

## Research Report

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# RESORTING TO THE COURTS: LITIGATION AND THE CRISIS IN THE ADMINISTRATION OF SOCIAL GRANTS IN THE EASTERN CAPE

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## **Key findings and Recommendations**

### ***Litigation against the provincial Department of Social Development***

#### Finding

The Constitution of South Africa states that every needy citizen has the right to social assistance. However, in the Eastern Cape over the last few years the courts in the province have become the primary means by which thousands of needy citizens have been able to realise their right to social assistance. They have had to do so because the provincial Department of Social Development has been singularly unable or unwilling to properly manage the social grant system that it is Constitutionally bound to implement. The action, or more generally inaction, of the Department of Social Development is unconstitutional because the Constitution states that all citizens have the right to administrative justice which is “lawful, reasonable and procedurally fair.”

#### Recommendation

The provincial Department of Social Development needs to take its accountability obligations seriously and act in a fashion which is consistent with the Constitution. It needs to urgently address those issues (detailed in recommendations below) which hamper its ability to properly exercise its mandate in terms of the delivery of social grants to the needy citizens of the Eastern Cape.

### ***Litigation Costs***

#### Finding

Since 2001 the provincial government in the Eastern Cape has spent in excess of R52 million on legal fees in relation to social grant applications. Current evidence from court rolls suggests that this figure is set to continue to rise over the foreseeable future. In general, these costs are incurred because the Department appears to be using the courts to allow it to have more time to process social grants. It appears that the Department has to be brought to court in order to process grants, rather than attend to them in the ordinary course of its day-to-day functions as it is constitutionally mandated to. Money spent on litigation is not budgeted for and has to come from the budgets of the Department’s core programmes compromising its ability to meet its mandate of assisting the poor in the province.

#### Recommendation

The Department must stop using the courts as a delaying tactic to give it more time to process social grant applications. It should refrain from congesting the court rolls with unfounded opposition to applications brought for the processing or payment of social grants. The Department should meet its mandate by processing grants internally, rather than having to force the most needy of citizens to resort to litigation in order to access the said grants. In terms of the Public Finance Management Act, the costs associated with such tactics can be defined as “fruitless and wasteful expenditure.” This means that by allowing such costs to accrue against the Department, the accounting officer of the Department (the Head of Department) is, in fact, committing financial misconduct for

which they should be disciplined. A further alternative would be to impress upon staff within the Department that courts of law are entitled to award costs against the defaulting official personally, for their failure to consider the matter before them in a diligent manner. More generally, the Department obviously needs to improve its administration of social grants to negate the need for applicants to approach the courts for relief.

### ***Court Orders***

#### Finding

The provincial Department of Social Development in the Eastern Cape has also acted unconstitutionally by routinely ignoring numerous court orders against it to pay social grants to needy citizens. This is despite the fact that as an organ of state the provincial Department of Social Development is constitutionally bound to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

#### Recommendation

The Department of Social Development in the province must, as a matter of the utmost urgency, observe the primacy of the Constitution and the courts in this matter and start honouring court orders made against it. Failure to do so should result in disciplinary action being taken by the Premier against the MEC and HOD for the Department. In line with recommendations made by Judge Plasket, the courts in the province could force those in contempt of court to pay costs or impose sanctions on them from fines to imprisonment to ensure that the Constitution is upheld and court orders are duly dealt with.

### ***General Staff Shortages***

#### Finding

For the past four financial years (from 2000/01 to 2003/04) the Department has been functioning with an average vacancy rate of 50 percent. In addition, there has been a lack of continuity in senior and executive positions within the Department. During 2005 alone the Department has already had three different MEC's and three acting Heads of Department. Despite drafting a Human Resource Plan for 2006-2010 the Department admits that it cannot properly address its chronic staff shortages because its personnel budget is absorbed in paying existing staff and in meeting personnel backlog payments.

#### Recommendation

The Department needs to approach the provincial Treasury and source additional funds to finally meet its commitments in terms of personnel backlog payments. This will at least enable the Department to try and start addressing its current staffing crisis. The Department should also undertake a needs analysis to accurately assess its staffing needs in light of the upcoming transfer of social grant delivery to the South African Social Security Agency (SASSA). This analysis should form the basis for the development of a coherent and properly costed staff recruitment and retention strategy.

## ***Shortages of social workers and doctors***

### Finding

The provincial Department of Social Development recently noted that it experienced a 72 percent vacancy rate in regard to social workers. The provincial Department of Health recently acknowledged that it employed only 861 doctors despite it requiring 1865. Both social workers and doctors play an essential role in the processing of social grants as they are responsible for assessing the suitability of applicants for many social grants. It is clear that shortages of social workers and doctors contribute to delays in the processing of social grants which leads to litigation against the Department.

### Recommendation

The provincial and national departments of Social Development need to come up with creative ideas to try and attract more social workers to the provincial department. In this regard, the Department should undertake research to see if the payment of rural incentives to social workers is likely to attract more social workers. In addition, the provincial Department needs to strengthen its relationship with institutions that train social workers in an effort to try and attract newly qualified social work professionals to the Department. The Department also needs to do all it can to assist the provincial Department of Health in recruiting more doctors into the public health service within the province.

## ***Neglect of front office support***

### Finding

The SDIMS (Social Development Information Management System) Centre was created to provide back office support functions to the front desk, thus allowing the latter to concentrate on actual service delivery. It appears that the Centre has mostly succeeded in addressing operational problems relating to the organisation of information and the capturing of data. However, the Department has to a large extent failed to address other problems that hamper the ability of staff at regional and local level to efficiently and timeously process social grant applications. Inadequate funding for the Interim Management Team's turn-around plans and an overemphasis on improving back-office support has done little to actually address service delivery blockages at the point of delivery. Chronic staff shortages throughout the Department and infrastructural problems at regional and local offices chronically slow down the processing of social grants despite the existence of the SDIMS centre.

### Recommendation

The Department of Social Development needs to expend more energy and resources to deal with problems which hamper its ability to process social grant applications. This means that staff shortages need to be addressed and infrastructural problems, such as a lack of electricity, need to be overcome. The Department should audit its infrastructural needs and negotiate with the Treasury and the provincial Department of Public Works to ensure that all regional and local Social Development offices are properly serviced.

## ***Poor Communication***

### Finding

The problems that the Department experience are exacerbated by its apparent inability, or unwillingness, to manage a proper communication strategy. The Department has consistently failed to communicate its decisions to social grant beneficiaries in a fashion which is administratively just. This in turn has contributed to litigation against the Department as citizens have been forced to seek redress from the courts to try and find out why their grants have been cancelled or not processed timeously. The Department claims that the rural nature of the Eastern Cape and the failure of beneficiaries to give reliable addresses compromises its ability to communicate effectively.

### Recommendations

The Department of Social Development clearly needs to develop an effective communication strategy with its stakeholders. The Department should explore other options to ensure that beneficiaries are notified timeously of any changes in their social grant status. For example, the Department could begin to deliver important mail by hand, and could use the radio to disseminate more general information to beneficiaries. The Department could also organise workshops within communities to appraise them of any changes in social grant delivery. Lastly, the Department could employ community representatives to act as conduits through which information from the provincial Department of Social Development can reach communities.

## ***Service Delivery Environment Needs Analysis***

### Finding

Many of the problems experienced by the Department stem from the fact that it does not conduct adequate needs analysis surveys. Because the Department fails to undertake effective needs analysis of its service delivery environment, it finds it difficult to implement the policies required to fulfil its mandate. For example, it is clear that the Department does not know exactly how many people are in need of social assistance. This makes it impossible for the Department to plan properly and direct its resources where they are most needed. For example, because of its limited knowledge of its service delivery environment the Department has been entirely unequipped to deal with the growing numbers of applications for Child Support Grants. This has led to delays in the processing of such grants and under spending on Child Support Grants by the Department.

### Recommendation

The Department needs to regularly, and accurately, estimate how many people in the province are actually in need of each type of social grant. Only by doing so on a regular basis will the Department be able to target its resources more effectively and reduce delays in the processing of social grants.

## ***Strategic Planning***

### Finding

Strategic planning forms an integral part of the planning, budgeting, monitoring and reporting framework set in place to ensure the effective oversight of government departments and their accountability to the public. Strategic plans should include detailed breakdowns of the objectives and goals set out by departments and the budgets allocated in order to achieve these objectives. The Department's strategic planning has not been informed by a proper understanding of the particular service delivery environment that the Department operates within. The Department's plans have been characterised by an absence of reasonable timeframes for goals and objectives and there is little evidence to suggest that the Department properly monitors the delivery of its objectives to see that they are properly met. In addition, there is no evidence to suggest that the Department consults relevant stakeholders during its strategic planning processes. This weak strategic planning has meant that the Department has not developed any coherent policies or strategies to deal with the problems of application backlogs and litigation.

### Recommendation

The Department needs to ensure that it carries out adequate and effective strategic planning that involves both external and internal stakeholders. This strategic planning must be based on an effective needs analysis of the Department's service delivery environment. The targets that it sets itself need to be realistic, adequately budgeted for and closely monitored to ensure quality service delivery. It is clear that the Department needs to put in place specific plans detailing how it intends to overcome its current problems in regard to the processing of social grants. These plans should explain how the Department intends improving front office support structures to ensure that the Department can maximise the potential gains to be achieved by the creation of the SASSA.

## ***Legislature Accountability***

### Finding

The oversight institutions of the Auditor-General and the Standing Committee for Social Development have made numerous recommendations to the Department of Social Development in regard to the problems it experiences in regard to the delivery of social grants. Repeated recommendations have been made in regard to reducing litigation, recruiting and retaining staff and solving internal control difficulties which lead to the poor management of social grant documentation. However, none of these recommendations appear to have been properly implemented by the Department.

### Recommendation

The significant number of cases brought against the Department between 2000/01 and 2004/05 demonstrate that the Department has been unable, or unwilling, to properly implement oversight recommendations. To ensure that their recommendations are proactively implemented by the Department both the Department's Portfolio Committees

and the Legislature need to act without fear or favour and hold officials accountable for failed service delivery.



## 1. Introduction

I find it sad that the first truly democratic government in this province should be forced by the courts to fulfill what the Constitution promises to previously disenfranchised people, namely an accountable and responsive government ... It should be a source of shame to the respondents that these people have to turn to the courts to help them  
(Judge Froneman)<sup>1</sup>

Since the transition to democracy in 1994 the South African government has claimed that the eradication of poverty is one of its principal objectives. In reforming the unequal and racially based social grant system which characterised apartheid South Africa, the government has expanded the social grant system in an attempt to address socio-economic inequalities. Currently, eight different social grants are available in South Africa, ranging from old age grants to war veterans grants.<sup>2</sup>

Recent research has shown that social grants “tend to be pooled in households” and effectively shared by household members. This means that social grants “effectively function as household grants, and contribute to poverty alleviation in the households of social grant recipients.”<sup>3</sup> Research demonstrates how households that receive social grants are more likely to send children to school because school expenses can be better met. In addition, such households generally spend less on health care because, as spending on food increases, nutritional intake among households improves leading to less illness and disease.<sup>4</sup>

Despite this extension of social grants, severe poverty and socio-economic inequality remains a prominent feature of South African society. A recent study by the Human Sciences Research Council observed that 57 percent of individuals in South Africa live in poverty. This figure rises to 72 percent when only the population of the Eastern Cape is considered, a province which, the report also indicates, contains seven out of ten of the countries poorest municipalities.<sup>5</sup> The relative poverty of the Eastern Cape is confirmed by Statistics South Africa which notes that the province accommodates the highest proportion of households within the lowest income category, with 32 percent of the province’s households having to survive on an income of R200 or less per month.<sup>6</sup>

Given the extent of the poverty in the Eastern Cape, and the proven positive impact social grants can have on that poverty, there is a clear need for social grants to be administered in the province as effectively and efficiently as possible. Despite this pressing need, media reports from the province over the last few years describe a social

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<sup>1</sup> Somyani v MEC for Welfare, Eastern Cape (SECLD case number 1144/01).

<sup>2</sup> See, <http://www.welfare.gov.za/sassa/Documents/ugrants.htm>

<sup>3</sup> Kumiko Makino, ‘Social Security Policy Reform in Post-Apartheid South Africa: A Focus on the Basic Income Grant’, Centre for Civil Society, Jan. 2004, p. 2. See, <http://www.nu.ac.za/ccs/files/Report%2011.pdf>

<sup>4</sup> Dr. Michael Samson (et al), ‘The Social and Economic Impact of South Africa’s Social Security System’, Economic Policy Research Institute, Sept. 2004, pp. 2-3.

<sup>5</sup> Craig Schwabe, ‘Fact Sheet: Poverty in South Africa’, Human Sciences Research Council, <http://www.sarpn.org.za/documents/d0000990/index.php>

<sup>6</sup> ‘Measuring Poverty in South Africa,’ Statistics South Africa, p. 55. See, <http://www.statssa.gov.za/Publications/information.asp?ppn=fel4hjoh4fehj>

grant system in disarray, as citizens of the province struggle to gain access to their constitutional right to social assistance. Reports suggest that social grant applicants are routinely forced to use the courts in the province to seek redress because their grants are not processed timeously, not paid out after approval, or cancelled without notice. This report will examine the causes and extent of litigation in the province in regard to social grants, and will assess the provincial Department of Social Development's efforts to deliver social grants to the poor in line with its mandate.

## 2. Legislative Framework

The rights of all South African citizens are enshrined in the country's progressive Constitution, which includes a Bill of Rights which sets out the rights that South African citizens are entitled to claim. These include the right to housing, education, freedom and security. Most importantly, all citizens have the right to health care, sufficient food and water, and social security. According to Section 27 of the Constitution:

Everyone has the right to have access to health care service, including reproductive health; sufficient food and water; and social security, including if they are unable to support themselves and their dependants, appropriate social assistance. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.<sup>7</sup>

In terms of the Social Assistance Act of 2004, the national and provincial departments of Social Development are required to meet this obligation by providing:

for the rendering of social assistance to persons; to provide for the mechanisms for the rendering of such assistance; to provide for the establishment of an inspectorate for social assistance; and to provide for matters connected therewith.<sup>8</sup>

The Eastern Cape Department of Social Development states that it is mandated to ensure that services are provided to "the vulnerable groups of society, the poorest of the poor, the marginalized and the disadvantaged groups."<sup>9</sup>

Significantly, the Constitution also states that every citizen has the right to administrative action "which is lawful, reasonable and procedurally fair."<sup>10</sup> This right is given effect by the Promotion of Administrative Justice Act, 2000 which states that all administrative action "which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair." The Act notes that such affected persons must be given:

- (a) adequate notice for the nature and purpose of the proposed administrative action;
- (b) a reasonable opportunity to make representations;
- (c) a clear statement of the administrative action;

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<sup>7</sup> Section 27 of the Constitution of South Africa.

<sup>8</sup> Government Gazette, Republic of South Africa, Vol. 468, Cape Town, June 2004, No. 26446

<sup>9</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 10.

<sup>10</sup> Section 33(1) of the Constitution of South Africa.

