, Mid-Year Departmental Programme Report to Minister Zola Skweyiya from the Director-General of Social Development (31 August 2000).

¹⁵ [*Mashava v The President of the Republic of South Africa and Others, Case No. 17220/2002 \(High Court, Transvaal Provincial Division\)*](#).

¹⁶ Clause 3(a) of the Bill.

¹⁷ Clause 30.

This proposed Agency differs from the institutional recommendations contained in the Consolidated Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (March 2002) – the so-called ‘Taylor Report.’

While the Committee proposed the creation of a Social Security Agency, there are three crucial differences in the scope and function of the envisaged structure:

- (1) Under the Taylor recommendations, the scope of the Agency would extend to social security programmes in its broadest context i.e. including social insurance, private sector regulation and social assistance.
- (2) The primary functions of the Agency would be research and monitoring, policy co-ordination, information and IT. Critically it would perform “intermediary services”, acting as an interface between the public and all parts of the social security system.

The proposed ‘Social Security Agency’ is really a misnomer, as the Bill is restricted to an Agency performing social *assistance* administration. The DSD has acknowledged the title reflects a long-term vision of comprehensive social security delivery through an Agency.

The establishment of the proposed Agency is clearly a far-reaching measure that removes an existing function and capacity from within the public service, and locates it within an entirely new public entity. This appears to be a precipitous step, taken without much in-depth research into the short-, medium- and long-term implications of the establishment of such an Agency.

Government itself acknowledges that its social assistance programme, which reaches substantial numbers of South Africa’s poorest citizens, is one of its most effective poverty alleviation programmes. It is critical that institutional arrangements for the implementation of this programme be carefully researched and developed with a maximum of public participation and consultation. Government does not appear to have established a clear, accessible process for engaging in public debate and consultation and further research on the institutional or other recommendations of the Taylor Committee. At the very least, these processes have not been communicated clearly to the public. Given the socio-economic implications of these proposals, the failure of the department to do this weakens the credibility of their proposals.

The systemic problems in the delivery of social assistance in South Africa are unlikely to be resolved by simply transferring the grants administration function to a new public entity. In fact, government will have less power to control and rectify these problems, as it will essentially be at arm’s length from the new agency.¹⁸ Public Entities as has been shown in our country and internationally can be as if

not more, inefficient as certain service delivery functions, depending upon how much thought has been put into its design. Excessive haste in design and implementation will translate into inefficiency down the line. What the department is attempting to do is to get around the assignment powers (Proclamation 7 of 1997) to provinces through the introduction of an agency. This does not address the problem, but rather shifts it to an institution at arm's length from the public service.

4.2 Will the Agency result in improved access to social assistance grants?

It is useful to examine what problems the Agency seeks to address and assess whether the Agency is likely to achieve an improvement in social security delivery on the ground.

4.2.1 Staffing

This is clearly a major issue. The Agency will allow the CEO to discipline and train staff, using performance contracts. Currently only senior management in the Public Service, grades 13 to 16 and those who are brought into the Public Service at these grades are on performance contracts. In other sectors, where performance contracts have been introduced at lower levels, there has been major problems, leading to disputes being declared and ending up in court. (e.g. Parliament).

Therefore the idea that you will be able to automatically place all new staff under performance contracts is not realistic. Further, performance contracts, unless well structured, can themselves also suffer the same problems that the merit awards system faced in the public service, resulting in its discontinuation.

Whilst the Bill emphasizes the fact that all existing staff are to be taken over, the department knows that in terms of the recent Constitutional Court ruling (*Nehawu v. UCT*), and the Labour Relations Act, they are obliged to take over the staff. As we have pointed out, the key problem in the Public Service is the organisation and management of work. The answer lies in the re-organisation of work not in the re-organisation of the structure. The under performance of staff cannot be solely attributed to themselves personally but has to be taken in the context of a broader objective environment, the lack of resources and lack of managerial direction. The Department of Public Service and Administration and the South African Management Development Institute (SAMDI) have acknowledged this, hence funds were made available through annual budget allocations to address this problem, and training has and is taking place. In addition SAMDI has now moved to middle management to address the problems at that level.

