Gauteng workshops on legislative drafting

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http://hdl.handle.net/2144/19013

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SIX PROPOSED BILLS

GAUTENG DEPARTMENT
OF WELFARE
AND POPULATION DEVELOPMENT
(June 1998)
Chapter One:

EXECUTIVE SUMMARY

The Six Proposed Bills

Translating Policy Into Effectively Implementable Laws: Methodology
CHAPTER ONE:

EXECUTIVE SUMMARY

The Reconstruction and Development Programme (RDP) justifiably denounced South Africa's "present racially-based and discriminatory Social Welfare services as piecemeal responses. They have little impact on the root cause of social problems and the disintegration of the social fabric." The RDP called for "new legislation which provides the framework for a development orientated Social Welfare system based on the principles of equality, equity, access, user involvement and empowerment and public access."¹

As with the National Social Welfare system that of Gauteng Province also has proven grossly inadequate to meet the needs of the Province's vulnerable groups - the poor, women, children, aged and people with disabilities. To facilitate and accelerate the much-needed transformation of the Gauteng Welfare system the Gauteng Welfare Department proposes six bills.

This Report contains the draft bills and accompanying research reports that purport to explain and justify the bills detailed provisions. By focussing on six different priority aspects each bill aims to contribute to an ongoing process as envisaged in the RDP and the White Paper on Social Welfare² that will fundamentally transform the Province's inherited complex and interrelated Welfare system.

The Six Proposed Bills

The six bills include two that centre on reshaping the Provincial Welfare Department's governance structure to ensure greater access by local communities most in need of its services; improved allocation and use of the Department's and Civil Society's available human and financial resources; and more transparency and stakeholder participation in designing the programmes.

The first bill, described in Chapter Three below, aims to assist local authorities to build capacity to assume greater responsibility for providing welfare services to meet their communities' needs.

The second bill, discussed in Chapter Four, proposes to establish Regional Social Welfare Institutes (RSWIs) to ensure greater participation of non-governmental and community-based organisations and their target beneficiaries in designing Welfare programmes that provide greater equity, access and empowerment, especially for vulnerable groups.

The remaining four bills seek to ensure more equitable distribution of available resources to four particularly vulnerable groups.

Chapter Five focuses on the second bill, which proposes a process for reallocating that portion of the Department's resources - more than 50% - presently discriminatorily devoted primarily to elderly whites while strengthening family and community support for all the Province's elderly inhabitants.
Chapter Six reports on the second bill which aims to ensure adequate shelter for the escalating numbers of Gauteng’s 'street children' struggling for survival especially in the growing urban areas.

Chapter Seven presents the third bill explaining how the Welfare Department will work together with Provincial Government and non-governmental landlords to improve the access of people with disabilities to urban buildings so they can live more normal, productive lives. Chapter Eight explains the fourth of these bills which proposes to empower the members of vulnerable groups as much as possible to become increasingly economically self-reliant in order to assume greater control over their own lives.

For several months six senior Welfare Department officials worked together to prepare the research reports which in each chapter provides the facts and logic undergirding the bills. In particular the officials learned to use legislative theory and methodology to guide a process of conceptualising how to employ reason informed by experience - logic and facts - to translate their Department’s new Developmental Welfare vision into effectively implementable legislation.

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3 They worked together as participants in a Wits course in legislative drafting which enabled them to learn the legislative theory and methodology needed to translate the Department’s new policy into laws which, in the Gauteng circumstances, would prove effectively implementable and contribute significantly to transforming the Province’s welfare system.
Translating Policy Into Effectively Implementable Laws: Methodology

The Welfare Department officials employed a problem-solving methodology guided by legislative drafting theory to structure the Department's available evidence as a basis for grounding their proposed bills' detailed measures on their knowledge of the facts relating to Gauteng's realities - the circumstances inherent in the lives of members of vulnerable groups; and the nature and role of the non-governmental organisations as well as local, provincial and national governmental agencies with whom the Welfare Department works to provide Social Welfare services.