- (d) adequate notice of any right of review or internal appeal ... and
- (e) adequate notice of any right to request reasons.<sup>11</sup>

Despite these obligations on the part of the Department of Social Development in the Eastern Cape, newspaper reports dating back to 2001 show that the administrative processing of social grant applications in the province has been at best inefficient, and at worst, chaotic. Newspaper reports present a picture of failed service delivery and a almost complete lack of accountability on the part of the Department for that failed delivery. They demonstrate how the Department has, through its failure to provide appropriate and timely social assistance, undermined the intention of the Constitution and contravened the provisions of the Social Assistance Act. In doing so, the provincial Department has been flooded with costly court applications from vulnerable citizens who have been forced to seek redress from the courts in an effort to realise their right to social grant assistance.

For its part, the Department has acknowledged that there are a number of major obstacles that hamper its ability to effectively provide social grant assistance in the province. However, the Department has claimed that it has made a number of significant interventions in an effort to improve service delivery and reduce the number of litigation cases that it faces due to delayed application processes.

This research seeks to establish whether the Department's interventions, most notably the establishment of the Social Development Information Management System (SDIMS) Centre, have resulted in any improvement in the administration of social grants. This report will first briefly outline media reports from the last four years which demonstrate the nature of the evolving crisis in regard to the delivery of social grants in the province. The report will then review a number of High Court judgments that have been made against the Department because of their significance to the evolution of policy relating to the administration of social grants. The report will then consider the financial cost to the Department, and through it the citizens of the province, of social grant litigation. The report will then seek to contextualise the litigation crisis by examining the overall performance of the Department during the last four financial years. This analysis will include a review of the findings of the Interim Management Team (IMT)<sup>12</sup> and will highlight the particular operational and organisational challenges that face the Department in the province. Lastly, the report will review the Department's efforts to address its difficulties, before making some concluding comments in regard to the establishment of the National Social Security Agency and its likely effect on the administration of social grants in the Eastern Cape.

### **3. Media reports**

The following section provides an analysis of media reports which detail the unfolding nature of the service delivery crisis and resultant litigation which has overtaken the delivery of social grants in the Eastern Cape. The section is made up almost exclusively

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<sup>11</sup> Promotion of Administrative Justice Act, 2000, Sections 3(1) and 3(2)(b).

<sup>12</sup> In 2003, under the direction of President Thabo Mbeki, the Interim Management Team (IMT) took curatorship of four major service delivery departments in the province. The task of the IMT was to assist the province in improving the delivery of essential services through the development and implementation of appropriate turn-around strategies within the four key departments namely Social Development, Health, Education and Public Works.

from media reports drawn from the two primary Eastern Cape daily newspapers, the *Daily Dispatch* and *The Herald*.<sup>13</sup>

- On 5 April 2001 *The Herald* reported that Judge Eric Leach of the Port Elizabeth High Court had found in favour of two applicants, Mr. Mbanga and Ms. Mahambehlala, who had instituted legal proceedings against the then MEC for Welfare<sup>14</sup>, Ncumisa Kondlo. According to the report, Judge Leach sharply criticised the Department of Social Development for the “unconscionable” length of time it took to conclude social grant applications. Judge Leach said the Department’s officials were guilty of the “widespread abuse of human rights” and the “tardy administration of grants.” He accused the Department of failing to act in the best interests of the public.<sup>15</sup>
- The *Daily Dispatch* reported on 13 April 2001 that another 26 social grant applicants had instituted legal action against the Department of Social Development. According to the report, “the applicants claimed that the provinces’ handling of their applications infringed their constitutional rights, their rights to lawful administration and their right to human dignity.”<sup>16</sup> A further 51 similar applications were placed on the court roll during the following week.
- On 22 August 2001 the Department of Social Development appealed an Eastern Cape High Court ruling which sanctioned a class action suit for disabled applicants who had their pensions unlawfully suspended. The Department took the case to the Supreme Court of Appeal (SCA) which ruled in favour of the applicants. The SCA accused the provincial government of wasting taxpayer’s money by appealing the decision and stated that it had acted “as though at war with its own citizens”. The Department’s behaviour was described as being “all the more shameful” because those it was opposing were the poorest and least powerful. The SCA found that “the responses of the provincial authorities included unfulfilled undertakings, broken promises, missed meetings, administrative buck-passing, manifest lack of capacity and gross ineptitude.” According to the SCA judges “this (behaviour) speaks of a contempt for the people and process that does not befit an organ of government under our constitutional dispensation.”<sup>17</sup> According to the Grahamstown based Legal Resources Centre, the SCA decision cleared the way for 40 000 pensioners to join the class action against the provincial Department of Social Development.<sup>18</sup>
- On 5 September 2001 the Department retaliated by claiming that judges were too political. According to the MEC, Ncumisa Kondlo, “judges have since become the politicians”. However, the SCA had acknowledged that it had not set out to criticise the government’s decisions in the area of social policy. Rather, it argued that when an organ of state used legal processes to “impede the rightful claims of its citizens” it

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<sup>13</sup> It also includes articles from the Afrikaans publication, *Die Burger*, as well as a number of other publications.

<sup>14</sup> At the beginning of the 2002/03 financial year the Department reported that it was implementing a “scientific approach to design models, systems and processes that will facilitate the shift from traditional welfare to Social Development.” The Department of Welfare has thus been transformed into the Department of Social Development.

<sup>15</sup> ‘Judge lashes out at “abuse of human rights” by Bisho’, *The Herald*, 5 April 2001.

<sup>16</sup> ‘26 take Welfare to court’, *Daily Dispatch*, 13 April 2001.

<sup>17</sup> ‘Bisho lambasted for challenging High Court order’, *The Herald*, 22 Aug. 2001.

<sup>18</sup> ‘Poor win battle against the state’, *Sunday Times*, 2 Sep. 2001.

defied the Constitution and “misused” the law which the courts had a responsibility to safeguard.<sup>19</sup>

- On 31 October 2001 the *Daily Dispatch* reported that the Eastern Cape government would have to find R150 million in backpay for citizens who had applied for their grants after April 1998. This was after the Gauteng High Court had found that backpay could not be restricted to only three months but had to be paid from the first day that the application was dealt with. According to the Eastern Cape MEC for Social Development, no provision had been made for this expense in the Department’s budget.<sup>20</sup>
- On 29 November 2001 the Department announced its intention to re-evaluate all disability grants which had been suspended between 1 March 1996 and 28 September 2000. The Department promised to reinstate those grants that had been mistakenly suspended. The Department reported that it had created a number of “mobile task teams” who were instructed to assist beneficiaries in having their grants reinstated.<sup>21</sup>
- On 12 January 2002 the Department reported that it was due to complete its review of disability grants. According to the Department, officials were visiting disability grant beneficiaries to confirm and update their details. Departmental spokesperson, Gcobani Maswana, said that the Department was introducing 19 new district offices to compliment the existing five regional offices, in an effort to “bring (our) services closer to the people so that their applications and complaints will be handled much quicker than before.”<sup>22</sup>
- On 15 February 2002 President Mbeki announced that the Eastern Cape was to receive an additional R2 billion to finance back payments to pensioners who had had their old age grants unlawfully suspended. According to Mbeki, “it was intolerable that some civil servants acted in a cruel and irresponsible manner” by forcing pensioners to wait up to two years for their grant applications to be processed.<sup>23</sup>
- On 20 February 2002 *The Herald* reported that taxpayers were footing the legal bills of the Eastern Cape Welfare Department which were said to amount to millions of rands. It was reported that the Port Elizabeth High Court had, since 1999, received 1340 applications against the Department at a cost of approximately R16 million. It was reported that there were 21 new cases to be heard in court for that particular week alone, including one charging the Department’s acting secretary with contempt of court. The report quoted Judge Eric Leach who had said, during an earlier judgment, “as long as administrative inefficiency continues to plague this province, public funds are going to continue to be wasted solely because public officials do not do the work which they are being paid to do.”<sup>24</sup>
- On 20 March 2002 the *Daily Dispatch* reported that the Grahamstown Legal Resources Centre (LRC) was to take further action against the Department for failing to reinstate all suspended grants following a ruling from the court in March 2001. According to the LRC, the Department had also failed to inform those people who

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<sup>19</sup> ‘Statements too political says MEC: Kondlo criticizes judges’, *Daily Dispatch*, 5 Sep. 2001.

<sup>20</sup> ‘Bisho to pay R150m backpay to pensioners’, *Daily Dispatch*, 31 Oct. 2001.

<sup>21</sup> ‘Grants to be re-evaluated’, *Daily Dispatch*, 29 Nov. 2001.

<sup>22</sup> ‘Welfare makes plans to improve service’, *Daily Dispatch*, 12 Jan. 2002.

<sup>23</sup> ‘R2bn cash boost for pensioners’, *Daily Dispatch*, 15 Feb. 2001.

<sup>24</sup> ‘Bisho wastes millions on welfare litigation’, *The Herald*, 20 Feb. 2002.

had had their grants reinstated, and had neglected to explain to other beneficiaries why their grants remained suspended.<sup>25</sup>

- On 7 August 2002 *The Herald* again reported that the Department's "lackadaisical attitude" had earned the attention of the judiciary. Another 34 cases were on the court roll for that day. According to the report, the estimated cost per case to the taxpayer was R4000. Port Elizabeth High Court judge, Andre Erasmus, pointed out that those who brought social grant matters to court were probably only the "tip of the iceberg" which raised the "disturbing likelihood that many persons in this province at this moment are suffering real hardship through ineffectiveness of the public service at provincial level". Judge Erasmus cited other judges' remarks regarding the Department's "administrative sloth and inefficiency", its "lamentable failure" to give proper attention and effort to rectifying and alleviating the "intolerable state of affairs."<sup>26</sup>
- According to a report in the *Daily Dispatch* on 4 September 2002, the Department of Social Development's problems were often caused, and exacerbated by, its continued staff shortages. The Department blamed its shortages on an instruction by the provincial treasury to only fill critical posts. This followed findings of the Standing Committee for Welfare, which had condemned the large numbers of vacancies in the Department, and had observed that staff morale was low and absenteeism unacceptably high.<sup>27</sup>
- On 23 October 2002, *The Herald* reported that the national Minister for Social Development, Dr Zola Skweyiya, had dispatched a task team to the Eastern Cape in order to speed up the processing of 6 000 grant applications. According to Minister Skweyiya, this action was necessary because grants were not being processed timeously causing litigation against the Department. Minister Skweyiya said that in the previous financial year the Eastern Cape Department had incurred legal costs of R1.6 million as a result of court action by social grant beneficiaries.<sup>28</sup>
- On 16 January 2003, Minister Zola Skweyiya responded to allegations of mismanagement in the Eastern Cape Department of Social Development. He stated that he was deploying a team to the Province in order to fully assess what the difficulties and problems were plaguing the payment of social grants. Minister Skweyiya vowed to "leave no stone unturned to make sure that together with the provinces we resolve the problems pertaining to the poor administration of the payment of grants especially in the Eastern Cape."<sup>29</sup>
- On 20 March 2003 the LRC indicated that it was considering applying for the reinstatement of all disability grants cancelled between 1996 and 2000. This came after promises from the Department that it would reinstate disability grants which had been unlawfully cancelled. Despite the Department's estimate that approximately 44 000 grants were affected, the LRC suggested that the figure was much higher as it had in its possession details of a further 5 800 grants which were unlawfully cancelled but did not appear on the Department's list. According to LRC advocate

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<sup>25</sup> 'Quest to reinstate disability grants', *Daily Dispatch*, 20 March 2002.

<sup>26</sup> 'Gross inefficiency' under fire, *The Herald*, 7 Aug. 2002.

<sup>27</sup> 'Social Development still short of staff', *Daily Dispatch*, 4 Sep. 2002.

<sup>28</sup> 'EC grant, pension backlog now on track', *The Herald*, 23 October 2002.

<sup>29</sup> 'Nkwinti intervenes', *Daily Dispatch*, 16 January 2003.

Sarah Sephton, the Department had failed to review or reinvestigate these 5 800 applicants.<sup>30</sup>

- On 22 March 2003 the South African Human Rights Commission (SAHRC) expressed its dissatisfaction with the Eastern Cape Department of Social Development. According to the deputy chairperson of the SAHRC, Zonke Majodima, the delivery of social services in the Eastern Cape was inadequate, which, she claimed, prevented people from accessing their basic socio-economic rights. Majodima was quoted as saying “We have never come across a bad situation like this before; we are not happy about the findings as they showed that human rights and privileges were only preached at the offices in Pretoria and did not transcend to the rural areas.”<sup>31</sup>
- On 14 April 2003 approximately 1000 applicants stormed their way into the Social Development offices in King William’s Town demanding medical forms and improved service delivery. Despite having up to 1000 new applicants every day, officials in the office reported that they had run out of application forms. They noted that applicants would have to wait until the following week as Bisho had also run out of forms. It was reported that many applicants had been waiting and queuing outside the offices for a number of days and some said that they were preparing to spend the night there as they could not afford to return again the following day.<sup>32</sup>
- On 19 June 2003 *The Herald* detailed the findings of a report on the state of the Eastern Cape Departments of Home Affairs and Social Development. According to the report, which was released by the Home Affairs and Social Development Standing Committees, service delivery in both departments was poor. It stated that “there is no sense of urgency on the side of the officials in serving the public. Not even the presence of the delegation could spark a sense of urgency.” This, according to the report, led to the “dignity of clients being badly affected” as the government’s “Batho Pele” service principles were not observed.<sup>33</sup>
- On 12 August 2003 the provincial Department of Social Development received an order from the Grahamstown High Court to publish a notice informing 8 459 people who had their disability grants cancelled to undergo a medical examination in order to have their grants reinstated. This took place after 9 526 people had their grants reinstated due to class action brought against the Department by the LRC. The Department had been ordered to re-examine and reinstate all those grants which had been illegally and unlawfully suspended. According to the LRC, the remaining people had not been informed in the correct manner concerning the re-examination process, or given enough time to respond.<sup>34</sup>
- On 14 August 2003 the Department announced that it would obey the High Court order to reissue a notice to the 8 459 people who had had their grants cancelled. According to Departmental spokesperson, Gcobani Maswana, the Department had

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<sup>30</sup> ‘Quest to reinstate disability grants’, *Daily Dispatch*, 20 March 2003.

<sup>31</sup> ‘Social service delivery inadequate – SAHRC’, *Daily Dispatch*, 22 March 2003.

<sup>32</sup> ‘Grant applicants storm King office’, *Daily Dispatch*, 14 April 2003.

<sup>33</sup> ‘Government offices slated as “filthy and a health hazard”’: Report slates service delivery in E Cape’, *The Herald*, 19 June 2003.

