

# Chapter 13

## Institutional Framework



### 13.1 Introduction

The term “institution” refers to more than an organisation. Institutions also refer to regularised patterns of behaviour or systems of legitimate enforceable rules embedded in social relations. The development of both institutions and organisational structures is primarily determined by the existing social, political and economic context.

Major shifts become possible, as in the case of South Africa, with changes from undemocratic to democratic forms of Government and through the introduction of a Constitution. Such shifts may preface the development of new policy, organisations and legislation that previously could not evolve due to imbalances in political and economic power. Nevertheless, the degree to which institutions and organisations change, and the manner in which they change, depends on the influence different stakeholders exercise on policy-making.

Examples occur when programmes ostensibly for the poor are starved of adequate funds or their budget are consumed by administrators. Even apparently well-intentioned efforts to support the poor can be so clouded by ignorance of the real position of the poor that they create greater obstacles:

- Means tested grants create poverty traps that penalise formal job efforts
- It is possible that support for informal sector and marginally viable production mean that effort is directed into risky and low income jobs that never lift people out of poverty

There is no simple solution. The Committee recommends that a number of mechanisms be utilised:

- The views of vulnerable and marginal groups should be sought whenever programmes are being evaluated. They can also be encouraged to participate in decision making, but it must be recognised that their representatives will be open to co-optation as a result of their vulnerability.
- Formal performance evaluation (from within departments and by external auditors) should be made publicly available.
- Periodic reviews should be held that seek to incorporate the widest possible range of local and international views.

Regarding the substance of institutional transformation, there are three important considerations. First, due to the many domestic structural and capacity imbalances, one cannot reasonably expect markets to lead this transformation process. Indeed, with poverty being as persistent and pervasive as it is, building the capacity of the state and its public sector institutions is an essential starting point for institutional transformation. Second, the desired institutional structure must follow the chosen strategic functions and priorities set by the South African developmental state. Third, socially and economically sustainable social security arrangements need to seek to increase the integrity of households and communities to cope with socio-economic challenges, reduce dependency on grants, and effectively rationalise existing grants.

**Table 11**  
**Summary of key issues affecting the operational and policy effectiveness of different organisational options within the social security system**

<b>Public sector</b>	<b>Social insurance</b>	<b>Regulated private markets</b>
<ul style="list-style-type: none"> <li>o Fragmentation in policy making</li> <li>o Linkages between policy making and resource allocation</li> <li>o Efficiency of the budget allocation mechanism</li> <li>o Decentralisation of operational decision-making</li> <li>o Targeting of services and grants</li> </ul>	<ul style="list-style-type: none"> <li>o Statutory authority</li> <li>o Independent board with fiduciary responsibility</li> <li>o Chief executive officer (accounting officer)</li> <li>o Independence from civil service HR and procurement requirements</li> </ul>	<ul style="list-style-type: none"> <li>o Strong and independent regulatory authorities</li> <li>o Efficient enforcement mechanisms</li> <li>o Appropriate corporate governance</li> <li>o Consumer protection</li> <li>o Unfair discrimination</li> </ul>

## 13.2 Challenges

### 13.2.1 Overview

Social security systems typically embody a range of organisational and institutional arrangements, each with different operational and regulatory challenges. The three key arrangements are public sector provision, social insurance organisations, and regulated private markets (table 11).

### 13.2.2 Public sector

A central challenge affecting service delivery within the public sector is operational inflexibility. Its impact can be felt on everything from human resource management to procurement. Poorly structured hierarchies, over-centralised decision making – particularly with respect to basic operational matters – and the lack of appropriate performance evaluation and remuneration leads to poor morale and ultimately poor service delivery.

In addition, organisational capacity needs to be addressed by in the implementation of effective and disciplined management process.

#### 13.2.2.1 Budget allocation mechanism

Large complex functions within Government require careful attention to policy determination and financing. The processes required to formulate policy may not do so in a manner that links effectively to the budget determination and allocation process. There is therefore a need to better link strategic prioritisation, planning and budgeting processes.

#### 13.2.2.2 Decentralisation of operational decision-making

The public sector operates with a large array of institutions directly responsible for service

delivery. Many suffer from chronic under-performance, amongst other things, due to the lack of a clear model for decentralising the management of these facilities or institutions. One solution may lie in moving away from the standard hierarchical civil service model of reporting and management toward more decentralised approaches. This involves introducing revised governance models, emphasising the role of Boards with comprehensive responsibilities and chief executive officers with appropriate accountability requirements. Decentralised responsibility for procurement, human resource management, and financial management is important. Such approaches do not involve the decentralisation of policy, merely the carrying out of policy.