Alleged incapacity has to be dealt with in terms of the Labour Relations Act, and the proposal to move to an Agency to circumvent this will not help. Incapacity has

to be dealt with as part of the organisational challenges, which face the public service.

The essential task that is needed here is to train staff effectively and to systematically monitor their performance. This does not require an Agency to accomplish. Performance management does not appear to be best suited to this context, where it may lead to the creation of perverse incentives, such as the avoidance of difficult cases in preference to easier ones, or the writing of multiple letters. The problem does not lie solely with staff at the lower-levels. The middle and upper management are culpable of failing to monitor performance and train on a coherent and national scale.

The Agency hopes to rely on a sleight of hand to either train or get rid of these officials through a performance contract process.

A more logical step in addressing the staffing issues involved in social security delivery is to remove the assignment of the administration of the Social Assistance Act, and for the national Minister to *delegate* appropriate functions to the provincial spheres. Delegation retains existing staff but subjects them to national level intervention to redress performance, as the MECs will be answerable to the Minister. Interventions to address existing poor performance can be made through a joint task team, drawn from provinces, together with organised labour drawn from the Health & Welfare Sector Bargaining Council. This is the most efficient way of redressing low levels of discipline and poor training, rather than prematurely establishing an Agency to accomplish this.

4.2.2 Infrastructure

The Agency will require extensive investment to be set up. New relationships will be needed in a wide range of areas since service delivery requires infrastructure in diverse locations. This is a potential minefield of multi-provincial negotiations, disturbed service delivery relationships, since staff will be uncertain and financial dilemmas.

Contradictions over movable and immovable property and different categories of staff will result in a time consuming and costly exercise with no clear undertaking that service delivery will improve.

The process of setting-up of an Agency will be extremely cost-intensive, time-consuming and draining for existing social security staff who are already under pressure. It makes more sense to retain the existing infrastructural arrangements, and to work on improving these and the staffing issues identified above. A dedicated unit within the social security directorate, with its own organogram, own ring-fenced dedicated budget and HRM, can achieve far more than an agency placed outside of the Public Service.

4.2.3 Policy leadership and control

A major problem at present is the lack of binding national guidelines regarding the interpretation and application of the regulations under the Social Assistance Act. MINMEC has become a consensual negotiation and co-ordination forum. Although MINMEC's decisions are contractually binding, they are not subject to the Minister's authority. Thus MINMEC typically does not take decisions on issues such as the implementation of the 2001 regulations, and it is left to Provinces to determine. This allows for provincial variations in how regulations are interpreted, for example, the test for disability in order to qualify for a disability grant. Often this happens not so much through express policy, but through allowing procedures to determine the policy.

The removal of the assignment and the delegation of functions will vest clear national responsibility for poverty alleviation and social grants with the national Minister.

With an Agency, the current dilemma would be retained, with the state avoiding transparency in funding poverty alleviation through the vehicle of a separate entity, which it can then blame for poor performance. Even worse, it places the Agency in a potential conflict of interest situation by permitting it to divide its own revenue into self-interested areas such as staff improvement and loans as well as delivery.

What is likely to happen is that the Agency will become the dominant policy-making body in executive areas (forms, application procedures, processing issues, payment procedures, line discretion's and so forth). This has already happened in other Agencies of the State.

It is unlikely to foster procedures that are expensive to administer but which will facilitate delivery, especially if its budget includes both administrative costs and benefits. The Minister's discretion will be limited to the broadest policy parameters.

The result will be a similar stalemate to that which presently exists between the provinces and the Minister. The Minister ought to make policy but cannot enforce it, so does not make policy and the provinces do it through administrative convenience.

Reverting back to a delegation of functions will establish the Minister's authority and policy-making expertise, with proper monitoring. Financial pressures in government are likely to reduce the number of institutions to monitor the Agency and as has been the case with other Agencies it begins to monitor itself or restrict monitoring to a reading of an annual report, and reporting in parliament.