<sup>34</sup> ‘Thousands could get grants reinstated’, *Daily Dispatch*, 12 Aug. 2003.

already complied with the order but people had failed to come forward. The Department undertook to “communicate the names as the court has ordered.”<sup>35</sup>

- On 26 September 2004 the *Sunday Times* reported on an article detailing Judge Johan Froneman’s findings in a case brought before the courts by Mrs. Nontembiso Kate. In this case the court had found that the applicant was entitled to more than R19 000 in backpay and interest, but the Department of Social Development had only paid out R6000. The Department defended its action by making reference to the Jayiya judgment which stated that the Department could not be held in contempt of court when ignoring a court order. Judge Froneman has, however, questioned the finding of the SCA in regard to the Jayiya judgment, arguing that if the judgment were to be upheld, it would not be possible for the state to be held accountable for its actions. According to the article, the provincial administration handling of social grants could provoke a constitutional crisis between the government and the judiciary.<sup>36</sup>
- On 12 October 2004 *The Herald* published a report which stated that the Department of Social Development planned to suspend the grants of all beneficiaries who could not produce a valid identity document by the end of October. This meant that pensioners had only 18 days in which to respond to this request. According to Departmental spokesperson, Gcobani Maswana, the grants were to be suspended until beneficiaries complied with this demand.<sup>37</sup>
- According to a *Daily Dispatch* report on 22 October 2004, the Department had been struggling to retain the services of its remaining social workers because a large majority had already resigned. The social worker vacancy rate in the Department (at the time) was 47.9 percent, which meant that only 446 of the 856 available posts were filled. This meant that the beneficiary to social worker staff ratio in the Eastern Cape was five times the national average.<sup>38</sup> This situation led to increasing discontent among social workers which reached a crisis point on 3 November 2004, when disgruntled social workers marched to the Premier’s office in Bhisho to complain about being overworked and underpaid.<sup>39</sup>
- On 8 November 2004 the *Daily Dispatch* reported that the Department had suspended the grants of thousands of disabled people. According to the report, many permanently disabled people had arrived at paypoints to find that their grants had been suspended. According to Departmental spokesperson, Gcobani Maswana, the suspension was not meant to affect those with permanent disabilities, and if they had had their grants suspended this could only be attributed to Departmental error. This did not, however, ease the plight of those who had to survive without an income for that month, or the time it took to have their grants reinstated.<sup>40</sup>
- In response to the suspension of disability grants, the Standing Committee for Social Development criticised the conduct of the Department. It accused Social Development officials of not adequately communicating with beneficiaries about actions and decisions that directly affected them. According to the Chairperson of the Committee, Mbulelo Sogoni, “the department had to develop an acceptable

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<sup>35</sup> ‘Bisho “will obey court order on disability grant recipients”’, *The Herald*, 14 Aug. 2003.

<sup>36</sup> ‘Judge in revolt takes on the law for the sake of justice’, *Sunday Times*, 26 Sep. 2004.

<sup>37</sup> ‘Pensioners told to get IDs or have grants suspended’, *The Herald*, 12 Oct. 2004.

<sup>38</sup> ‘Desperate bid to retain social workers’, *Daily Dispatch*, 22 Oct. 2004.

<sup>39</sup> ‘Angry social workers plan march on Bhisho’, *Daily Dispatch*, 3 Nov. 2004.

<sup>40</sup> ‘Disabled shocked at paypoints’, *Daily Dispatch*, 8 Nov. 2004.



method of reviewing grants so that people who are permanently disabled would not have their grants unlawfully suspended or reviewed.” He also blamed some of the Department’s problems on the number of contract workers that were employed on a temporary basis. The Committee urged the Department to review its staff policies and vacancy rate in order to avoid confusion and misunderstandings in the future.<sup>41</sup>

- Following the suspension of disability grants, many people were forced to obtain certificates from doctors to prove their disability. On 12 November 2004 the *Daily Dispatch* described how hundreds of people were queuing to have their grants reinstated. Some people were even said to have slept in a queue at the Bhisho hospital in order to keep their positions. One pensioner, Dixon Fanele, who had been queuing for three days without food, stated that pensioners were being “completely ignored by the government.” However, many pensioners had to make peace with the fact that their grants would not be renewed as soon as they had hoped as staff at the hospital were not able to process all applications before their annual leave. As a result, many destitute people had to get through the festive season with no income.<sup>42</sup>
- On 12 December 2004, the *Sunday Times* reported that Grahamstown High Court judge, Clive Plasket, had taken the unusual step of asking the Human Rights Commission and the Public Service Commission to investigate whether there was any way to make the Eastern Cape Social Development Department stop its “present grand-scale infringing of human rights.” The *Sunday Times* pointed out that Plasket was the latest in a “long line of judges” to express frustration over the “dysfunctional and unrepentant” Department of Social Development. Judge Plasket was quoted as saying that the Department often indicated it would fight each matter in court, but then at the last minute withdrew its opposition — leaving the court to deal with the matter unopposed. On the basis that each case cost the state about R5000 in legal fees, the 100 cases heard by Judge Plasket in just one week cost the Department R500 000 in legal costs alone. Judge Plasket stated that while the courts could grant relief to individuals, they were forced to watch “impotently while a dysfunctional and apparently unrepentant administration continues to abuse its power at the expense of large numbers of poor people.”<sup>43</sup>
- On 10 January 2005 *The Herald* reported that the Department was implementing changes to try and improve the processing of disability grant applications. According to social security director, Mark Rasmussen, an investigation was to be launched in order to determine the cause of all delays. The chief director of social security, Bandile Maqetuka added to this undertaking by stating that, “a task team will sort out the backlog” as it had been “given the powers to process and approve grant applications and ensure that there are no further delays.”<sup>44</sup>
- Despite claims by the Social Development Department that it had remedied the problems regarding social grants, it was once again in the news on 8 February 2005. According to *The Herald* the Department was spending millions in order to defend lawsuits brought against it by people seeking to access social grants. Each lawsuit cost the Department between R5 000 and R40 000. Of some concern is the claim in

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<sup>41</sup> ‘Social development slated for failing to consult grant beneficiaries’, *Grocott’s Mail*, 12 Nov. 2004.

<sup>42</sup> ‘Anger over grant suspension’, *Daily Dispatch*, 12 Nov. 2004.

<sup>43</sup> ‘SOS goes out in bid to jack up civil servants’, *The Sunday Times*, 12 Dec. 2004.

<sup>44</sup> ‘Task team cracking down on delays in social grants’, *The Herald*, 10 Jan. 2005.

the article that, in some cases, the amount of the claim instituted against the Department was much less than the legal fees incurred. According to an investigation by *The Herald*, the Eastern Cape High courts had to deal with approximately 40 social grant cases a week.<sup>45</sup> It would appear that the Department could therefore save valuable taxpayers' funds if it paid the claim and compensated beneficiaries without allowing cases to go to court.

- On 15 February 2005, the *Daily Dispatch* reported that the Department had spent R20 million on legal costs contesting litigation relating to social grants. Port Elizabeth state attorney Andre Crouzier was quoted as saying his office was swamped by litigation cases involving the Department. He said it would help if the Department sped up the application process for disability grants which would help prevent future litigation.<sup>46</sup>
- On 21 February 2005 the Department was once again criticised for its inefficiency when a Port Elizabeth High Court judge ruled in favour of a grant applicant. According to Judge Leach the Department's case was "bereft of vital information and documentation with which this court should have been provided to enable it to make a fully informed decision." He subsequently ordered the Department to foot the bill for the applicants legal costs which amounted to approximately R20 000.<sup>47</sup>
- On 1 March 2005 the newly appointed MEC for Social Development, Christian Martin, vowed that he would act against officials guilty of corruption and mismanagement. He also made an undertaking to deal with "the numerous lawsuits brought against the department – costing the tax payer tens of millions of rands a year." He attributed part of the litigation problem to the fact that "arrogant staff dragged their feet in processing the grant applications."<sup>48</sup>
- The *Weekend Post* reported, on 5 March 2005, that the Department had not made provision for the R100 million that had been set aside by the national Department of Social Development for the registration of child support grants. The paper reported that if the Department failed to spend the R100 million it would risk "being made to return (the funds) to national government."<sup>49</sup>
- The shortage of social workers was again highlighted in the *Daily Dispatch* on 9 March 2005. The newspaper reported that social workers were unhappy because they felt that they were being overloaded with cases because of the Department's inability to address the 50 percent staff vacancy rate for social workers. According to the Department, it had attempted to deal with this problem by advertising 30 new social worker posts. It argued that these appointments would be funded by an R11 million allocation from the Provincial Treasury. Despite the fact that it welcomed this initiative by the Department, the National Education, Health and Allied Workers' Union (Nehawu) suggested that it would bring little relief, claiming that it was far less than the 100 posts that the Department had promised would be filled by April 2005. In response to this, the Social Development director of corporate services, Welile Payi, stated that it was impossible for the Department to meet this target due to

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<sup>45</sup> 'Bhisho's expensive lawsuit headache', *The Herald*, 8 Feb. 2005.

<sup>46</sup> 'Litigation costs Bhisho R20m', *Daily Dispatch*, 15 February 2005.

<sup>47</sup> 'Court slates Bhisho case as judge rules for grant recipient', *The Herald*, 21 Feb. 2005.

<sup>48</sup> 'New MEC promises to crack down on lazy staff', *The Herald*, 1 March 2005.

<sup>49</sup> 'Millions East Cape must not lose', *Weekend Post*, 5 March 2005.

financial constraints. He said, however, that the Department was planning to fill all vacant posts by 2007/08.<sup>50</sup>

- On 16 March 2005 the Department announced its intention to establish a “Temporary Disability Grant Task Team” to speed up appeals from disability grant beneficiaries for their grants to be reinstated. According to MEC Martin, of the 78 000 grants that had been cancelled during the grant review held in 2004, 30 000 beneficiaries had lodged appeals. He said that 10 000 had been reinstated with backpay. The aim of the Task Team was to deal with the remainder of the grants in order to fast track the process.<sup>51</sup> The Department had set 31 October as the deadline for all appeals but extended the deadline to 31 January 2005. Departmental spokesperson, Gcobani Maswana, said that he was sure everyone with genuine grants would have come forward by the extended date and those who didn’t would be treated like new grant applicants.<sup>52</sup>
- According to the national Department of Social Development, R1.5 billion a year was lost via social grant fraud, with the most significant contributor being the Eastern Cape. An amnesty period was introduced by the National Minister of Social Development, Dr. Zola Skweyiya. Those guilty of involvement in defrauding the Department of Social Development were offered the chance to give themselves up in order to avoid prosecution. In response to this, the provincial Department urged those guilty of fraud to apply for amnesty.<sup>53</sup>
- Despite the Department’s efforts to try and accelerate social grant payments and deal with payment irregularities, the Department continued to be taken to court by beneficiaries. In late March, a Port Elizabeth lawyer was quoted as saying that despite the Department’s contention that litigation against it has declined, some 30 cases a week were still coming before the court.<sup>54</sup>
- It was reported in May 2005 that large numbers of grant applicants were again seeking legal advice after many who had tried to apply for social grants were turned away due to a “glitch with the department’s fingerprinting system.” According to *The Herald*, applicants in Uitenhage were being turned away because their “names were not on the list of those awaiting fingerprinting and processing.” This “glitch” in the system was said to lengthen the application process by months. The human rights group “Lawyers for Human Rights” threatened to report the Department to the South African Human Rights Commission if difficulties being experienced by the poor were not addressed.<sup>55</sup>
- On 18 May 2005 *The Herald* reported that the Department of Social Development had registered 60 000 children for child support grants. According to Social

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<sup>50</sup> ‘30 new posts advertised for social workers’, *Daily Dispatch*, 9 March 2005.

<sup>51</sup> ‘Task team to speed up grant appeals’, *Daily Dispatch*, 16 March, 2005.

<sup>52</sup> ‘Act now to renew disability grants says dept’, *Daily Dispatch*, 10 December 2004.

<sup>53</sup> ‘Come clean or face drastic action, Bhisho warns grant fraudsters’, *The Herald*, 30 March 2005.

<sup>54</sup> ‘Waghond dreig Bhisho met hof’, *Die Burger*, 31 March 2005.

<sup>55</sup> ‘Rights group takes Bhisho to task over social grants’, *The Herald*, 4 May 2005. When pronouncing on the case of Mahambehlala vs MEC for Welfare, Justice Leach stated that “common sense tells one that in a case such as this where no unduly intricate investigations have to be made, a period of three months would normally be more than sufficient to take an administrative decision.” He reiterated his finding in Mbanga vs MEC for Welfare where he said that “it was reasonable for a decision on an application for a social grant to be taken within three months.”

Development spokesperson, Gcobani Maswana, this had increased the number of child support grant beneficiaries to 1.3 million. This was, however, a long way off its target of registering 350 000 children before the end of the financial year.<sup>56</sup>

- On 13 June 2005 the *Daily Dispatch* reported that the South African Human Rights Commission (SAHRC) had referred the Department of Social Development to its complaints committee. According to the SAHRC, it had not received the Department's full cooperation into its investigation of the Department's handling of social grant payments. After reviewing information provided by the Department, the SAHRC found it was inadequate and requested additional information. However, no further information was forthcoming from the Department.<sup>57</sup> This non-compliance by the Department once again exposed it to the threat of legal intervention, as the SAHRC can subpoena the requested documents.
- The Department had still not managed to resolve its difficulties by July 2005. According to a Port Elizabeth lawyer hundreds of social grant cases were being dealt with by his office, including some where beneficiaries had been waiting more than two years to hear if their applications had been successful. The Department of Social Development's Port Elizabeth district manager was reported as saying that delays occurred because doctor's certificates needed to be gained before disability grants could be processed.<sup>58</sup>

It is clear from this media analysis that the provincial Department of Social Development has struggled over a number of years to meet its constitutional mandate in terms of the delivery of social grants. Given the large number of litigation cases still appearing before the courts, it is also clear that the Department's efforts to overcome its difficulties have not yielded the improvement in social grant administration that is needed in the province. The following section shall briefly review a number of cases that have appeared before the courts in the Eastern Cape. These cases have been chosen because of the importance of the judgments reached in terms of defining the Department's legal obligations in terms of the administration of social grants in the province.

#### 4. Judgments<sup>59</sup>

The following cases have been chosen because of the effect that they have had on the development of best practise in the administration of social grants, and because they demonstrate the attitude of the Department to the litigation that it has faced.

In 2001, the case of *Mahambehlala vs the MEC for Welfare, Eastern Cape Provincial Government*, Judge Leach ruled that three months was sufficient time for the

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<sup>56</sup> 'Child support drive pays off for 60 000', *The Herald*, 18 May 2005. There is some confusion with regard to the estimated targets which had been set by the Department with regard to the Child Support Grant (CSG). The original target was 780 000 CSG's to be registered by the end of 2002/03. However, this was adjusted to 425 000 by the Department but according to the IMT report the original figure was 803 483 of which only 371 556 had been registered by the end of February 2003. Eastern Cape Department of Social Development, Budget Statement 2, 2003, p. 118 and Report: Work of the Interim Management Team: Eastern Cape, Nov. 2002-March 2004, p. 124.

<sup>57</sup> 'Social Grants abuse now with SAHRC', *Daily Dispatch*, 13 June 2005.

<sup>58</sup> 'Baie dalk hof toe oor gesloer met toelaes', *Die Burger*, 19 July 2005.

<sup>59</sup> The author would like to acknowledge 'Plasket, C. Administrative Justice and Social Assistance in *South African Law Journal*, 120, 2003.