There is also a need to create optimum opportunities and processes for interaction with, and feedback from, beneficiaries and potential beneficiaries. This will promote better accountability and hence greater operational efficiency.

Where these powers have been delegated to independent Boards, great care must be taken that they are independent and representative, and that members have the necessary expertise and time to fulfil their responsibilities. They must themselves be subject to stringent auditing standards particularly, and be monitored by the central department.

#### 13.2.2.3 Targeted services

Services that are targeted at selected vulnerable groups suffer from the standard problem of having to find and make allocations to those eligible for the support. If managed badly, many eligible people could be excluded from access to

goods, services, or grants to which they are entitled. Attention therefore has to be paid to streamlining targeting criteria or the provision of certain goods and services on a universal basis if the inefficiency of a targeting system is so great as to prove dysfunctional.

### 13.2.3 Social insurance

Social insurance is typically offered via a statutory institution lying outside of the conventional civil service structure. In many countries this results in a significant improvement in operational efficiency so essential for direct service delivery to the public. In South Africa certain of the social insurance institutions (RAF, COIDA, UIF) are operated as if they were part of the civil service structure, despite the fact that these institutions are engaged in specialised functions with a need for a high degree of operational flexibility.

### 13.2.4 Regulated private markets

Social security provision in South Africa has, in many instances, placed significant responsibility for financing and delivery onto a regulated private market. This has created a number of challenges. These include the requirement for strong regulatory authorities, streamlined enforcement mechanisms, regulated governance requirements, regulation protecting consumers from abuse, protections against unfair discrimination and requirements for protecting social solidarity principles when these are important, e.g. healthcare and retirement. Without ensuring that these issues are adequately addressed it is likely that policy objectives will be undermined.

#### 13.2.4.1 Regulatory authorities

Regulatory authorities need to be fully independent statutory authorities. It is important to protect such authorities both from inappropriate Government interference and regulatory capture by private stakeholders. Such authorities need good capacity and sufficient scope to offer attractive career opportunities to high quality staff.

#### 13.2.4.2 Enforcement

Regulated markets require efficient methods of enforcement and arbitration by public regulatory authorities. Without this the process of ensuring compliance with legislation or contracts (in the

case of functions outsourced by the public sector), or protecting people from abuse, may become a very slow and arduous process, undermining the effectiveness of whatever legislation has been put in place. Having to revert to the High Court for litigation may substantially diminish the speed of enforcement. In this regard, more efficient options need to be considered, particularly the establishment of dedicated social security adjudication structures and possibly courts.

#### 13.2.4.3 Corporate governance

Poor corporate governance will result in fraud and poor organisational decision making. Each policy area that relies on the private sector requires a coherent approach to corporate governance. In the case of pension funds, for example, elected boards of trustee and the elimination of conflicts of interest are essential to protect against fraud and corruption. This goes together with a strong regulatory authority and streamlined enforcement.

#### 13.2.4.4 Consumer protection

Consumers need a fair degree of protection in areas ranging from defective products to corrupt agents and intermediaries. Relying on consumer watchdogs or following up complaints will be insufficient where consumers are placed at a structural disadvantage relative to private agents. The whole area of consumer protection needs to have a clear policy focus where any aspect of the social security system relies on the private market for delivery.

#### 13.2.4.5 Unfair discrimination

Where an aspect of the social security system relies on the private market for delivery, legislation typically has to be introduced enforcing minimum solidarity and cross-subsidisation requirements. Without these protections, reliance on the private market will be undermined through unilateral decisions made by the market to exclude certain groups from cover.

### 13.2.5 Policy co-ordination

Since 1994 the government has made significant strides in policy co-ordination through institutions such as the cluster of cabinet ministers. There are, however, still a number of policy areas in which policy co-ordination is lacking. For instance, with regard to retirement and old age, the Department of Social Development develops policy for old age grants,

whereas the National Treasury develops the policy for private old age provision. These two environments are not viewed holistically.

The specific areas of social security identified by the Committee as having no clear over-riding policy responsibility or lead Ministry are:

- Old age and retirement
- Disability
- Maternity benefits and support

### 13.3 Recommendations

#### 13.3.1 Integrated institutional and organisational framework

The Committee recommends that consideration be given to a significant revision of the organisational framework and institutions governing social security (figure 17). This revision should focus on a clarification of roles and responsibilities within the following areas:

- Policy determination
- Organisational framework for social

security and protection

- Governance structures for social insurance funds
- Private sector regulation
- Enforcement.