4.2.4 Financing and budgeting

The Agency has no greater benefit over a national department function. In effect, it will require two layers to calculate the social grants budget since the national department must also do so.

4.2.4 Employing new skill

A highly skilled CEO can be employed by an Agency. However, exactly the same is possible in the Public Service. Higher management echelons (grades 13 – 16) are now outside of the PSCBC, and are brought in on performance management contracts, with their conditions of service outside of those that are negotiated in the PSCBC. This has meant that at very senior levels of the public service you are able to attract highly skilled management. Secondly, merely by introducing the post of a CEO is no guarantee that this will turn matters around. The public sector, since rationalisation and restructuring has taken place, is littered with examples of highly paid failures when it comes to CEOs, mismanagement, improper conduct, and corruption. Every quarter we are subjected to fresh allegations.

The criteria for good management, is one of skill and there is nothing, which prevents the public service from attracting such skill. It is a fallacy to think that one person's entrepreneurship or dynamism can change the culture, which currently exists in the social security sector. What is required is a well-trained cadre of public service employees, properly resourced and remunerated, and working in a supportive working environment with sufficient staffing levels. The correction of attitudinal problems and discipline, which flow from such an approach, is not conditional upon having a CEO. The spirit of *Batho Pele*, whilst a laudable initiative, cannot exist at conceptual level, depending on the goodwill of public service workers. It has to be resourced.

4.3. Impact on the development of the Public Service

A critical factor in the debate concerning the proposed Agency is the future structure of the Public Service. Any current restructuring of the Public Service should take into consideration future moves to realise the vision of a single public service. An approach that fragments the public service further, such as 'Agentisation' cannot be supported except in those circumstances where there is a compelling reason to do so. Rather than electing to 'opt out' and seek to establish an alternative structure to deliver the same services, it would be preferable to address the challenges faced by the Public Service directly.

Secondly, we are in a period of transition that can be best described as reconstructing the State towards a National Democratic State with a developmental agenda. In any developing country, how the State is restructured to meet the needs of its people is central in the delivery of services to its people. Experience has shown, that in those developing countries that have fragmented the resources of the State in favour of agentised and commercialised systems of service delivery, this has led to a direct weakening of the state and a weakened delivery system.

The point of departure for the Public Service must be guided by the Constitution. Key values and principles that must govern the Public Service in terms of the Constitution are:

- The efficient and effective use of resources must be promoted.
- The public must be encouraged to participate in policy making.
- Good human resource management and career development must be promoted. Practices to maximise human potential must be cultivated.

In this context, the proposal by the Department of Social Development to establish an Agency of the narrow type as envisaged must be questioned.

Research has not been forthcoming which indicates that Agency would be a more effective or efficient use of the State's resources. In fact the setting up of the Agency will in fact increase the costs of administration at least in the short term, since new structures will demand new funding.

The arguments that are being advanced that an Agency will be able to deal with human resource problems more efficiently, seem more preoccupied with asserting discipline than what the Constitution requires of the Public Service. Whether one is in or outside the Public Service, relevant labour legislation is applicable. It is misleading to portray the idea that by escaping the additional public service regulations one will be able to deal with staff more efficiently.

It has been established both in the South African Public Service and in international experience, that job satisfaction and security lead to increased productivity. The absence of these two factors has the opposite effect. The mere establishment of an Agency will not automatically result in increases in job satisfaction and security, in fact if one is to examine the most recent service delivery agencies of the state, in the health sector, just the opposite has happened.

One of the areas of human resource development that has been pursued since 1994 is to train and develop a new public service cadre, with a vision and understanding of the democratic principles that underpin our new democracy.

The programme of transforming the Public Service, in specific provinces and sectors by the Department of Public Service and Administration, and the 2002 report of the Public Service Commission, all point to the need for priority to be given to targeted groups of workers in the Public Service, who are responsible for delivering services directly to people.