To facilitate assessment of the extent to which they grounded their proposed bills in reason informed by experience the problem-solving methodology required the Department officials to accompany their bills by research reports structured in four parts:

1. A description of the available evidence as to the surface manifestation of the social problem the proposed bill seeks to address; and particularly the social actors' behaviours that contribute to that social problem.

2. An explanation of the detailed causes both in the existing law and the non-

philosopher, John Dewey, developed the problem-solving methodology to ensure that research contributed to viable solutions to problems in general. Legal realists, like Carl Lewellyn, focussed on the reality people's behaviours in the face law will likely prove problematic, not simply because of the law, but also a host of interrelated non-legal constraints and resources.

5 Law cannot address the surface manifestation of a problem for example, that of street children who do not have adequate shelter. It cannot tell shelters to house the street children; it can only try to prescribe improved behaviours on the part of those responsible for providing street shelters.
legal factors that cause the social actors to behave in problematic ways. The drafters' "educated guesses" - hypotheses - as to the causes of problematic behaviours must at least prove consistent with the available facts. This essential second step lays the basis in fact for designing new legislation likely to overcome the causes of the actors' problematic behaviours; 7

3 The solution to the problem comprises the proposed bill's detailed measures, which logically must change or eliminate the causes of the relevant social actors' problematic behaviours. The Report should provide facts to show that the proposed measures' social benefits outweigh their likely social costs; and

4 The bills must provide a means of monitoring and evaluating the social impact of the law once enacted.

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Footnotes:

6 Legislative theory offers a set of categories to help drafters, including ministry officials, to ensure they have considered all possible causes of relevant actors' problematic behaviours: Rule - the existing legislation; Opportunity and Capacity to obey (or not to obey) the rule; Communication - do the actors know the rule; Interest of the actors in obeying; Process - how the actors decide, especially as members of a decision-making organization, to behave; and Ideology - the actor's values and attitudes. The first letters of these categories combine to form the acronym, ROCCIP, which helps to remember them.

7 See the footnote to step #3.

8 No one can gather facts to prove directly that a proposed bill will solve the social problem; but one can demonstrate that the proposed bills measures logically will likely alter or eliminate the causes of problematic behaviours thus making it more likely that the relevant actors will behave as the new law prescribes.
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Laws never work precisely as anticipated either because the facts and logic upon which they rest prove faulty; or because the circumstances in which the law operates continually change (in part due to the law itself). Ongoing evaluation ensures identification of new social problems which may require amending the law; indeed, law-making constitutes a continual ongoing process.

Using problem-solving's four steps the Department officials drafted the research reports that seek to provide the evidence the readers need to assess whether their proposed bills will likely 'work' as desired. By presenting providing clearly structured reports the officials aim to provide the facts and logic which underpin their bills. In that sense the research reports should contribute to a more open, accountable law-making process in which every stakeholder can make a contribution to improving the bill. If the readers – whether legislators, NGO personnel or the most vulnerable of welfare recipients - can provide 'better' or even contrary evidence to support the inclusion of alternative measures in the bills, so much the better!

The remainder of this document comprises the proposed bills and research reports submitted by the Department of Welfare with a view to facilitating and accelerating the necessary transformation of the Gauteng system of Welfare.

Chapter Two will provide general background information about the current status of the Gauteng Welfare system to enable readers to understand better the reasoning that underpins the research reports and bills described in the subsequent chapters and their drive for transformation.
Chapter Two:

THE CURRENT STATUS OF THE GAUTENG WELFARE SYSTEM

The Social Security System
Social Welfare Services
The History of Local Government and Welfare Services Provision
Developmental Welfare Programmes
The Gauteng Government's Social Welfare Policies
Conclusion
CHAPTER TWO:
THE CURRENT STATUS OF THE GAUTENG WELFARE SYSTEM

Gauteng's existing Welfare system comprises an inherited mixture of public and private initiatives. The Provincial Welfare Department's largest financial role constitutes its participation in making Social Security payments as prescribed by national legislation. In addition it contributes financially to the provision of Social Welfare services primarily through grants to non-governmental and community-based organisations. This chapter first briefly describes the Social Security system. Since Social Security payments remain governed by national legislation, however, the chapter focuses primarily on the Department's current role in providing Welfare services to the Province's vulnerable groups.