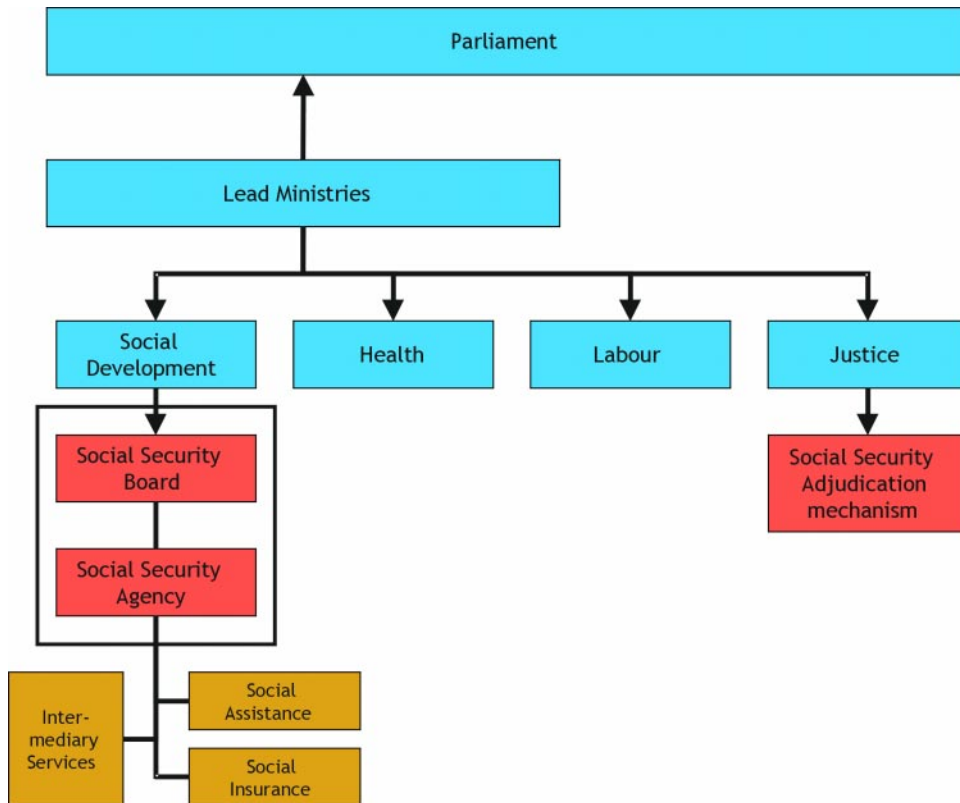
#### 13.3.2 Social security board and agency

A revised operational framework is required to ensure effective service delivery in both social assistance and social insurance. The key recommendation here is for the implementation of a social security board (reporting to the Minister of Social Development) and agency (reporting to the social security board) to operationalise various social security functions outside of the civil service. Policy development and determination will remain with the Department of Social Development.

The Committee proposes that consideration be given to the following functions of the social security agency (figure 18):

- **Social assistance:** The agency will have the function of managing the non-contributory social assistance fund,

**Figure 17**  
Recommended integrated organisational framework.



including budget determination and grant administration.

- **Social insurance:** The agency will become the oversight authority for all social insurance funds operating in South Africa. This will not extend to policy control, as this function will rest with the lead ministers responsible for particular policy areas.
- **Intermediary services:** The important interface between the general public and all areas of the social security system, whether contributory or non-contributory, would become the responsibility of the social security agency. The agency may be developed eventually into an intermediary between the general public and relevant Government departments (e.g. Home Affairs) or social assistance and social insurance institutions (e.g. UIF, COIDA).