One of the greatest weaknesses lies in the area of human resource management. While Agencies often seek to restructure how services are delivered, they often do not deal with the question of human resource management. The practice is to “dress up” the agency prior to its launch and thereby attract staff. Thereafter in the following years these benefits are run down as the agency seeks to balance the books.

The move to a Social Security Agency reflects the political abandoning of the challenges of effective human resource management in the Public Service. In the mid-90’s when the transformation of the public service was taking root, the trade unions pushed for and won the right for inclusion in transformation co-ordinating committee’s (TCC’s).

The failure of these TCC’s to survive, can be directly attributed to the bureaucratic model that has persisted in the public service. The failure to significantly change this model has led to a number of departments agreeing to move outside of the Public Service to escape these challenges. The route has often been through Agentisation.

In conclusion, the shift toward establishing an Agency without addressing the underlying challenges of service delivery will weaken the Public Service without necessarily improving the delivery of social services to beneficiaries living in poverty.

5. AN ALTERNATIVE PROPOSAL FOR IMPROVING SOCIAL ASSISTANCE DELIVERY

5.1 Addressing the challenges in social assistance delivery

Any alternative must answer the challenges, which are impeding the efficient, equitable delivery of the social assistance programme:

These can be defined as:

- Excessive reliance on private partners
- Systemic weaknesses in conditional grants

- Lack of appropriate management skills
- Poor management and development of human resources
- Inadequate infrastructure, lack of resources and shortages of staff
- The excessive bureaucracy of the procurement system.
- The effects of fiscal restraint

5.1.1 Private Partners in delivery of services

A central reason for the inability to spend resources is the increasing dependence on the private sector to deliver services. The lack of systems and experience to manage these relationships has led to a decline in service delivery.¹⁹ Management of contracts is a specialised skill. In contracting out, the degree of resources which the state still has to provide and the lack of capacity in the private sector to deliver, results politically in the undermining of confidence in the Public Service as opposed to the private sector. Where services are provided by the private sector, oversight is a major problem that government has tried to deal with, but not very successfully.

Our proposal would rather see a system of public-public partnerships developing with assistance from specialised agencies on specific technical issues. This could cut across sectors and between provincial and local government. Where specific skills in the private sector are not present in the Public Service, the contracting in of management to impart those skills over a given period of time should be considered.

5.1.2 Systemic weakness in conditional grants

Our proposal would be to simplify the procedures currently used for conditional grants, which are time consuming and complex, resulting in conditional grants only being disbursed some three months after the budget is announced thus putting pressure on the department.

5.1.3 Management & the development of human resources

As part of the solution towards ensuring a better-performing Department of Social Development, career pathing needs to be introduced as a matter of urgency. This is not a new suggestion and has long been the point of discussion in the Public Service Bargaining Co-ordinating Council. The approach must be sectoral and offer workers in the Department clearer mechanisms for determining promotions and enhancing service delivery.

¹⁹ See, for example, the recent announcement of the National Department and the Eastern Cape Department of Social Development that they intend instituting action against private payment contractors following reports of poor service delivery in the Eastern Cape.

One of the key problems in the public service is the way in which work is shaped by management. It is the reshaping of *the organisation of the work* as opposed to a new structure that needs attention. Certainly this will enhance morale in the department, something that is currently lacking. Career pathing supports the retention of and development of skills.

If the problem is the conduct of officials in the department, human resource management is the mechanism that must be used to address employment practices. This would include: -

- assessment procedures,
- the allocation of decision making power,
- support mechanisms from more senior officials, as well as
- mentoring.

Skills development is clearly a critical factor in addressing the problems that confront the Department.

The department's integrated human resource management plan must be given the chance to achieve what it was set up to do. This plan must include career pathing, a skills-based grading system and, most importantly, must reflect a shift from the new-managerial approach of governing the public service, to a developmental model. The setting of goals would be a joint process between stakeholders, supervisors and political leadership. Consultation becomes central in delivery of services. The dangers of new-managerialism have resulted in the situation we have today in Social Development - extraordinary discretion, corruption and incompetence.