Department to process a social grant application. The regulations require that a social grant should accrue from the date of its approval, given this, Judge Leach concluded that the Department should back-pay the applicant their grant from the time it should have been approved, i.e. three months after the initial application had been received by the Department. In making this ruling the judge condemned the “administrative sloth and inefficiency” which, he claimed, “bedevilled” the provincial Department of Social Development.<sup>60</sup>

In a similar judgment involving *Mbanga vs the MEC for Welfare, Eastern Cape Provincial Government*, Judge Leach contended that “as long as administrative inefficiency continues to plague this province, public funds are going to continue to be wasted.”<sup>61</sup>

In 2001, another landmark judgment was given against the Department when the LRC took up the cases of four people whose disability grants had been unlawfully cancelled by the Department. In *Ngxuza and others v Permanent Secretary, Department of Welfare, Eastern Cape, and another 2001(2) SA 609 (E)* the four applicants claimed that their disability grants had been suspended without any notice and that the Department had acted unlawfully. Acting on behalf of the applicants, the LRC sought to have the applicants’ grants reinstated, while also instituting a class action which would ensure that all those in the province who had had their pensions similarly suspended would have their grants reinstated.<sup>62</sup>

The courts finding had three crucial aspects. Firstly, Judge Johan Froneman ruled that the four applicants had the legal standing to bring the class action suit against the Department. This allowed the LRC to act on behalf of everyone in the Eastern Cape who had been similarly affected by the social grant suspension. Secondly, it required the Eastern Cape government to disclose the details of all beneficiaries who formed part of the class action and, thirdly, the Department was required to publicise the details of the class action so that people affected by it could come forward.<sup>63</sup> In his judgment, Judge Froneman criticised the Welfare Department for what appeared to be a “large-scale unlawful deprivation of social grants”. He said he could not allow “the unlawful deprivation of these rights by way of administrative stealth. The Constitution forbids that and has made the courts the democratic guardians to prevent that from happening.”<sup>64</sup>

In dismissing a Departmental appeal of Froneman’s judgment, in *Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government and another v Ngxuza and others*, Supreme Court of Appeal Judge, Edwin Cameron, stated that the papers before him demonstrated

a pitiable saga of correspondence, meetings, calls, appeals, entreaties, demands and pleas by public interest organisations, advice offices, district surgeons, public health and welfare

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<sup>60</sup> Mahambehlala v MEC for Welfare , Eastern Cape Provincial Government and another, 2001 (9) BCLR 899 (SE), p. 907.

<sup>61</sup> Mbanga v MEC for Welfare, Eastern Cape Provincial Government, and another, 2001 (8) BCLR 821 (SE), p. 830.

<sup>62</sup> Ngxuza and others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government, and another 2001(2) SA 609 (E).

<sup>63</sup> Ngxuza and others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government, and another, 2001 (4) SA 1184 (SCA)

<sup>64</sup> Ngxuza and others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government, and another 2001(2) SA 609 (E), p. 1334.

organisations and branches of the African National Congress itself, which is the governing party in the Eastern Cape ... [b]ut their efforts were unavailing. The response of the provincial authorities as reflected in the papers included unfulfilled undertakings, broken promises, missed meetings, administrative buck-passing, manifest lack of capacity and at times gross ineptitude.<sup>65</sup>

Judge Cameron contended that the Department displayed “a contempt for people and process that does not befit an organ of government under our constitutional dispensation”<sup>66</sup> adding that the Department “conducted the case as though it was at war with its own citizens, the more shamefully because those it was combating were in terms of secular hierarchies and influence and power the least in its sphere.”<sup>67</sup>

In 2002, *Ndevu v Member of the Executive Council for Welfare, Eastern Cape Provincial Government and another* was one of 27 similar cases on the motion court roll which involved applicants approaching the court for relief because of difficulties involving social grant applications. Judge Erasmus commented that the fact that the applicants in these matters “found it necessary to turn to the court for assistance would indicate that the respondents and the public servants under their control have failed to perform their administrative duties properly and timeously”.<sup>68</sup> Judge Erasmus claimed that it would be unrealistic to assume that “this is the end of the sorry saga”<sup>69</sup> because there were a further 34 similar matters on the next motion court roll and, in view of the fact that many people do not have access to legal advice and representation, “the matters that do come to court are probably but the tip of the iceberg”.<sup>70</sup> The Judge claimed that this raised the “disturbing likelihood that many persons in this province at this moment are suffering real hardship through the ineffectiveness of the public service at provincial level”.<sup>71</sup> In regard to legal costs for social assistance cases, he said that: “millions of rand in taxpayers’ money have been wasted in unnecessary legal costs occasioned by indolence and/or incompetence on the part of public servants.”<sup>72</sup>

In November 2004 the case of *Vumazonke and others v Member of the Executive Council for Social Development, Eastern Cape* was heard by Judge Clive Plasket. This judgment, one of the most recent to be delivered, summed up years of judicial frustration at the ongoing dysfunctionality of, in Plasket’s words, an “unrepentant administration.”<sup>73</sup>

In one week Plasket noted that he had dealt with more than 102 cases brought against the MEC for Social Development, a situation which, he remarked, was “unfortunately” common. According to Plasket:

The judges of this division, as well as those in the other two divisions in the Eastern Cape, have grown accustomed to the depressing tales of misery and privation contained in an ever-

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<sup>65</sup> Ngxuzza and others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government, and another, 2001 (4) SA 1184 (SCA), p. 1045.

<sup>66</sup> Ibid, p. 1040.

<sup>67</sup> Ibid, p. 1047.

<sup>68</sup> SECLD undated judgment (case no. 597/02) unreported, p. 1.

<sup>69</sup> Ibid, p. 2.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, pp. 5-6.

<sup>73</sup> Vumazonke and other v MEC for Social Development, EC [2004] JOL 13361 (SE), p. 6.

increasing volume of cases that clog their motion court rolls in which applicants complain about administrative torpor in the processing of their applications for social assistance. To make matters worse, this situation is not new. Over the last four or five years, judges have commented, often in strident terms, about the unsatisfactory performance of the respondent's department in the administration of the social assistance system in the province.

In a bid to stop the Department's "present grand-scale infringing of human rights"<sup>74</sup> Plasket took the unusual step of referring his judgment to the Human Rights Commission and the Public Service Commission with a request for them to investigate the situation.

In responding to the above cases, and numerous others that it has faced in relation to litigation around social grants, the Department has often ignored, or failed to comply adequately with, court orders directed against it. The reaction of the courts in the Eastern Cape to this has been to seek committal of the respondents (in this case, representatives of the Department of Social Development) for contempt of the court orders. However, generally speaking, committal for contempt of court is not allowed where the respondent fails to comply with an order for the payment of money. In such cases, the successful party can execute against the debtors property. However, the State Liability Act of 1957 prohibits execution against state property. This raises the dilemma of how the successful party, via the court, enforces an order where the Department of Social Development refuses to obey such an order.

In *Mjeni vs Minister of Health and Welfare, Eastern Cape*, Judge Jafta found that committal for contempt of court was the only means available to the court due to the limitations imposed by the State Liability Act.<sup>75</sup> However, in *Jayiya vs Member of the Executive Council, Eastern Cape and other*, the Supreme Court of Appeal (SCA) stated that the courts in the Eastern Cape could not commit organs of state for contempt of court. Judge Conradie stated that the State Liability Act outlawed the "attachment" of respondents in proceedings against a government department. From this he argued that the common law could not "evolve in such a way as to (retrospectively) create a new crime."<sup>76</sup>

In *Kate vs MEC for the Department of Welfare*, the Department chose to interpret Conradie's ruling in such a way as to find that public officials could not be found in contempt of court because of the limitations imposed by the State Liability Act. However, in *Kate*, Judge Froneman rejected the Department's reading of Conradie, stating that such an interpretation would have a "chilling effect" on the efforts of the High Courts in the Eastern Cape "to ensure compliance on the part of the provincial government with its constitutional duties of efficient and accountable public administration."<sup>77</sup> Froneman held that if the State Liability Act forbade declarations of contempt this would result in the government being placed "above the law in so far as the binding nature of court orders

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<sup>74</sup> *Vumazonke and other v MEC for Social Development*, EC [2004] JOL 13361 (SE), p. 12.

<sup>75</sup> *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (Tk), 454A-H and 455E-G.

<sup>76</sup> *Jayiya v MEC for Welfare, Eastern Cape Provincial Government and another* [2003] 2 All SA 223 (SCA), p. 231.

<sup>77</sup> *Kate v MEC, Department of Welfare, Eastern Cape* [2004] JOL 13143 (SE), pp. 1-2.

are concerned.”<sup>78</sup> Froneman found that such a reading of the State Liability Act made the Act itself unconstitutional. In conclusion, Froneman determined that declarations of contempt (*without* criminal sanction, i.e. civil contempt) could be used as a method to ensure compliance with court orders. Froneman granted the Department leave to appeal his ruling, and the SCA is likely to hear the matter in the near future.

Judge Plasket has recently argued in an article that there are in fact three options open to the courts to ensure that court orders are complied with by the provincial Department of Social Development. He argues that as members of national and provincial executives are bound to act in accordance with the Constitution, this provides ample opportunity for the President and the provincial Premier to act against members of the provincial executive who ignore court orders. Plasket argues that by not taking action they [in this case the provincial Premier] is actually complicit in ignoring the court order because the Premier would have sworn loyalty to the Constitution when taking his or her oath of office. Interestingly, Plasket also argues that members of executive councils who do not subject their employees (including heads of provincial departments) to corrective action for ignoring court orders also make themselves complicit in the conduct itself and thus should be subject to disciplinary action.<sup>79</sup>

Secondly, Plasket argues that courts have powers to force officials to pay costs personally if they continue to hold the court in contempt. He argues that if a court finds conduct unconstitutional they must grant “appropriate relief” and such punitive cost orders can be made if they “will strike effectively at the source of the violation of the Constitution.” Plasket claims that “costs orders of this type will indeed strike most effectively at the unacceptable flouting of court orders.”<sup>80</sup>

Lastly, Plasket contends that another method to ensure that court orders are complied with is through committal for contempt of court “when the respondent has been found to have wilfully and in bad faith failed or neglected to obey the order in question.” Plasket notes that in such instances the courts can decide on what sanction to impose, from fines to direct imprisonment. While this may be a dramatic step for the courts to take Plasket argues that the situation has now got so bad in the Eastern Cape that “if the courts are to perform their constitutional duties of serving as the bulwark between the governed and those who govern and as guardians of the Constitution, they must act decisively before it is too late.”<sup>81</sup>

The cases briefly outlined above highlight the development of a disturbing trend in the province which has seen Eastern Cape courts, in the words of judge Froneman, “become the primary mechanisms for ensuring accountability in the public administration of social grants.”<sup>82</sup> This clearly represents a failure on the part of the provincial Department of Social Development to take its Constitutional obligations seriously in regard to the processing and payment of social grants in the province.

## 5. Litigation costs

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<sup>78</sup> Kate v MEC, Department of Welfare, Eastern Cape [2004] JOL 13143 (SE), p. 18.

<sup>79</sup> C. Plasket, ‘Enforcing Judgments Against the State,’ *Speculum Juris* 17 (2003), pp. 10-11.

<sup>80</sup> *Ibid*, pp. 11-12.

<sup>81</sup> *Ibid*, p. 12.

<sup>82</sup> Kate v MEC, Department of Welfare, Eastern Cape [2004] JOL 13143 (SE), p. 5.



Between 2000/01 and 2003/04 both the Auditor-General and the Standing Committee for Social Development have repeatedly urged the Department to address the problems that lead to litigation. In particular, the Standing Committee instructed the Department to ensure that litigation did not become a recurrent problem.<sup>83</sup> In 2003/04 the Department claimed that there had been an improvement in the grant application process. Most importantly, the Department's Management report noted that there had been a decrease in the number of litigation cases.<sup>84</sup> Despite this reported improvement, the Department admitted that it incurred R20 million in litigation costs in the 2004/05 financial year.<sup>85</sup>

It was against this background that the PSAM made a Promotion of Access to Information Act request to the Provincial Department of Social Development asking it to indicate to the PSAM how much it had spent on litigation since 2001. The PSAM received information from Mr. Maqoma (from the State Attorney's office in King William's Town) and from Mr. Crozier from the State Attorney's office in Port Elizabeth.

Mr. Maqoma's records indicated that the Department spent the following amounts:

<b>Year</b>	<b>Amount (R')</b>
2001	768 504
2002	174 149
2003	23 870 000
2004	13 360 000
<b>Total</b>	<b>38 172 652</b>

However, the records provided by Maqoma are not complete as they only provide information relating to nine months in 2001, four months in 2002, nine months in 2003 and 11 months in 2004. The following table shows the average costs per month for each year in question.

<b>Year</b>	<b>Average cost per month (R')</b>
2001	85 388
2002	43 537
2003	2 650 741
2004	1 214 217

The documents supplied by Mr. Crozier's office were complete and provided the following information:

<b>Year</b>	<b>Amount (R')</b>
2001	2 000 699

<sup>83</sup> See PSAM Monitoring Brief, Eastern Cape Department of Social Development Performance Report for 2001/02-2002/03, Vuyo Tetyana, p. 9.

<sup>84</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p 67.

<sup>85</sup> 'Litigation costs Bhisho R20m', *Daily Dispatch*, 15 February 2005.

2002	3 184 817
2003	3 075 273
2004	5 622 761
<b>Total</b>	<b>13 883 550</b>

This results in average per month expenditure of:

<b>Year</b>	<b>Average cost per month (R')</b>
2001	166 724
2002	265 540
2003	256 272
2004	471 897

As the tables above indicate, the Department of Social Development in the Eastern Cape has spent over R52 million on litigation costs involving social grants between 2001 and 2004 (an average across the four years of R1.1 million). However, given the incomplete records from King William's Town it is likely that in reality the figure is considerably higher.

The state attorney in King William's Town also provided information relating to January, February and April of 2005, where, in total, the Department incurred litigation costs of just over R2 million, or on average R670 000 a month. The state attorney from Port Elizabeth provided figures for January 2005 which showed that R820 774 had been spent in that month on social grant litigation. This would seem to indicate that costs are falling in King William's Town and rising in Port Elizabeth.

However, as there are large numbers of cases still before the courts this figure is set to rise.<sup>86</sup> The court rolls for the South Eastern Cape Local Division of the High Court (sitting in Port Elizabeth) for August 2005 had a large number of cases in which the Department of Social Development is cited as the respondent. This is a clear indication that the inefficiency that has hampered the Department's ability to deliver adequate services still remains.

A further disturbing aspect of this litigation is the Department's response to legal proceedings taken against it. It appears that in the vast majority of cases where an applicant approaches the High Court seeking payment from the Department, the Department files notices of opposition. However, when the High Court then sits to consider each case (sometimes months later) the Department appears to withdraw its opposition and allow applicants to take orders unopposed. For example, the South Eastern Cape Local Division (the Port Elizabeth High Court) court roll for 30 August includes 223 applicants seeking social grant payment from the Department. The roll shows that all 223 cases were found in favour of the applicants.<sup>87</sup> This means that the

<sup>86</sup> See the following articles, 'Waghond dreig Bhisho met hof', *Die Burger*, 31 March 2005 and 'Baie dalk hof toe oor gesloer met toelaes', *Die Burger*, 19 July 2005.

<sup>87</sup> High Court, South Eastern Cape Local Division, Court Roll, 30 Aug. 2005, pp. 6-48.

Department would then have been issued with court orders compelling it to pay each applicant the monies due to them in terms of their social grant applications.<sup>88</sup> It also means that the Department has to pay all the litigation costs.

Judge Erasmus has stated that this behaviour of the Department “was merely a manoeuvre designed to allow the respondents [the Department] time to process the claim.”<sup>89</sup> Erasmus has claimed that each time the Department opposes a case in this nature it costs in the region of R4000 in legal fees. This would mean that for the Port Elizabeth High Court alone, in one week R892 000 was spent fruitlessly and wastefully by the Department of Social Development in the province. What this means is that the Department is paying out huge sums of money, which would be better used helping the poor and needy in the province, because of its inability to timeously process social grant applications. The problem is made even more serious because the Department does not budget for litigation costs which means that resources are clearly being diverted from Departmental programmes to cover these costs, thus hindering the Department’s ability to properly fulfil its mandate in the province.