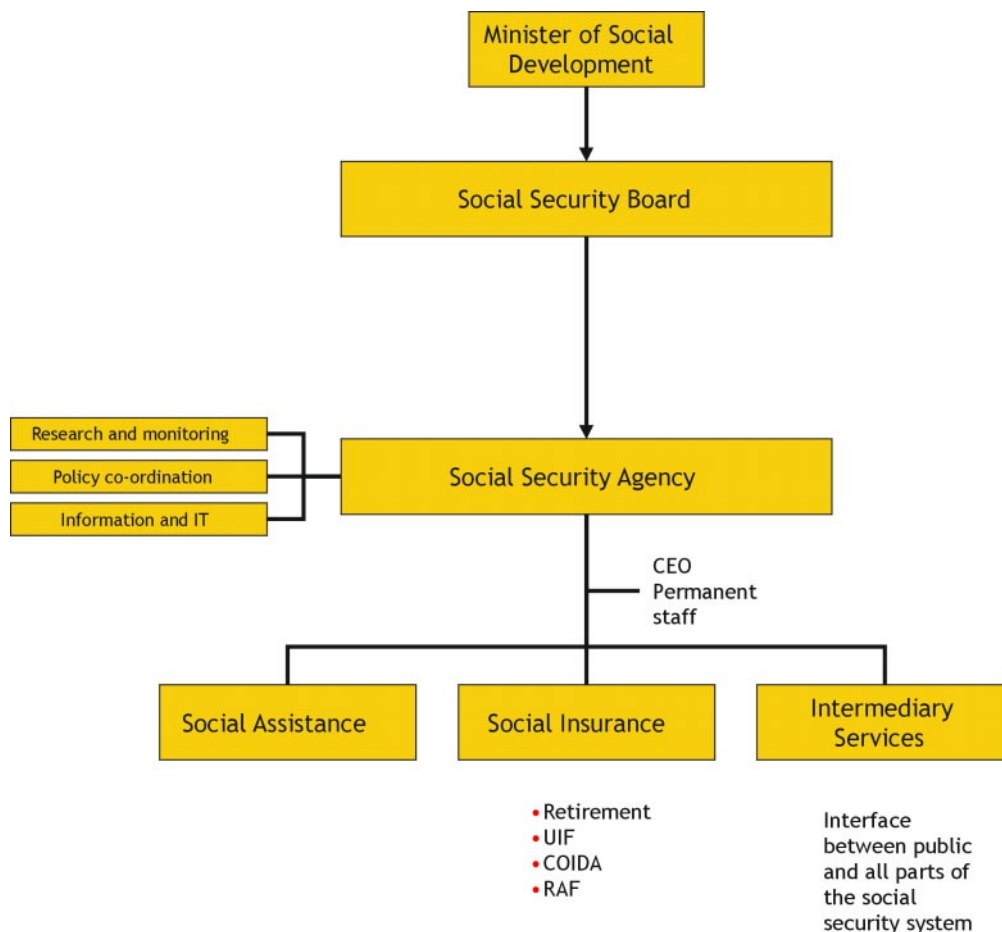
### 13.3.3 Governance structures for social insurance and related organisations

The existing social insurance funds require a reconsideration of their governance structure to ensure their operational efficiency. It is recommended that new decentralised governance structures be introduced for existing and future social insurance structures. They should ultimately report to the social security board (although policy responsibility for particular funds will remain with designated ministers, e.g. the policy environment for the UIF will be determined by the Minister of Labour).

### 13.3.4 Social Protection Commission

It is recommended that a standing Social Protection Commission (SPC), representing key stakeholders, be established. The SPC should relate to NEDLAC. The SPC would have a mandate to review all issues relevant to social protection.

**Figure 18**  
Proposed structure of a social security board and agency.



This reporting structure is required to preserve its independence in any research, monitoring and investigation it carried out.

In addition to its broad mandate, it is recommended that the SPC be given specific terms of reference to monitor and review public and private sector social security institutions and regulatory structures. The specific requirement would be to monitor the extent to which social security objectives are either achieved or undermined. Another key area is to develop and monitor employment policy.

### 13.3.5 Private sector regulation

Apart from the regulation of medical schemes, there is very little recognition within Government at present of the need to achieve key social objective through the regulation of private markets as exist in other nations. There is also the constant risk of regulatory capture, which requires that Government introduce measures to guarantee the ongoing independence of regulatory authorities. It is therefore recommended that the SPC develop specialised capability and have funding to monitor and evaluate the performance of regulatory authorities. To preserve the independence of the regulatory authorities, it is important that this monitoring and evaluation process focus specifically on the achievement of social protection policy and consumer protection.

### 13.3.6 Social security adjudication mechanism

The present system providing for complaints and appeals against decisions taken by social security providers has many shortcomings:

- There is little consistency as different bodies or officials are called upon to hear complaints and appeals in respect of different parts of the social security system
- Undue delays are the order of the day
- The powers of the courts to deal with these matters are unsatisfactory
- The normal courts of the country are apparently not specialised enough to deal effectively with social security matters
- Access to the courts is limited, in particular as far as the indigent are concerned
- Cases are often dealt with on a purely

technical and legalistic basis, with little regard to broader fairness considerations

- Court proceedings tend to be prohibitively expensive.

One of the guiding principles in devising an appropriate social security adjudication system is the need to ensure that an institutional separation exists between administrative accountability, review and revision, and a wholly independent, substantive system of adjudication.

The Committee recommends that a uniform adjudication system be established to deal conclusively with all social security claims. It should, in the first instance, involve an independent internal review or appeal institution.

It should, in the second place, involve a court (which could be a specialised court) which has the power to finally adjudicate all social security matters, and that this court has the power to determine cases on the basis of law and fairness.

The jurisdiction of this court should cover all social security claims, whether under the new UIA, the RAFA, the COIDA and all the other benefits (including the Social Assistance Act) emanating from the social security system (including claims falling under the jurisdiction of the Pension Funds Adjudicator).