5.1.4 Procurement Systems

The current government procurement system can delay major expenditure by 3 to 6 months on a particular programme. Key in this is the Tender Board. Our proposal would be that there be a comprehensive look at the Public Service Act and its regulations as they relate to procurement. This must be headed by the Department of Public Service and Administration, involving key stakeholders. The objective should be to remove those aspects of the Act and regulations that unnecessarily hinder service delivery, and bring the necessary amendments. This could be fast tracked, since there is ample experience in the Public Service on those regulations that are the main cause of unnecessary delay.

5.1.5 Fiscal constraint

Fiscal restraint has become a barrier to spending. Savings are encouraged even at the costs of delivery. Budget cuts have led to posts been frozen, and even untargeted cuts in employment. This has led to reduced capacity without improving efficiency. Ironically, under-spending often leads to further budget cuts.

What we call for is a relaxation of macro-economic parameters. Specifically, by making significant changes in the tax to GDP ratio and the deficit to GDP ratio. In both cases we argue that we have the fiscal space to increase both tax and deficit as a percentage of GDP. In this manner, more money can be made available for social investment and address the problems we have with chronic under-resourcing. In addition there must be a reduction in debt servicing and in this regard we call for the ring fencing of apartheid debt.

5.2. The logical sequence of steps for improving delivery

It is our view that it is inappropriate to leapfrog over the logical sequence of steps for addressing the social security delivery problems identified above. These are the following:

- (1) Consent and support the process establishing the legal invalidity of the assignment.
- (2) Centralise powers and functions in relation to social assistance delivery within the National Minister and Department of Social Development.
- (3) Clearly vest policy responsibility with the National Minister of Social Development for the following:
 - Social assistance;
 - Poverty alleviation;
 - Children; and
 - Social security integration
- (4) To the extent necessary, delegate social assistance delivery functions to the provincial sphere of government.
- (5) Develop a focused human resources strategy, through negotiation with the trade unions to improve service efficiency and staff capacity. This may involve sending expert national task teams to the provinces to work with improving the human resource capacity of provincial staff.

Interventions to address poor performance can be made through a joint task team, drawn from the provinces, together with organised labour from the Health & Welfare Sector Bargaining Council.

Explore the full range of options within the public service to improve performance and capacity among staff (for example, establishing clear lines of accountability, enhanced staff training). The lines of accountability should become clearer when the power

of the national Minister over the social assistance function is unambiguously established.

- (6) Develop and implement national norms and standards for social assistance delivery.
- (7) Locate the social assistance budget at a national level. Budgetary allocations for social grants should be in the form of conditional grants to the provinces to administer as instructed, and according to binding national norms and standards (see above comments on improving the conditional grant system). In this way, it will become easier to ensure accurate budgeting for social grants.
- (8) A dedicated unit within the social security directorate, with its own organogram, own dedicated and ring-fenced budget as well as HRM to focus on the improvement of social security delivery
- (9) A review of specific Public Service regulations, together with DPSA, which are hampering service delivery.
- (10) Carefully monitor the impact on social security access of the above steps.

The essential goal of these steps is to establish a nationally organised social security system with standardised management, budgeting and communications systems.

Only once these steps have been taken, will the government be in a position to assess their impact on social assistance delivery. It is only at this juncture that government will be able to properly assess whether an Agency as envisaged in the draft Bill is necessary and desirable to ensure effective access to social assistance grants.

Parallel with the above steps, government should engage in a broad, consultative process on the Taylor Committee recommendations, including the institutional arrangements as proposed in their Report.

6. SPECIFIC COMMENTS ON THE DRAFT BILL

6.1 Qualifier:

Our comments on the content of the Draft Bill, in no way prejudices what is required in terms of the Public Service Act and collective bargaining responsibilities of the Department. In terms of its contractual responsibilities towards organised labour, of Resolution 7 of 2002 of the Public Service Co-ordinating Council requires negotiations on any aspect in respect of the restructuring of the Public Service.

6.2 Our comments are on the “Third Draft for Discussion” dated 17 September 2003. We have not used the version of the Bill, as it appeared in the Government Gazette No 25256 of 25 July 2003.