The Social Security System

Social Security forms part of Social Welfare services. Primarily governed by national legislation it nevertheless accounts for a clearly distinct and significant part - 87 percent - of the Provincial Welfare Budget.

Social Security spending contributes to reducing insecurity amongst many of the poor and increases the purchasing power of many poor households. By targeting and reaching some economically vulnerable groups such as the old age pensioners it probably constitutes Welfare's most effective social programme. (See Figure 1 which provides a graphic illustration of the number of beneficiaries in receipt of grants.)
Figure 1:

**Number of Beneficiaries in Receipt of Social Security Grants**

**NUMBER OF BENEFICIARIES**

<table>
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<tr>
<td>Old Age Grant</td>
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<td>81,986</td>
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<td>17,617</td>
<td>17,524</td>
<td>17,519</td>
</tr>
<tr>
<td>Foster Care Grant</td>
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<td>5,507</td>
<td>5,365</td>
<td>5,317</td>
<td>5,300</td>
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<tr>
<td>Care Dependancy Grant</td>
<td>792</td>
<td>835</td>
<td>773</td>
<td>801</td>
<td>809</td>
</tr>
</tbody>
</table>

**Social Grants**

- Old age
- War Veteran
- Disability
- Maintenance
- Foster care
- Care Dependancy
Social Welfare Services

Welfare services - financed by only 13 percent of the Provincial Welfare Department's Budget - remain potentially the most intimately linked to basic human needs and community participation in the development process. In South Africa family disorganisation, domestic violence, crime, substance abuse and abuse of women and children comprise the symptoms of widespread social disintegration. Welfare services as with the care of the aged, children and drug and alcohol dependants comprise the concern of any caring society. In this respect when all else has failed Welfare often constitutes the final resort for those who struggle to adjust to the demands of a modern society.

The History of Local Government and Welfare Service Provision

The Welfare Sector's historical background during and after the Apartheid era played a significant role in shaping Gauteng Local Government's Welfare service delivery. Racist divisions imposed serious inequities in communities' distribution of and access to the available Welfare resources especially for those most disadvantaged.

Prior to the 1994 Elections Welfare data available from the Region's 14 different Welfare Departments revealed a picture of distorted and disjointed Welfare services. After the amalgamation of the Departments it became possible to present data in an integrated manner. In assessing progress towards attaining greater equity race may serve as an indicator of the extent of the shift of services to the marginalised groups.
In the past in the context of racial, gender, sectoral and geographic disparities, service delivery primarily focussed on rehabilitative, non-accessible, non-responsive and non-preventative institutional care. Making the shift to the new Welfare policy emphasis on community-based care while maintaining a balance between rehabilitative, protective, preventive and developmental intervention emerged as a challenge to all providers of Social Welfare services. Both the Provincial and Local Government Departments experienced difficulties in matching their Budgets to the new policy's imperatives.

The present subsidy system does not allow any savings to finance proposed new community-based structures. Cutting subsidies to institutions might make funds available for projects but there was also the need to make the NGO Sector less dependant on the State - whether provincial or local - for its existence. In the short term this posed a real challenge.

The existing Welfare services combined with Budget constraints promoted institutionalisation rather than self-reliance. As an example, although the aged population makes up only 4.5 percent of the total Gauteng population, the Gauteng Department of Welfare spends 51 percent of its Budget on subsidies to Welfare organisations or NGOs that provide homes for the aged. The new approach and thus the Budget focusses on low cost community-based strategies to meet needs. Institutional services are provided only for those needs that cannot be addressed within the community context. (Grobblaar et al 1995 :8)
Nevertheless the Gauteng Welfare Department has accepted the challenge of 
encouraging the participation of Civil Society as a provider of services as well as granting 
the Private Sector access to additional funding to sustain and develop the broad array of 
services required by the society's vulnerable groups.