In terms of the PFMA the costs involved in using the courts in this fashion represent “fruitless and wasteful expenditure” which is defined by the Act as “expenditure which was made in vain and would have been avoided had reasonable care been exercised.”<sup>90</sup> The PFMA makes it clear that an accounting officer, in this instance the HOD of the provincial Department of Social Development, commits an act of financial misconduct if they make or permit fruitless and wasteful expenditure to take place.<sup>91</sup> Given this, it would appear that the HODs that the Department has had since 2001 have routinely committed financial misconduct by allowing litigation costs of this nature to be incurred by the Department.

A further problem that has appeared in the province in relation to social grant litigation is the emergence of dubious lawsuits being bought against the Department by attorneys. In August 2005 two attorneys were charged with fraud and corruption after allegedly being involved in an elaborate scheme to represent fictitious social grant applicants in court. It is alleged that the attorneys would submit applications to the High Court from fictitious applicants for social grants. The Department would then bear the costs of any successful applicants. According to the Directorate of Special Operations (the Scorpions) 156 applications brought by the attorneys are said to have resulted in them being paid over two and a half million rand by the Department of Social Development.<sup>92</sup> While strongly condemning the alleged activities of the attorneys, it has to be recognised that the Department has to bear responsibility in this regard. If the Department had effective internal controls and properly managed its social grant application processes opportunities would not be created which would enable alleged unscrupulous attorneys to defraud the Department and, with it, the tax paying public.

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<sup>88</sup> As we have seen, the Department then generally ignores these court orders.

<sup>89</sup> Quoted by Judge Plasket, *Vumazonke (et al) v MEC for Social Development*, 2004 JOL 13361 (SE), p. 3.

<sup>90</sup> PFMA, definitions.

<sup>91</sup> PFMA, section 81(1)(b).

<sup>92</sup> ‘Scorpions sting two lawyers, R22.5m social grants scam’, *Daily Dispatch*, 18 Aug. 2005.

## 6. Performance of the Department of Social Development over the past four financial years

The remaining sections of this report will try and establish why cases of social grant litigation against the Department continue to dominate high court rolls within the province. The following sections will examine the structural and systemic problems which compromise the Department's ability to meet its mandate, as well as evaluating the Department's response to these problems.

The following section provides an overview of the performance of the Department over the last four financial years. It includes specific findings and recommendations, in regard to the administration of social grants, from the key oversight institutions of the Auditor-General and the provincial Standing Committee for Social Development.

### Department of Social Development budget by financial year

Financial Year	Total budget (R'000)	Actual Expenditure (R'000)	Variance: (over)/under expenditure (R'000)
2000/01	4 032 964	4 067 474	(34 510)
2001/02	5 343 419	4 663 013	680 406
2002/03	6 353 822	6 425 476	(71 654)
2003/04	7 838 326	8 444 747	(606 421)
<b>Total</b>	<b>23 568 531</b>	<b>23 600 710</b>	<b>(32 179)</b>

#### **2000/01**

According to the Department's Accounting Officer, during the 2000/01 financial year the Department prioritised the re-instatement of grants erroneously removed from the system. In addition, the Accounting Officer stated that the Department had prioritised the timeous processing of social grant payments.<sup>93</sup> The Department reported that it spent all of its re-registration conditional grant allocation of R8.91 million during the year under review.<sup>94</sup> However, it admitted that it overspent within Programme 2 (Social security), because of the servicing of backpay to social grant applicants.<sup>95</sup> In the Department's Annual Report for the 2000/01 financial year it acknowledged that 20 391 beneficiaries had been irregularly removed from the social grant system between 1996 and 2000. Of the 20 391 cases which had been incorrectly terminated, the Department claimed that it had resolved 8618 cases by March 2001, leaving it with a further 11 773 cases to be reviewed.<sup>96</sup>

<sup>93</sup> Eastern Cape Department of Social Development, Annual Report, 2000/01, p. 5.

<sup>94</sup> Ibid, p. 68.

<sup>95</sup> Ibid, p. 70.

<sup>96</sup> Eastern Cape Department of Social Development, Annual Report, 2000/01, p. 26.

The Auditor-General issued the Department with a disclaimer<sup>97</sup> for the 2000/01 financial-year.<sup>98</sup> In regard to the management of social grants the Auditor-General noted that:

- The Department did not maintain adequate controls over documentation relating to beneficiaries. In some instances, files submitted for auditing did not contain copies of South African identity documents or proof of income.<sup>99</sup>
- The Department was not always able to prove the existence of some beneficiaries, while in other cases beneficiaries who appeared to be deceased were still registered on the SOCPEN system.<sup>100</sup>
- Medical reports and reports from social workers could not be produced on a regular basis in order to confirm the continuation of disability grants.<sup>101</sup>

According to the Department's annual report it had an overall vacancy rate of 52 percent, with 47 percent of critical posts being vacant.<sup>102</sup>

## **2001/02**

In the 2001/02 financial year the Department spent R34 million on addressing a class action suit brought against it by beneficiaries who had had their grants erroneously cancelled. The Department argued that by the end of the year there were only 8 459 outstanding applicants.<sup>103</sup> However, the Department underspent its budget for Programme 2 (social security) by R565.98 million, or 11.5 percent.<sup>104</sup> The Department attributed this underexpenditure to the late allocation of a R450 million conditional grant from the Provincial Treasury which was intended to service social grant back-payments. According to the Department's Management report, "the under-spending did not have much impact on the core service delivery that is the disbursement of grants to disabled, child support and older persons."<sup>105</sup> It seems inconceivable that service delivery was not compromised by the Department's failure to spend R450 million, given that this amount was designated for the payment of back-pay.

The Department also underspent its budget allocation for the recruitment of personnel because it failed to undertake person to post matching during the financial year. The Department reported that it had made a subsequent "saving" of R45 million in personnel.<sup>106</sup> By the Department's own acknowledgement, the shortage of skilled

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<sup>97</sup> An audit disclaimer is a severe opinion issued when a Department's records and supporting documentation are either unavailable for audit purposes or are of such poor quality that no reasonable determination of the validity of financial transactions can be made.

<sup>98</sup> Eastern Cape Department of Social Development, Annual Report, 2000/01, p. 50.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid. SOCPEN is the Social Pension System on which the Department stores beneficiaries' details.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid, p. 8.

<sup>103</sup> Eastern Cape Department of Social Development, Annual Report, 2001/02, p. 25.

<sup>104</sup> According to the Management report however, the total underspending amounts to R638 million. See Eastern Cape Department of Social Development, Annual Report, 2001/02, p. 52.

<sup>105</sup> Ibid, p. 53. The Department was permitted to role over this conditional grant to the following financial-year.

<sup>106</sup> Eastern Cape Department of Social Development, Annual Report, 2001/02, 52.

personnel is one of its biggest constraints.<sup>107</sup> It is somewhat disingenuous of the Department to report a saving in personnel, when at the same time it acknowledges that its most serious constraint is a shortage of personnel. Given the latter, one would assume that the Department would prioritise the recruitment and retention of new and existing personnel.

The Auditor-General issued the Department with a disclaimer for the 2001/02 financial-year and listed the following shortcomings in regard to the processing of social grants:

- As in the previous year, the Department failed to produce adequate documentation to confirm the existence of beneficiaries. Despite being given the opportunity to deal with this problem, the Department failed to rectify the situation. According to the Auditor-General, the Department's failure to produce supporting documentation amounted to a breach of sections 40 (1)(a) and 41 of the Public Finance Management Act (PFMA).<sup>108</sup> He reported the matter as an act of financial misconduct in terms of section 81 of the PFMA.
- Grant types were not always captured on SOCPEN. This meant that the validity of grants and the amounts that beneficiaries were meant to receive could not always be confirmed.
- The Auditor-General also found that some beneficiaries were also registered on the Government Employee Pension Fund (GEPF), meaning that they were receiving grants as well as government salaries. In other instances, despite the fact that certain beneficiaries were deceased and registered on the Home Affairs Death Register, files showed that grants were still being paid out to them.
- When budgeted social grant expenditure was compared with actual payments made by the post office, an overstatement of R30 317 058 was recorded.<sup>109</sup>

Another issue that continued to plague the Department was its high vacancy rate which was at 50.7 percent during the 2001/02 financial-year, while the vacancy rate for critical posts was 48.78 percent.<sup>110</sup>

In its Strategic Plan for 2002-2005, the Department acknowledged that its weaknesses were caused by its chronic staff shortages.<sup>111</sup> However, the Department failed to provide an adequate plan with realistic and achievable goals and objectives in regard to addressing this problem. The Strategic Plan did, however, make reference to the need to address the social grant backlog problem. In particular, it set out time frames for the completion of the class action project.<sup>112</sup>

## **2002/03**

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<sup>107</sup> Ibid, p. 54.

<sup>108</sup> The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) (as amended by Act No. 29 of 1999) is one of the most important pieces of legislation passed by the first democratic government in South Africa. The Act promotes the objective of good financial management in order to maximise service delivery through the effective and efficient use of the limited resources.

<sup>109</sup> Eastern Cape Department of Social Development, Annual Report, 2001/02, p. 57-58.

<sup>110</sup> Ibid, p. 8.

<sup>111</sup> Eastern Cape Department of Social Development, Strategic Plan, 2002-2005, p. 10.

<sup>112</sup> Ibid, p. 42.

In this financial-year the Department overspent its budget allocation of R6.35 billion by R71.65 million, or 1.13 percent.<sup>113</sup> Programme 2 (social security) was the largest contributor, overspending its budget by R76.04 million.<sup>114</sup> The Department attributed the overspending to inadequate budgeting during the financial-year.<sup>115</sup> In regard to administering social grants, the Department reported that it had finally completed the class action project. It reported that 9266 grants were reinstated, while a further 3535 beneficiaries received back pay at a cost of R43 million.<sup>116</sup> In addition, a total of 307 000 beneficiaries were re-registered, while 7300 grants were suspended due to the failure of beneficiaries to re-register.<sup>117</sup>

In terms of Regulation 11,<sup>118</sup> all grants approved between 1 April 1998 and 1 December 2001 were entitled to back-pay. The Department had received a conditional grant of R443 million in order to service back-pay. However, it underspent this conditional grant by R208.67 million, or 46 percent, and a rollover for this amount was again requested. Despite receiving a significant conditional grant to address backlogs, it is concerning that the Department once again grossly underspent this grant, which resulted in more than 40 000 beneficiaries not being awarded their back-pay.<sup>119</sup> This failure by the Department to properly spend this grant probably explains why litigation cases continued to be brought against the Department during the year under review.

The Head of Department again observed that the shortage of skilled personnel within the Department was a major constraint. Overall the Department had a vacancy rate of 51 percent. The Department's annual report stated that "the inadequate provision of critical components like social workers undermines the delivery capacity of the department and often results in litigation and court cases due to failure to render statutory services."<sup>120</sup>

The Department's commentary on the shortage of social workers contradicts its reporting in its annual report. According to the Department's organogram there were 561 permanent and 12 temporary social worker positions. Of this, the Department claimed to have filled 558 positions, and all of its temporary positions. This means that the Department was reporting that 99.5 percent of its social worker posts were filled. The Department attempts to explain this apparent contradiction by noting that "the number of approved posts reflected...is not necessarily a true reflection of the current state of affairs as at the time of writing the department was engaged in the process of reviewing its organogram."<sup>121</sup> Despite this acknowledgement it would appear that the Department had no clear idea of the extent of its capacity problems.

The Auditor-General issued the Department with a qualified audit opinion for the 2002/03 financial year which represented an improvement on the disclaimers that it had received

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<sup>113</sup> Eastern Cape Department of Social Development, Annual Report, 2002/03, p. 65.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid, p. 74.

<sup>116</sup> Ibid, p. 20.

<sup>117</sup> Ibid, p. 19.

<sup>118</sup> According to National Social Development Minister, Zola Skweyiya, Regulation 11 of the Social Assistance Act was amended "so that the accrual date of benefits is from the date of application and the three-month limitation on back pay is discarded." See Speech by Dr Zola Skweyiya, Minister for Social Development at the launch of the norms and standards project to improve the delivery of social security, Centurion, 6 August 2001 and Social Assistance Act, 2004.

<sup>119</sup> Eastern Cape Department of Social Development, Annual Report, 2002/03, p. 20.

<sup>120</sup> Ibid, p. 55.

<sup>121</sup> Ibid, p. 95.

in 2000/01 and 2001/02.<sup>122</sup> He did, however, voice his concerns about the continuing lack of internal control over social security files. The Auditor-General noted that:

- Proof of the existence of beneficiaries was not obtained on a regular basis.
- Identity documents could not always be produced.
- Grants were not verified by the second attesting officer after initial approval.
- Documentations detailing the re-assessment of disability grants after the initial approved period could not be produced for audit purposes.

In essence, these are the same issues as those raised by the Auditor-General in the 2001/02 financial year, which means that the Department had not properly addressed the Auditor-General's previous queries.

The Standing Committee made the following recommendations in regard to social grants at its hearings held in November and December 2003:

- The Department was instructed to fast track back-payments to beneficiaries, and provide the Committee with a report on its progress by 30 January 2004.<sup>123</sup>
- The Department was instructed to ensure that systems were in place to prevent future litigation.<sup>124</sup>

The Committee also instructed the Department to work on a staff retention strategy, and update the Committee on progress in this regard by 31 December 2004.<sup>125</sup>

## **2003/04**

The Department's budget increased from R6.36 billion in 2002/03 to R7.84 billion in 2003/04. Despite this increase, the Department overspent its budget by R606.42 million, or 7.74 percent.<sup>126</sup> Programme 2 (social security) was again the most significant contributor, overspending its budget by R588.79 million, which amounted to 96.6 percent of the Department's total overexpenditure.<sup>127</sup> According to the Department, it implemented the following measures to improve the administration of social grants:

- It established a centralised filing system in order to streamline the processing of beneficiary grant applications.<sup>128</sup>
- It improved its processing time for applications and grants which, it claimed, were now processed within the required 90 days.<sup>129</sup>

According to the Department, these changes contributed to an increase in the uptake of disability grants.<sup>130</sup> The Department's management report noted that litigation against the Department had been reduced as a result of improving the processing time of

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<sup>122</sup> Eastern Cape Department of Social Development, Annual Report, 2002/03, p. 59.

<sup>123</sup> Resolutions/recommendations affecting the Department of Social Development, 2 Dec. 2003, p. 276.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid, p. 277.

<sup>126</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 97.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid, p. 34.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid, p. 35.



applications.<sup>131</sup> In addition, the report stated that the Department had set itself a number of objectives to try and accelerate service delivery. These included:

- The intensification of the drive to register Child Support Grants.
- The elimination of grant application backlogs.
- The implementation of an electronic file management and work flow tracking system.
- The establishment of help desks at all pay points.
- The successful combating of fraud.
- Improved service provider management of social grant payment contractors.
- The reduction of litigation cases against the Department.<sup>132</sup>

The Auditor-General issued the Department with an unqualified audit opinion for 2003/04.<sup>133</sup> However, without further qualifying his opinion, the Auditor-General drew attention to the Department's inability to ensure adequate internal controls. He pointed out the following issues:

- The lack of control over social security files has led to the periodic unavailability of identity documents, the existence of eligible beneficiaries who are not confirmed on a regular basis and grants not always verified by a second attesting officer. According to the Auditor-General, this could lead to the possibility of monetary loss. Given this, the Auditor-General stated that an audit team was in the process of conducting a forensic audit of disability grant files.<sup>134</sup>

These findings indicate that the Department is unable to account for each of the thousands of beneficiaries who receive social grants. This situation could lead to eligible beneficiaries having their grants cancelled due to poor document management, leading to subsequent litigation. It also creates an environment which exposes the Department to the real possibility of social grant fraud.