The reason for this is that the Bill has materially changed since it was published in the Government Gazette. Secondly the Portfolio Committee has amended the Bill substantially and we need to reflect this in our submission. Thirdly a number of our comments have been taken into consideration in amendments that have taken place since it was gazetted, and we do not wish to repeat issues where progress has been made.

LONG TITLE OF THE BILL – Page 2

What remains unclear in the long title is the extent to which this Agency is either the sole deliverer of Social Security or a contracting Agency

Proposed Amendment:

Line 2 of Long Title:

Insert after “an” the word “sole”

Transitional mechanisms would apply during the interim phase

CHAPTER 1 DEFINITIONS Page 7 Line 4

Proposed Amendment:

Delete: “private”

Insert: “all”

CHAPTER 2 SOUTH AFRICAN SOCIAL SECURITY AGENCY

Clause 4 (2) (a)

Proposed Amendment:

Delete

This keeps open the way for the continued practice of private provision of payments to beneficiaries. We are opposed to the continuation of private sector provision, as has been shown through repeated violations of service level agreements. If the Agency is to provide the service then it must itself effect payments to beneficiaries.

Contracts of other nature, e.g. IT provision etc can be contained in regulations, where it can be stipulated the nature and type of contracts that the Agency can enter into.

Clause 4 (3)

Proposed Amendment

Delete

Our motivation to delete 4 (2) (a) would render this sub-clause 4 (3) redundant.

CHAPTER 3

CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF THE AGENCY

Clause 5 Chief Executive Officer

Proposed Amendments

Insert new sub clause 5 (7) to read as follows:

“The Minister may override the decisions of the CEO”

Insert new sub clause 5 (8) to read as follows:

“The Minister will give direction on decisions making in respect to implementing policy”

Insert new sub clause 5 (9) to read as follows:

“The CEO remains accountable to the Minister”

Insert addition to sub clause 6 (1) (b) to read as follows:

“report on a quarterly basis the Minister”.

Clause 6 Functions of the Chief Executive Officer

6 (1) (c) & (d)

Proposed amendment

Delete both sub clauses.

If the Agency does ever arise, staff should remain under the Public Service, with the Agency as a Public Entity applying the Public Service code and governed by Remuneration and Conditions of Service in the Public Service in respect of staff.

Clause 7 Staff of the Agency

7 (1)

Proposed Amendment

Delete: “as may be necessary”

This merely gives away what organised labour have long suspected. That once staff have been transferred the process of scaling down employment will begin. The words in this sentence give powers to downsize. In discussions with the DSD there is a common view that there is gross under staffing which is one of the reasons for impaired service delivery. The phrase used in this sentence has historically and currently in all Public Entity's always been used in the negative.

7 (1)

2nd Proposed Amendment

Delete: “and such persons are employees of the Agency”

Staff of the Agency must remain under the Public Service in terms of conditions of service – remuneration and benefits. The Agency would apply the Public Service Code and staff would function as if they were in a seconded status to the Agency.

7 (2) (b)

Proposed Amendment

Delete: “core”

Again this is another give away, that the Agency's real intentions in the future is to downward vary conditions of service of its staff. In the Public Service there is no core and non-core benefits. This has been long rejected in the Public Service.

7 (3)

Proposed Amendment

Delete entire clause

The Public Service Code of Conduct must apply. Anything else can be contained in regulations in respect of the seconded status staff complying with the applicable law for the Agency

Clause 8 Conflict of Interest

8 (1) line 1

Proposed Amendment

Delete: “on appointment”

Staff would not be appointed to the Agency but seconded from the Public Service.

CHAPTER 5 GENERAL PROVISIONS

Clause 22 Regulations

22 (b)

Proposed Amendment

Delete

All employment issues must remain within the Public Service Code of Conduct.