**Developmental Welfare Programmes**

The Gauteng Welfare Department does not only provide Social Welfare services; social 
work and developmental services are also delivered by 571 social workers employed by 
165 not-for-profit non-government organisations (NGOs). The Department finances 75 
percent of these organisations' running costs with the expectation that they will raise the 
balance through their own fundraising efforts. As the NGO Sector is better positioned and 
structured to deliver these services the Department proposes to strengthen this sector 
while taking steps to encourage it to adopt the new Developmental Welfare Paradigm.

The Department itself employs 342 social workers to execute social work functions. It 
provides Welfare services through a network of decentralised service offices. However it 
unfortunately cannot provide access to these services to all those who need them most. 
For this reason the Department aims to develop a District Model for Welfare service 
delivery (see Chapter Three for the proposed bill and research report).

Given its role in providing Welfare services the Department must take the myriad of not-
for-profit NGOs into consideration when allocating its finances. To avoid duplication of 
services the Department reaches agreements with the NGO sector and facilitates 
agreements amongst NGOs as to which services each will perform.
In addition to the social work and developmental services provided the Department of Welfare provides a host of other, especially residential, services. Although private institutions initiated many of these the Department continues to finance them by means of transfer payments. The Department has also established and run a number of services. These Government-run services tend to prove more costly than those run by private Welfare organisations. Therefore whether developing new programmes or evaluating old ones the Department seeks to ascertain whether it should continue to run these services or outsource them to the Private Sector.

Unfortunately however the relevant NGOs do not always conform with the new Constitutional imperative that requires ensuring that all citizens especially the historically disadvantaged enjoy equal access to their services. The research reports in Chapters Five and Six analyse specific aspects of these kinds of problematic NGO behaviours, focussing on the cases of the elderly and street children and propose bills that incorporate specific measures designed to change them.

Many NGOs furthermore have not accepted the challenge of seeking to empower their target beneficiaries especially the historically disadvantaged to become increasingly self-reliant. Detailed provisions of the bill proposed in Chapter Seven aim to encourage them to shift towards a more Developmental Welfare Paradigm.

**The Gauteng Government's Social Welfare Policies**

Given these existing programmes the Gauteng Welfare Department aims to make a concerted effort to spend resources on those programmes that will yield the best results. The Department has declared poverty alleviation and community-based development as its priority programmes.
In some circles confusion exists as to the conceptualisation of Social Welfare and Social Development. The term "Social Welfare" is today widely misused. Although its original meaning was a noble one referring to a state of well-being, contentment and prosperity, most people today equate the term with charity or, as in the United States, with public assistance for poor families and their children. (Midgley. P 13).

The White Paper for Social Welfare (Notice 1108 of 1997) describes Social Welfare as "an integrated and comprehensive system of social services, facilities, programmes and social security to promote social development, social justice and the social functioning of people."

Social Welfare remains intrinsically linked to other social systems. Government designs to meet people's needs and through which people strive to achieve their aspirations. Social Welfare services and programmes therefore comprise part of a range of mechanisms to achieve social development such as health, nutrition, education, housing, employment, recreation, rural and urban development and land reform.

Social Development constitutes a process of planned social change designed to promote the well-being of the population as a whole in conjunction with a dynamic process of economic development. As its ultimate objective Social Development aims to bring about sustained improvement in the well-being of the individual, family, community and society at large. The reduction or eradication of mass poverty, inequality and conditions of underdevelopment are widely accepted as indicators of social progress. The dimensions of Social Development include Social Welfare, health, education, housing, urban and rural development and land reform (Social Welfare White Paper: 1995).