The Standing Committee on Social Development made the following recommendations in December 2004:

- As the Department had underspent its Child Support Grant by 22 percent the Standing Committee instructed it to intensify its Child Support Grant registration campaign and furnish the committee with progress reports by the end of January 2005.<sup>135</sup>
- The Standing Committee found that communication between the Department and beneficiaries was inadequate and it instructed the Department to improve its communication strategies through direct contact with beneficiaries via correspondence in the relevant language at imbizos or constituency offices.<sup>136</sup>

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<sup>131</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04., p. 67.

<sup>132</sup> Ibid, p. 64.

<sup>133</sup> Ibid, p. 74. An unqualified audit opinion is a favourable opinion issued where the financial statements of a Department fairly represent its financial situation.

<sup>134</sup> Ibid, p. 75.

<sup>135</sup> Resolutions/Recommendations affecting the Department of Social Development, 13 December 2004, p. 2.

<sup>136</sup> Ibid, pp. 2-3.

As in the 2002/03 financial year, the committee again instructed the Department to work on a staff retention policy in order to attract and retain personnel. The Department was ordered to provide the committee with this policy by the end of January 2005.<sup>137</sup>

In the 2003/04 financial year the Department reported an overall vacancy rate of 51.6 percent, while vacancies for social worker and related posts were reported at 44.2 percent.<sup>138</sup>

## 7. The Interim Management Team (IMT) report

In 2002 President Thabo Mbeki deployed an Interim Management Team (IMT) to the Eastern Cape in order to investigate maladministration and corruption in the province.<sup>139</sup> The Department of Social Development was one of four departments chosen by the IMT because of its persistent spending problems and service delivery failures.

### **Key Challenges**

The IMT identified a number of key challenges which faced the Department of Social Development in the province.

- *Finance and administrative issues:* The report highlighted the Auditor-General's comments concerning the Department's lack of financial management, poor internal controls and administrative capacity. According to the IMT, controls were deemed to be especially weak at the district office level which was being plagued by a lack of skilled staff and incapacity. The IMT stated that there was a poor relationship between the financial and administrative functions of the Department. For example, districts were not involved in the resource allocation process while it was not always clear how budgets were allocated to programmes. This was worsened by the unreliability of the SOCPEN system and poor and inaccurate record keeping.<sup>140</sup>
- *Human Resources:* Apart from the fact that many staff members were inadequately trained, the Department was also struggling with overall staff shortages.<sup>141</sup> According to the IMT report, the vacancy rate (at the time of its investigation) was 51 percent. This meant that the beneficiary to staff ratio was 1:2900 compared to an average ratio in other provinces of 1:1700.<sup>142</sup> The IMT found that a number of human resource plans were not in place, including a human resource plan, skills development plan, employment equity plan and a strategy to retain and attract professional staff. Little appears to have been done two years later, when the Department reported a 51.6 percent vacancy rate.<sup>143</sup>
- *Leadership and Management:* The IMT report found that the Department had been led by acting Heads of Department for a long period of time and that it had operated

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<sup>137</sup> Resolutions/Recommendations affecting the Department of Social Development, 13 December 2004, p. 3.

<sup>138</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 113.

<sup>139</sup> Report: Work of the Interim Management Team: Eastern Cape, November 2002 – March 2004, p. 122.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid, p. 123.

<sup>142</sup> Ibid.

<sup>143</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 16.

without a Chief Financial Officer, financial manager and head of Corporate Services. It also found that top management were dealing with matters that should be dealt with by programme managers and staff. This was worsened by the fact that programme management capacity was lacking. In addition to these problems, there were poor linkages between planning and implementation processes as well as the integration of planning and budgeting.<sup>144</sup>

- *Service Delivery Backlogs:* The IMT stated that one of the most significant challenges that the Department faced was in regard to service delivery backlogs. For example, despite setting a target of processing 803 483 Child Support Grants by the end of 2003, the Department only managed to capture and verify approximately 371 556 applications by the end of 2003. This means that it fulfilled less than half of its target.<sup>145</sup>

The IMT suggested a number of turnaround strategies:

- Firstly, it stated that the Department should fast-track critical interventions that would stabilise service delivery. For example, the elimination of backlogs, the intensification of the Child Support Grant registration campaign and the combating of fraud and corruption.<sup>146</sup>
- The Department was also ordered to “radically” improve front-end service delivery, while strengthening the “back office” to improve service delivery. The rationale behind this was that the responsibility for filing and processing would be removed from the “front end” which would allow the latter to concentrate on improving service delivery.<sup>147</sup>

According to the IMT report, the Department has made progress in a number of areas, including establishing a grants processing centre, improving the management of information, addressing fraud and corruption and reducing litigation.<sup>148</sup> However, if one considers that in the 2003/04 financial year the Department of Social Development incurred litigation costs of R20 million,<sup>149</sup> up from R5 million in 2002/03,<sup>150</sup> it seems that the IMT’s conclusion in regard to litigation costs is somewhat questionable.

## 8. Key Problems

The preceding section has provided a broad overview of the Department’s performance over the last four financial years. The following sections will focus, in detail, on specific issues which have hindered its ability to meet its mandate in terms of the delivery of social grants.

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<sup>144</sup> Report: Work of the Interim Management Team: Eastern Cape, November 2002 – March 2004, p. 124.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid, p. 125.

<sup>147</sup> Ibid, p. 126.

<sup>148</sup> Ibid, p. 129.

<sup>149</sup> ‘Litigation costs Bhisho R20m’, *Daily Dispatch*, 15 February 2005.

<sup>150</sup> Resolutions of the Standing Committee on Social Development, 19 Nov. 2003, pp. 275 – 6.

## 8.1 Staffing difficulties

Many of the problems that hamper the Department's ability to fulfill its mandate are caused by the fact that it is chronically understaffed. Between 2000/01 and 2003/04 the Department received a cumulative personnel budget of R714.53 million, of which it has spent R701.54 million, or 98.18 percent. Despite spending most of its personnel budget, the Department has continued to struggle with an average 50.93 percent vacancy rate over the past four financial years.<sup>151</sup>

Financial year	Personnel budget (R'000)	Expenditure (R'000)	Variance (R'000) Under/(over)	Vacancy rate
2000/01 <sup>152</sup>	143 853	139 768	4 085	52 % <sup>153</sup>
2001/02 <sup>154</sup>	169 764	159 571	10 193	50.7% <sup>155</sup>
2002/03 <sup>156</sup>	192 055	192 057	(2)	51% <sup>157</sup>
2003/04 <sup>158</sup>	208 860	210 147	(1 287)	50% <sup>159</sup>
<b>Total</b>	<b>714 532</b>	<b>701 543</b>	<b>12 989</b>	<b>50.93%</b>

There is clearly a desperate need for the Department to address its debilitating staff shortages. The Department must, as a matter of utmost urgency, produce a comprehensive and realistic staff recruitment and retention strategy. Such a strategy should be properly costed and fully resourced. This means that the Department must motivate vigorously with the provincial Treasury for extra resources, if it can prove that its existing personnel budget is unable to meet the Department's current personnel needs. The Department has recently admitted that it has a 72 percent vacancy rate in terms of social workers.<sup>160</sup> Given the central role that social workers play in the processing and approval of social grants it is vital that the Department focuses its energies on recruiting more social workers. In conjunction with the national Department of Social Development, the Department should investigate whether the payment of rural incentives to social workers is likely to result in a reduction in its social worker vacancy rate. In addition, the Department should negotiate with educational institutions responsible for the training of social workers to try and encourage newly qualified social workers to enter the employ of the provincial Department of Social Development.

<sup>151</sup> See Eastern Cape Department of Social Development, Annual Reports, 2000/01, p. 68; 2001/02, p. 77; 2002/03, p. 65; 2003/04, p. 84.

<sup>152</sup> Eastern Cape Department of Social Development, Annual Report, 2000/01, p. 68.

<sup>153</sup> Ibid, p. 8.

<sup>154</sup> Eastern Cape Department of Social Development, Annual Report, 2001/02, p. 77.

<sup>155</sup> Ibid, p. 7.

<sup>156</sup> Eastern Cape Department of Social Development, Annual Report, 2002/03, p. 65.

<sup>157</sup> Ibid, p. 94.

<sup>158</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 84.

<sup>159</sup> Ibid, p. 16.

<sup>160</sup> 'Massive number of top State jobs waiting to be filled', *The Herald*, 12 Sept. 2005.

A further serious staffing problem which delays the processing of social grants is the chronic shortage of doctors within the public health sector in the Eastern Cape. The provincial Department of Health recently admitted that it had only 861 in its employ despite having 1865 approved posts for permanent doctors.<sup>161</sup> This shortage hampers the processing of social grants because there are too few doctors to assess social grant beneficiaries. Evidence also suggests that existing doctors are contemplating leaving the public service because they believe that they spend a disproportionate amount of their time assessing social grant applicants.<sup>162</sup> For this situation to be resolved the Department of Health obviously needs to make every effort to try and resolve its own staffing difficulties.

It is obvious that the provincial Department of Social Development will only be able to fast-track social grant payments, and deal with payment backlogs, if it is properly capacitated.

## **8.2 Leadership crisis**

Between January 2005 and June 2005 three different MEC's have been appointed to the Department of Social Development, with MEC Christian Martin in this position for barely two months before being replaced by the current MEC, Tokozile Xasa. Both Martin and his predecessor, Neo Moerane-Mamase, had committed themselves to a number of policy initiatives aimed at dealing with the problems experienced by the Department. In particular Moerane-Mamase had publicly vowed to deal with the problems surrounding litigation against the Department.<sup>163</sup> Martin, in turn, had promised to properly address the Department's lack of capacity with a special focus on the Department's shortage of social workers.<sup>164</sup>

As the political head of the Department, the MEC is responsible for:

- Drawing up a strategic plan that sets measurable objectives for the Department and which ensures that services are provided efficiently and effectively;
- Appointing and evaluating the performance of the Head of Department;
- Ensuring that misconduct and inefficiency is adequately addressed;
- Ensuring that the Department remains within its budget and spends all its funds;

The performance of an MEC is evaluated against his/her ability to meet these requirements and responsibilities. There can be little doubt that the constant changing of MEC's undermines the Department's ability to tackle the problems that it faces. This is because each new MEC identifies new policy objectives which mean that the Department, and its staff, have to constantly realign their agendas and priorities. In addition, the Department has also experienced the departure of two Superintendent generals in the past eight months, Namhla Dekeda and Kalipile Mabentsela. The current MEC has also recently suspended the acting Head of Department, Jackson

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<sup>161</sup> 'Critical shortage of doctors in E Cape,' *Daily Dispatch*, 28 Sept. 2005.

<sup>162</sup> 'Unhappy EC doctors may quit,' *Daily Dispatch*, 29 Sept.. 2005.

<sup>163</sup> Neo Moerane-Mamase, Department of Social Development Stakeholder meeting, East London, 14 February 2005

<sup>164</sup> 'Martin promises more social workers, pay rise', *The Herald*, 10 March 2005.

Mbawuli, for alleged maladministration and corruption.<sup>165</sup> The Department currently has an acting Head of Department and an acting Chief Financial Officer. If it is to improve its service delivery capacity, the Department has to ensure that it develops strategies that would ensure a lower turnover rate amongst senior administrative staff and senior leadership.

A strong and effective leadership is absolutely crucial for the efficient management of the Department. Stability is especially crucial in light of the Department's shift in focus from welfare to development. In addition, strong leadership will be essential in order to manage the changes that will occur when the South African Social Security Agency (SASSA)<sup>166</sup> takes over the administration of social grants in the province.

### **8.3 Strategic Planning**

Strategic Planning is a crucial component of the Department's preparation for each financial year. Strategic plans need to contain accurate information on the service delivery environment and challenges faced by the Department, and need to calculate the human, financial and material resources that the Department requires in order to address the needs of its clients. It is, therefore, essential that the Department carries out regular needs analysis exercises to quantify exactly how many citizens within the province need social grant assistance from the Department.

In the past, evidence of proper needs analysis had been lacking in the Department's strategic planning. In the 2002/03 financial year, the Department provided an historical account of the subjugation of the people of the province by the previous government. The plan failed, however, to include a thorough needs analysis detailing the extent of the demand for the services of the Department. For example, it did not provide any information on the number of social grant beneficiaries that were registered or an estimate of those that still required assistance.<sup>167</sup> In the 2003/04 Strategic Plan, the Department stated that it carried out a SWOT analysis to identify its strengths and weaknesses. However, there was again, no evidence in the Department's strategic plan to suggest that it had carried out a proper needs analysis.<sup>168</sup>

In the Strategic Plan for 2004/05 the Department gives details of the province's situational profile at the back of the strategic plan. For instance the Department provides current aggregated demographic statistics on the province including the number of unemployed people as well as those living under the poverty line. While an improvement on previous years', such information is of little practical value unless it is used to calculate the likely demand for social grants within the province.<sup>169</sup> Finally, in the 2005/06 Strategic Plan, the Department again provides only demographic statistics. However, given the importance of the shift in emphasis that the Department is set to experience with the takeover of the SASSA it is concerning to note that the Department seems to have no direct plans relating to this change in its function.

A further issue that affects the Department's performance is the fact that activities it sets out for itself over the Medium Term Expenditure Framework (MTEF) period are often not

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<sup>165</sup> 'Xasa suspends two top officials', *Daily Dispatch*, 14 July 2005.

<sup>166</sup> See conclusion for a description of the Agency and its likely functions and difficulties.

<sup>167</sup> Eastern Cape Department of Social Development, Strategic Plan, 2002-2005, p. 9.

<sup>168</sup> Eastern Cape Department of Social Development, Strategic Plan, 2003-2006, p. 13.

<sup>169</sup> Eastern Cape Department of Social Development, Strategic Plan, 2004-2007, pp. 90-94.

properly costed and time-bound within the Department's strategic plans. This has the effect of making it very difficult for the Department to monitor the progress of its plans during the course of each financial year which often results in the delivery of poor and inadequate services. In some instances, strategic plans list challenges that could affect the Department's ability to deliver on its mandate, but the Department fails to specify plans to address these problems. For example, the 2002 – 2005 plan provided a SWOT analysis which listed numerous weaknesses such as staff shortages, poor control measures, a lack of accurate information, poor record keeping, poor customer care and inadequate management capacity. However, the plan fails to include any steps to address these shortcomings.<sup>170</sup> The plan also included spending figures from previous years, and compared these with the MTEF budget projections by programme. The plan did not however, compare spending figures from previous years against the actual budgets for those years.<sup>171</sup>

There is, therefore, no evidence to suggest that the plan had been reconciled with previous budgetary information or that the Department had conducted a thorough investigation into the causes for over and underspending in order to inform its spending for the following financial year. The same shortcomings were evident in the 2003 – 2006 Strategic Plan.<sup>172</sup> Only by properly planning, and vigorously monitoring the delivery of its plans, can the Department hope to address its long-term systemic problems.