CHAPTER 6 TRANSITIONAL PROVISIONS

Clause 23 Employees

Delete: Employees

Insert: Secondments

23 (1) (2) (3) All reference to transfer must be replaced with secondment

Transfer of social assistance

Insert : “That in the cases of conflicting provincial legislation, s 146 (national override provisions) of the constitution shall apply”

7. CONCLUSION

The institutional arrangements for social security delivery are clearly critical for determining whether the implementation of the social grants programme fulfils the constitutional test of reasonableness in terms of section 27. A major obstacle to the effective delivery of social grants has been the assignment of the administration of the Social Assistance Act to the provinces. This has resulted in a range of administrative and efficiency problems, but most importantly has resulted in unequal access to and enjoyment of social grants in various provinces. The national Minister has effectively been deprived of clear policy control over the social assistance function with the result that he has been unable to establish national norms and standards for social security delivery.

A further obstacle to effective and equitable access to social grants has been the budgeting process whereby social grant allocations fall within the equitable share allocation to the provinces in terms of section 214 of the Constitution. There is thus no 'ring-fenced' protection for social grant funds, which are subject to the vagaries of provincial budgeting priorities. This has resulted in situations where certain provinces have run out of funds for social grants during the financial year. The impact on beneficiaries has been long delays in the processing or payment of their grants in these provinces.

The assignment of the Act is now subject to legal challenge in the Mashava case. The national government and all the provincial governments (with the exception of KwaZulu-Natal) are not opposing the challenge to the legal validity of the assignment. If the legal challenge succeeds, it will mean that the national Minister is vested with clear national control over social assistance. This will enable him to set national policy in relation to the administration of social grants, and establish clear regulations, and norms and standards in relation to such matters as grants processing time, eligibility requirements, and suspension and termination procedures.

We are of the view that it is inappropriate to establish a Social Security Agency as envisaged, with the primary function of taking over the administration and payment of social assistance grants. The most logical step in improving social grants administration is to assess the impact of the removal of the assignment and the establishment of a nationally organised social security system. With clear policy authority and control vested in the National Minister, the administration of social grants can be *delegated* to the provincial spheres of government.

The proposal for an independent delivery mechanism can ultimately lead to rising costs and reduced access for the poor. The proposals are largely driven by a new-managerial approach, which rigorously separates the delivery of services from policy development. This approach emerged first in the developed countries of Europe, where the results have been at best mixed. At worst it has led to a decline in service delivery in developing countries where the challenges are far

greater in terms of lack of infrastructure. In such conditions, agencies take on a life of their own, leading to inappropriate responses, while governments lack the capacity required to regulate them (e.g. outsourcing of pension payments). Switching to alternative forms of private delivery has not solved the problem.

The debate on comprehensive social security (social protection) has not yet been resolved in any defined form. It therefore reflects a lack of co-ordinated strategy to produce a draft Bill that lacks a foundation of thorough research and a transparent consultative process of policy development, without any prior consultation, on such a huge aspect of comprehensive social security. This is clearly indicated in the complete failure of the Department to adhere to Resolution 7 of the PSCBC on the restructuring of the Public Service. This agreement between government and organised labour in the PSCBC required that any restructuring of the Public Service has to first be brought by the Department as a proposal to a joint task team of the department and labour. Clearly there is breach of agreement here.

The process of negotiations at NEDLAC on the Taylor Committee report has not even begun. The understanding is that once government had made up its mind on the various aspects of the report, they would engage at NEDLAC. This is surely a breach of good faith, in that we are now presented with draft legislation whilst another undertaking was given.

In addition given the nature and scope of the South African Social Security Agency Bill, it was supposed by law to have been tabled at NEDLAC. This initiative by Labour to have it tabled has been frustrated by the DSD, who have displayed no intention of tabling it at NEDLAC as they are required to do.

What has been apparent through the handling of this Bill in Parliament is how little reference has been made to: -

- Collective Bargaining, restructuring of the Public Service and the contractual obligations of the DSD
- The Process on the Integrated Public Service between Provincial and Local Government and the implications that this has for all forms of future service delivery.
- The complete lack of reference to the Review of Public Entity's by government
- And the failure to place this before NEDLAC and the frustrating of labour attempts to do so.