#### **8.4 Accountability to oversight institutions**

In terms of section 115 (a, b and c) of the Constitution, a committee of a Legislature can

- i) summon any person to appear before it to give evidence, or produce documents.
- ii) require any person or provincial institution to report to it.

According to the Standing Rules of the Eastern Cape section 63, standing committees must:

- i) ensure that all provincial executive organs of state in the province are accountable to it
- ii) monitor, investigate, enquire into and make recommendations, relating to the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of the Provincial Department, organs of state or Departments falling within the category of work assigned to the committee.<sup>173</sup>

The Auditor-General plays a similar oversight role as a supporting government institution. According to section 188 1(a) of the Constitution, the role of the Auditor-General is to audit and report on the accounts, financial statements and financial management of

- a. all national and provincial state departments and administrations;
- b. all municipalities; and
- c. any other institution or accounting entity

<sup>170</sup> Eastern Cape Department of Social Development, Strategic Plan, 2002-2005, p. 10.

<sup>171</sup> Ibid, p. 81.

<sup>172</sup> Eastern Cape Department of Social Development, Strategic Plan, 2003-2006.

<sup>173</sup> Standing Rules of Procedure of the Eastern Cape Provincial Legislature, p. 36.

Both the Auditor-General and Standing Committee have repeatedly identified problems relating to the administration of social grants over the past four financial years. For example the Auditor-General has raised the issue of inadequate control over documentation relating to social grant applicants and beneficiaries every year since the 2000/01 financial year. Although the Standing Committee had urged the Department to prioritise its staff recruitment and retention policy, the fact that it is still struggling with a 50 percent vacancy rate is an indication that this remains a problem. This indicates an unwillingness or inability on the part of the Department to deal with the problems identified by oversight bodies. However, it is within the power of the Standing Committee and the Legislature to force the Department to properly address these concerns.

The rules of the Legislature state that if a resolution or recommendation from a Portfolio Committee has not been implemented the relevant MEC must report in writing to the Speaker of the Legislature within 30 days stating:

- the reasons for not implementing the resolution or recommendation;
- the steps undertaken to implement the resolution or recommendation; and
- the planning to implement the resolution or recommendation.<sup>174</sup>

This process exists to ensure that recommendations that are before the Legislature are effectively implemented. It is deeply worrying that the Department has not implemented the recommendations of the Legislature. However, the Legislature rules themselves note that “in order to secure the integrity of the House and to comply with the Constitutional duties of the Legislature” the House may, on the recommendation of the relevant Portfolio Committee, instruct an MEC to implement resolutions and recommendations.<sup>175</sup> The only conclusion that can be drawn is that the House (i.e. the Legislature as a whole) has been unwilling to exercise its full powers over the MEC.

## **9. Departmental Response**

The following section describes the Department’s response to the problems that continue to plague the delivery of social grants in the Eastern Cape.

### ***9.1 Response to recommendations from IMT***

In its 2003/04 annual report, the then head of Department for Social Development, Mr. Mabentsela, stated that the Department had integrated the turnaround strategy proposed by the IMT into its departmental strategic and operational plans. According to Mr. Mabentsela, in order to make the best possible use of allocated resources the Department had to select only those turnaround plans that were “critical priorities.”<sup>176</sup> However, it is clear that the Department could only focus on selected parts of its turnaround plan because of a lack of resources.

It is important to remember that the Department was required to fund the turnaround strategy from its own budget. The predicted costs for the implementation of the turnaround strategies were estimated to be R432 million over the three year MTEF period. This meant the allocation of suitable resources for the implementation of the

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<sup>174</sup> Standing Rules of Procedure of the Eastern Cape Provincial Legislature, section 203.

<sup>175</sup> Ibid, section 204.

<sup>176</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 5.



strategy and the prioritising of funding for this process. According to the IMT, the Department itself was expected to fund the turn-around strategies. However, the IMT acknowledged that only R29.9 million was probably going to be forthcoming from the Department unless it under spent during the 2003/04 financial year.<sup>177</sup> The then MEC for Social Development, Neo Meorane-Mamase confirmed the budget shortfall in her policy speech for 2003/04 when she remarked that “regrettably” the budget for her Department fell short of what was necessary for the department to make a “full turnaround of the social grant administration as envisaged in the IMT plans.”<sup>178</sup>

In a discussion document created by the Department in response to the IMT report the Department noted its achievements during the 2004/05 financial year. These were:

- The completion of seven multimedia centres at front Office Service Centres.
- The registration of 52 566 Child Support Grant Beneficiaries between the ages of nine and eleven.
- The construction of two pay points.
- The rollout of performance management and development systems to all 24 area offices.
- The implementation of a Contract Management Centre.
- The completion of work with the private sector on partnership programmes.

The Department, however, also pointed out a number of challenges that it experienced in regard to the implementation of turnaround strategies. According to the Department, it continued to have problems in the following areas:

- It continued to have critical staff shortages.
- It experienced problems in regard to infrastructure provision.
- It argued that it could not always offer competitive remuneration packages which resulted in high staff turnover rates, especially among social workers.
- It argued that limited resources impacted on poverty eradication and HIV/AIDS strategies.

The Department noted in its 2003/04 annual report that it incurred overspending due to the implementation of IMT projects because no additional money had been set aside for the implementation of these projects. It noted in particular that it overspent its budget for administration by some R25.7 million due to IMT turn-around policies.<sup>179</sup> However, it is clearly not overspending within administration that prevented the Department from properly implementing IMT turn-around plans. In the 2002/03 financial year the Department overspent its budget by R71.65 million, and in 2003/04 it overspent by R606.45 million. This overspending is essentially the result of poor planning and financial mismanagement. What this means is that if the Department had planned properly and submitted realistic cost estimates to the provincial Treasury, and received adequate funding based on those estimates, it is probable that the Department would have had the necessary resources to implement all the IMT’s turn-around plans. It is somewhat disingenuous of the Department to simply claim that a lack of funding meant it could not properly implement its turn-around strategies, when the Department itself has

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<sup>177</sup> Report: Work of the Interim Management Team: Eastern Cape, November 2002 – March 2004, p. 131.

<sup>178</sup> MEC for Social Development, Neo Moerane-Mamase, Policy Speech 2003/04, p. 4.

<sup>179</sup> Eastern Cape Department of Social Development, Annual Report, 2003/04, p. 91.

been one of the main contributors to the current financial deficit being experienced by the provincial administration.

## **9.2 SDIMS Centre**

Despite funding difficulties the Department has managed to implement a Social Development Information Management System (SDIMS) Centre in line with the recommendations of the IMT.

The Department identified a number of challenges and problems that the Centre was meant to address. These include the Department's overall inefficiency, litigation cases brought against it due to delays in the processing of applications, lost application forms and the Department's inability to access key information.<sup>180</sup> In order to evaluate the efficiency and effectiveness of this Social Development initiative, the new Centre was examined by representatives of the PSAM and an interview was carried out with Mark Rasmussen, Provincial Deputy Director of Social Security.<sup>181</sup>

According to Mr. Rasmussen, one of the major objectives of the centre was to remove key administrative functions from district offices. He suggested that most delays experienced by the Department of Social Development were caused by its decentralized method of data collection. Under the SDIMS files were to be centralised, organised and recorded on a database to be managed by the Centre. Rasmussen noted that a file management system was being implemented which would control this process, and hopefully result in each district office being able to operate a standard electronic filing system. Despite this innovation, files are still delivered to the Centre, where they are sorted and stored manually. Mr. Rasmussen claimed that the Centre was able to monitor "from a distance" and can, at any time, trace the exact location of a file as well as the details of the person that was last responsible for managing it. In terms of addressing the problem of corruption, Mr. Rasmussen stated that the new system had a built in application validation system which alerted users of possible fraudulent activity. He also stated that the system had already delivered a number of successes in regard to detecting and rooting out corruption. The completion date for the implementation of the SDIMS system had been set for the end of March 2005 and Rasmussen suggested that all problems, including litigation, would be dealt with by the end of June 2005.<sup>182</sup>

While noting efficiency gains with the new system, Mr. Rasmussen acknowledged that there had been, and continues to be, a number of problems with the new system. Mr. Rasmussen stated that the implementation of the system had been delayed due to resistance from certain officials within the Department. He observed that this necessitated a significant amount of training, as well as "hand holding" during the implementation phase. Mr. Rasmussen also noted that certain districts were experiencing difficulties because the system was so reliant on telephone connectivity and electricity supplies which, in some districts, were unreliable.

When these problems occur, offices in rural areas have to complete application forms manually, leaving room for error. In responding to questions surrounding the continuing

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<sup>180</sup> Management Information System, Department of Social Development, Eastern Cape [www.socdev.ecprov.gov.za/managment\\_information\\_system/background.htm](http://www.socdev.ecprov.gov.za/managment_information_system/background.htm)

<sup>181</sup> Interview with Mark Rasmussen, Director of Social Security, SDIMS Centre, East London, 11 February 2005.

<sup>182</sup> Ibid.

problem of litigation Mr. Rasmussen suggested that litigation was a “pre SDIMS “ issue and that with SDIMS it was impossible for files to go missing. According to Rasmussen, the cases that are presently before the courts are ones that had “fallen through the cracks” prior to the establishment of the Centre. He suggested that these files went missing while the old system was in use and argued that it would be impossible to calculate the extent of the problem until they have been brought to the Centre’s attention.

In a subsequent conversation with Mr. Rasmussen<sup>183</sup> regarding the challenges facing the Department, he stated that there had been a number of improvements in regard to the social grant application process. According to Mr. Rasmussen, the Department has management to improve its turnaround time for the processing of social grant applications to 71 days. He also stated that the Department had managed to produce over 98 percent of required files and documentation during the 2004/05 financial year. However, he acknowledged that some problems which could lead to litigation against the Department still remain. In particular, Mr. Rasmussen identified the issue of notification as a continuing problem. Despite the fact that all social grant notification letters were sent out by registered mail, Mr. Rasmussen claimed that between 60 and 70 percent of them were sent back undelivered by the post office as beneficiaries did not come forward to collect them.

He also suggested that the State Attorney’s office was continually under pressure due to a shortage of staff. This, according to Rasmussen, was exacerbated by the fact that attorneys for social grant applicants often sent letters demanding the Department react to their requests within 10 days which did not give the Department adequate time to respond. Mr. Rasmussen noted that despite these problems the Department was intent on reducing litigation. He suggested that the Department was considering going door to door in order to hand deliver letters of notification. In addition, he stated that the Department was considering employing radio broadcasts to inform people where to go or who to contact if they experience problems with their social grants.

### **9.3 Staffing**

The Department has provided the PSAM with a draft version of its Human Resources Plan. The plan states that the Department will give priority to measures which will “strengthen service delivery, fast track change management, implement the HR training plan and facilitate the transfer of skills from all contracted consultants to employees in the organisation.”<sup>184</sup> The Department has developed a new organogram which provides for 3197 posts of which 2632 are currently filled. This organogram makes provision for the following:

- The strengthening of the leadership structure.
- The creation of posts for professional social workers and community development officers.
- The proper staffing of existing, and newly established, Community Development Centres.
- The integration of planning with demographic information.

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<sup>183</sup> PSAM presentation to the MEC for Social Development, Bhisho, 30 August 2005.

<sup>184</sup> Eastern Cape Department of Social Development, Draft Human Resources Plan, 2006-2010, Draft Document, p. 22.

- The strengthening of area offices/community development centres in line with the Department's service delivery model.<sup>185</sup>

The draft plan states that one of the Department's key concerns is the fact that it is currently short of 781 social workers. The plan notes that the Department will make a greater effort to train staff, develop "learning networks" with academic institutions and improve employee wellness programmes. In relation to social workers in particular, the plan states that the national Department of Social Development was busy implementing a staff recruitment and retention strategy.

Despite this plan, doubts remain as to the ability of the Department to actually improve its staffing predicament given its current budgetary difficulties in relation to personnel. In the Human Resources Plan the Department notes that its "limited budget meant no additional social workers could be appointed, neither could the department provide for social worker salary increases needed to retain critical personnel in the area of service delivery."<sup>186</sup> In this regard the plan acknowledges that R35 million will be needed to simply fill current vacant critical posts. It also notes, however, that over the MTEF period the Department's personnel budget "is inadequate." It argues that this is so because of outstanding issues that "have never been adequately catered for in the budget."<sup>187</sup> In particular, it highlights the problem of the payment of personnel benefit backlogs that consume part of its personnel budget.

What this problem illustrates again, however, is the Department's poor planning and weak financial management. If the Department had properly managed its personnel budget and made all payments timeously then it would not need to meet unbudgeted commitments in each new financial year. Once again, evidence is produced which demonstrates that poor planning is responsible for the current litigation that the Department faces.

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<sup>185</sup> Eastern Cape Department of Social Development, Draft Human Resources Plan, 2006-2010, Draft Document, pp. 23-24.

<sup>186</sup> Ibid, p. 25.

<sup>187</sup> Ibid, p. 49.

## 10. Front end delivery problems

One of the problems that appears to have contributed to the current litigation crisis is the Department's focus on back-office support improvements to the detriment of improving services at the actual point of service delivery. The following interviews with Social Development staff at district and area level illustrate this apparent neglect.



**Delivery unit at SDIMS centre: Files received from district offices**

### ***Interview with Deals House District Representative***

At the time of the interview with Mrs. Van der Sand, the district representative at Deals House, East London, problems were being experienced with the SDIMS system which was causing delays in the processing of social grants. In addition, it appears that most of the office staff were unavailable during lunch hours as the office was deserted, aside from a few grant applicants, from 1pm to 2pm. According to the district representative, Mrs. Van der Sand, the system experienced failures on a weekly basis. Mrs. Van der Sand stated that the actual processing of disability grants was the chief cause of delays. She contended that the shortage of doctors in the Eastern Cape had been largely responsible for delays, and particularly affected temporary disability grant holders who had to be re-examined on an annual basis. She noted that some applicants had been waiting to see a doctor since November 2004. Despite Mark Rasmussen's reassurances that the system was working well and that there are no major problems, Mrs. Van der Sand indicated that there was a problem with the "transport function" which is used when files are delivered to the Centre for storage. This, she claimed, had resulted in both the district and area offices having to manually record details concerning the transportation of files.

Mrs. Van der Sand also remarked that communication between different offices was inadequate. She also stated that there were a number of ongoing IT problems with the system. For example, the system performance slowed depending on the number of

people that were logged on. This, she said, had a negative effect on the number of applications that could be processed on a daily basis. In addition, Mrs. Van der Sand said that the application form that was filled out by applicants did not cater for all the information that the system required. She argued that the application form needed to be appropriately amended.<sup>188</sup>

### ***Interview with Mbashe Municipality area manager***

Mr. Lusiti noted that the Mbashe area consisted of one area office, based in Idutywa, and three service centres. According to Mr. Lusiti, there was sufficient and regular contact between the area office and the Centre in East London. Mr. Lusiti stated that he attends monthly meetings with the Centre management in order to discuss issues and challenges affecting the area office. He said that the area office was doing very well and that his office was able to account for every single application.<sup>189</sup> Mr. Lusiti also assured us that this had always been the case, and could not be attributed to improvements made after the installation of the SDIMS.<sup>190</sup>

The positive picture presented by the area manager was not confirmed by the PSAM's visit to the actual service point<sup>191</sup> in Idutywa. The office was housed in a prefabricated structure which was situated on the grounds of the Health Department, and was shared with the local clinic. The service point had to function without electricity, and application forms were filled out manually. According to Mr Bambeni, a staff member at the social development service point, the electricity had been cut by the Department of Health which claimed that the Department of Social Development had not made any financial contribution towards the costs of electricity.<sup>192</sup> Due to the lack of electricity, information had to be captured manually, whereafter it is transported to another service point 30km away in Willowvale. Here it was captured electronically onto the SDIMS system. According to Mr. Lusiti, the Department was engaged in negotiations with Eskom to replace old electricity cables in an effort to improve access to reliable electricity. In a recent conversation with Mr. Bambeni, he confirmed that nothing had been done to solve the electricity supply problem. Mr. Bambeni stated that a task team, which included an assistant director from the infrastructure sector, had been sent by the Provincial Department to assess the challenges, but despite repeated commitments to address infrastructural challenges at the office, nothing had come of them.<sup>193</sup>

With the continued lack of electricity, electronic equipment like computers have been moved to the area office in Idutywa. According to Mr. Bambeni, this will go some way towards solving the problem as applications could be captured here, instead of having to go to Willowvale. However, Mr. Bambeni said that the State Information Technology

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<sup>188</sup> Interview with Mrs. Van der Sand, District office representative, Deals House, East London, 11 February 2005. The interview was conducted with Mrs. Van der Sand who was acting on behalf of the District Manager who was unavailable at the time.

<sup>189</sup> Interview with Mr. Lusiti, Mbashe Municipality area Manager, Idutywa, 16 February 2005.

<sup>190</sup> Ibid.

<sup>191</sup> The Service point is the actual office at which applications for grants are made. Service points are under the authority of the area office which oversees the running of a number of service points in a given area.

<sup>192</sup> Interview with Mr. Ntombeko Bambeni, Social Development office, Idutywa, 16 February 2005.

<sup>193</sup> Telephonic conversation with Mr. Ntombeko Bambeni, Social Development office, Idutywa, 18 July 2005.

Agency (SITA) had reportedly not arrived at the area office to install the necessary cables to connect the computers.

Mr. Bambeni also lamented the shortage in personnel, especially in regard to trained social workers. Bambeni stated that it currently took between six and twelve months to process foster care grants due to the lack of social workers. According to Mr. Bambeni, the service point's staff shortages had been brought to the attention of the Department on numerous occasions, but little had been done to address the situation. Only one social worker had been appointed in June, with more appointments being promised for July. These staff shortages mean that the office is currently serviced by only three social workers. This situation is particularly alarming given that the office receives an average of ten new social grant applications per day. Equally worrying is the fact that there is also a shortage of available doctors to assess applicants for disability grants. The lack of resources and capacity at the service centre is concerning as it is the point of contact where applicants go to apply for social grants.

The testimony of these interviewees would seem to confirm that while improvements have been made in terms of back-office support, serious limitations remain at the actual point of service delivery. It is increasingly clear that SDIMS centre will not offer a solution to the Department's social grant processing problems unless it is supported by a fully functioning service delivery model which takes into account all the various stages that an application goes through.

The IMT identified the Department's failure to properly address "front-end service delivery" issues in its second report.<sup>194</sup> This is confirmed by the Department's draft human resources plan which notes that while funds were found to address back-office initiatives "there are no funds to be unlocked to cover cost [sic] for critical front-end delivery improvement in the form of change management, communication, and key human resource management."<sup>195</sup> Given these concerns, there can be little hope of the Department resolving the current crisis of social grant litigation if it fails to address infrastructural and staffing weaknesses at the actual points of service delivery.

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<sup>194</sup> Report: Work of the Interim Management Team: Eastern Cape, November 2002 – March 2004, p. 127.

<sup>195</sup> Eastern Cape Department of Social Development, Draft Human Resources Plan, 2006-2010, Draft Document, p. 23-24.

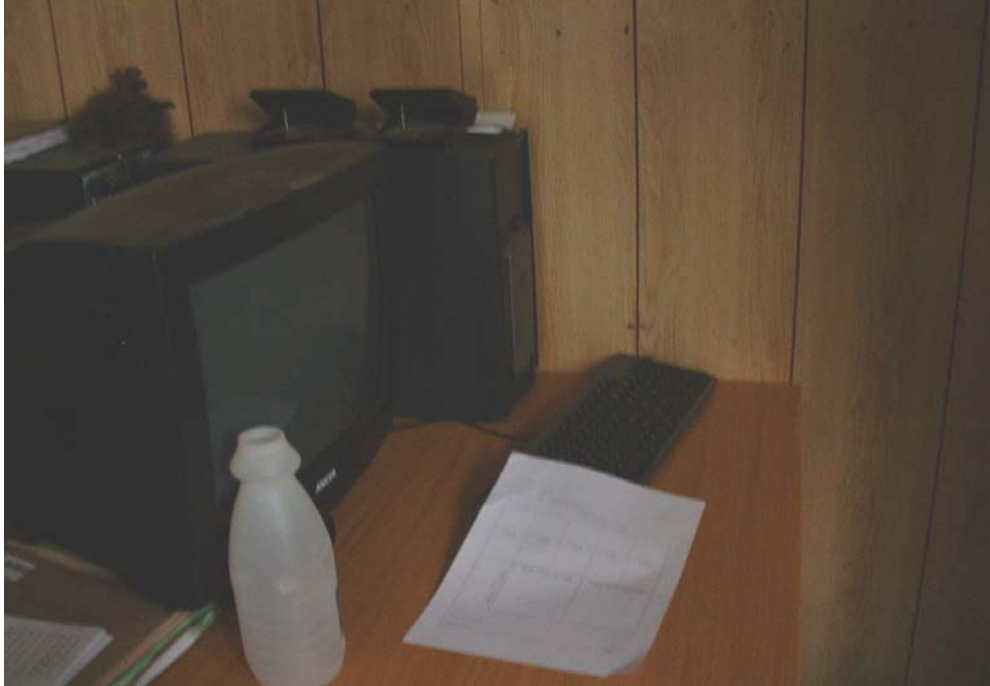


**In Idutywa grant applications have to be done manually because the electricity supply has been cut and staff are unable to make use of computers.**



**Lack of filing and storage space in the area office in Idutywa.**





**Computers sit unused at the Idutywa service point due to the lack of electricity.**





**Many applicants (including those with disabilities) have to make do with makeshift seating arrangements outside the Idutywa service point.**

## **11. The South African Social Security Agency**

In 2000 the concept of a national social security agency was mooted by government to try and overcome problems relating to the delivery of social grants. In October 2002 the national Cabinet gave approval for the agency, and in July 2003 the South African Social Security Agency Bill was drafted. The memorandum on the objectives of the Bill noted that the agency was necessary because there were “certain weaknesses” in the social grant administration and payment processes which resulted in beneficiaries “not timeously receiving assistance.” In June 2004 the South African Social Security Agency Act was passed by parliament.<sup>196</sup> This Act states that the agency will “eventually” act as the “sole agent” to “ensure the efficient and effective management, administration and payment of social assistance.”<sup>197</sup> In fulfilling this objective the agency will administer social assistance in accordance with the Social Assistance Act of 2004 and will “collect, collate, maintain and administer such information that is necessary for the administration of social grants.”<sup>198</sup>

The creation of the agency will mean that the responsibility for the administration and payment of social grants will no-longer be with provincial departments of Social Development. This obviously means that administration and payment responsibilities will have to be transferred from provincial departments to the agency. The South African Social Security Agency Act states that such a transfer should not interrupt or prejudice

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<sup>196</sup> See, N. Overy & R. Zuma, The Outsourcing of Social Security Grants in the Eastern Cape: Service delivery challenges and the problem of accountability, PSAM, 2004, pp/ 66-67.

<sup>197</sup> South African Social Security Agency Act, 2004, section 3 (a).

<sup>198</sup> Ibid, section 4 (1).

the payment of social grants and should only take place when “adequate and appropriate capacity exists to effect an effortless transfer of the social assistance administration.”<sup>199</sup>

President Mbeki announced that the new agency would take over payment of social grants in 2005.<sup>200</sup> This time frame was confirmed by Fezile Makiwanethe, the Head of Agency Establishment, who confirmed that by the beginning of 2005 all provincial functions of social assistance would be transferred to the agency. He promised that by 2006 the agency “would begin to show a real reduction in the time taken to process applications for social grants.”<sup>201</sup> However, responsibility was not transferred to the agency in 2005 as envisaged, but Makiwanethe was quoted as saying in September 2005 that he was confident that the agency would start work in April 2006.<sup>202</sup> This date is confirmed in the Eastern Cape Department of Social Development’s annual report which notes that the function of delivering social grants will be transferred to the agency from the start of the 2006/07 financial year.<sup>203</sup> It is not clear why there has been a delay in the establishment of the agency although the national minister for Social Development stated in May 2005 that the agency would only become functional in April 2006 because it needed an “opportunity to build capacity and capability.”<sup>204</sup>

Despite the imminent transfer of social grant responsibility to SASSA important questions remain unanswered concerning its ability to manage the payment of social grants effectively. Makiwanethe notes that the legislation surrounding the creation of the agency states that the Department of Social Development will still be responsible for the payment of social grants “but its role will change from service assessor rather than provider.”<sup>205</sup> However, it is not clear what role the agency will actually play in the administration of social grants in relation to existing regional structures within provinces. The legislation makes it clear that staff will be transferred from existing provincial departments to the agency, but will these staff be transferred to the agency itself or will they remain within provinces? Whatever the case may be, it is obvious that staff will have to remain within provinces to assist in the filling out of forms, the assessment of applicants and the delivery of social grant applications and data to the agency itself to process. This seems to be confirmed by Makiwanethe who argues that the agency’s “national character would not prevent it delivering services through regional structures.”<sup>206</sup> What this means in terms of the Eastern Cape is that back office support will presumably be strengthened even further but little appears to be in place to improve service delivery at the front end.

It seems that the agency has no plans to address inadequate infrastructure within the province, or chronic staff shortages in terms of social workers and doctors.<sup>207</sup> It would appear that these responsibilities remain with the Department of Social Development as the “service assessor.” Given this, the agency is not likely to offer a solution to the

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<sup>199</sup> South African Social Security Agency Act, 2004, section 24 (a-f).

<sup>200</sup> President Mbeki, State of the Nation Address, 21 May 2004.

<sup>201</sup> See, <http://www.welfare.gov.za/sassa/>

<sup>202</sup> ‘Stern corruption warning to heads of new agency,’ *The Herald*, 8 Sept. 2005.

<sup>203</sup> Provincial Department of Social Development, Annual Report, 2004/05, p. 76.

<sup>204</sup> ‘New agency to handle grant payments from April,’ *Daily Dispatch*, 15 May 2005.

<sup>205</sup> See, <http://www.welfare.gov.za/sassa/>

<sup>206</sup> Ibid.

<sup>207</sup> Fezile Makiwanethe notes that one of the objectives of the agency is to ‘involve fewer people in the process between government and grant recipient,’ see, <http://www.welfare.gov.za/sassa/>

problem of litigation against the Department of Social Development in the Eastern Cape. The report has shown that that problem is only likely to be properly overcome when required staff levels are met, infrastructural weaknesses addressed and effective communication strategies implemented.

## 12. Conclusion

In February this year the Department hosted a media briefing where the Department attempted to explain its current position in regard to social grant litigation. The meeting focussed on litigation cases brought before the Eastern Cape High Courts by grant applicants, and the costs of these cases to the Department. According to the former MEC for Social Development, Neo Moerane-Mamase, the Department had been making a concerted effort to deal with court cases, which, she claimed, has resulted in a decrease in the number of cases brought before the courts.<sup>208</sup> Moerane-Mamase claimed that the Department was aiming to eradicate a backlog of 66 000 grant applications by 31 March 2005.<sup>209</sup> Two state attorneys present at the meeting supported Moerane-Mamase's statement and argued that many cases were now being dealt with by the Department and were not going to court. The attorneys admitted, however, that their office was still being swamped with litigation cases.<sup>210</sup>

Despite these assurances High Court rolls in the Eastern Cape are still clogged with cases involving litigation between social grant applicants and the Department of Social Development. The court roll for the South Eastern Cape Local Division of the High Court (sitting in Port Elizabeth) for the week commencing on 22 August 2005, had 179 matters in which the Department of Social Development is cited as the respondent while there were 223 matters for the week starting 30 August 2005.<sup>211</sup> For the weeks commencing on the 5<sup>th</sup> and 19<sup>th</sup> of September there were a further 402 and 286 cases, respectively.<sup>212</sup>

There is little doubt that the crisis of social grant litigation in the Eastern Cape is set to continue. This report has found little evidence to suggest that the national or provincial Departments of Social Development have the capacity or resources to bring a timely halt to the social grant litigation crisis that has overtaken the provision of social assistance in the province. While the South African Social Security Agency promises to streamline the actual processing of social grants, little will change in the province if structural weaknesses relating to staff shortages and infrastructural backlogs are not speedily addressed.

In a recent social grant litigation case acting Judge Matthee was compelled to note that the response of the Department to the case had been "breathtaking" because of the Department's "failure to grasp the duties placed on them by the Constitution."<sup>213</sup> Judge Matthee's comments illustrate that the provincial Department of Social Development

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<sup>208</sup> Neo Moerane-Mamase, Department of Social Development Stakeholder meeting, East London, 14 February 2005.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> South Eastern Cape Local Division court rolls, Port Elizabeth High Court, 16 and 30 Aug. 2005.

<sup>212</sup> South Eastern Cape Local Division court rolls, Port Elizabeth High Court, 6 and 20 Sept. 2005.

<sup>213</sup> See: Mandisa Nomthunzi Violet Satula and Member of the Executive Council for Social Development and another, 859/2004, paragraph 6.

continues to disregard the human rights of citizens within the province. The whole pitiful saga of social grant litigation in the Eastern Cape has demonstrated that government officials within the Department do not understand, or have contempt for, the accountability relationship that exists between them as public officials and the citizens who they are paid to serve.

On two counts the provincial Department of Social Development has behaved, and continues to behave, in a fashion which undermines the intention of the Constitution. Firstly, in not processing social grant applications timeously and in not communicating effectively with social grant applicants the Department is not meeting its obligations in terms of just administrative action. Secondly, in ignoring court orders the Department has acted to undermine the rule of law. Section 165(4) of the Constitution states that organs of state “must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.” By ignoring court orders as it has, it cannot be said that the Eastern Cape Department of Social Development has acted in accordance with the obligations that the Constitution places upon it. Judge Plasket has argued that the actions of the Department present the danger of the Constitution’s vision not being realised in the future<sup>214</sup> while Judge Froneman argues that

If the government of the day decides to flout these Constitutional imperatives there is not much the court can do about it, except to continue to act in terms of the Constitution. But those who disregard court orders must then know that they are destroying the Constitutional democracy that enables them to govern. They then bear the responsibility for betraying the ideals of those who struggled to enable them to be where they are.<sup>215</sup>

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<sup>214</sup> C. Plasket, ‘Enforcing Judgments Against the State,’ *Speculum Juris* 17 (2003), p. 13.

<sup>215</sup> *Somyani v MEC for Welfare, Eastern Cape* (SECLD case number 1144/01).