

ENDNOTES

- 1 WHO [2001] p.18
- 2 Ibid. Foreword
- 3 White Paper on an Integrated National Disability Strategy [1997] Chapter 1
- 4 Gathering accurate data on disability is notoriously difficult. This is for many reasons, but is in large part due to the many competing definitions of disability itself and to practical difficulties with identifying people with disabilities. Definitions of disability differ from survey to survey; people answering household questionnaires respond to questions differently depending on their personal notions of disability; the stigma associated with disability may cause some people to conceal their status; since the disability tends to be more prevalent in poorer households and communities, precisely those communities where it is most difficult to gather data, it can be more difficult to capture people with disabilities in standard household surveys. Such problems are common to many efforts at obtaining a quantitative profile of people with disabilities in developing countries
- 5 WHO [1981] *ICIDH*, p.10 and Helander [1992], both cited in Elwan [1999] p.5.
- 6 CASE [1999] p.39
- 7 White Paper on an Integrated National Disability Strategy [1997] Chapter 1.
- 8 Figures cited by *Summary of Literature: Disability and Chronic Illness Prevalence in Children in South Africa* (submission prepared for the Committee of Enquiry by the Child Health Policy Institute) (June 2001) 6.
- 9 Rosenblum and Babson [2001] Table 1.
- 10 This figure is derived from the 1999 OHS, which provides the lowest estimate of disability prevalence among available surveys. It is quite likely that the share of the population living in households where one or more people suffer from some disability is higher than 16 per cent per cent. Elwan [1999] p.8 reports that evidence from the 1990 United States census suggested that nearly 29.2 per cent per cent of the population had a family member who was disabled in some respect.
- 11 Elwan [1999] p.11
- 12 White Paper on an Integrated National Disability Strategy [1997] Chapter 1.
- 13 Dudzic, P. and McLeod, D. [2000] p.1
- 14 Klinck [2001] p.4-5. These include, among others, the Universal Declaration of Human Rights (1948), the African Charter on Human and People's Rights (1981), the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993), and The Convention on the Rights of the Child.
- 15 WHO [2001] p.8
- 16 Ibid. p.1
- 17 White Paper on an Integrated National Disability Strategy [1997] p.19
- 18 Elwan [1999] p.v
- 19 Schneider *et al* [1999] p.247 and October Household Survey 1999.
- 20 Act 108 of 1996.
- 21 Section 9.
- 22 See article 3(3)(2) of the German *Grundgesetz*.
- 23 Including, if anyone is unable to support him-/herself and his/her dependants, appropriate social assistance: section 27(1)(c).
- 24 Act 66 of 1995.
- 25 Act 55 of 1998.
- 26 Section 6.
- 27 Section 15(2)(c). "Reasonable accommodation" is defined as "any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate in or advance in employment": section 1.
- 28 Act 4 of 2000.
- 29 Section 28.
- 30 The EEA defines persons with disabilities as "people who have long-term or recurring physical or mental impairments which substantially limit their prospects of entry into or advancement in employment"—section 1.
- 31 In *Bacela v MEC for Welfare (Eastern Cape Provincial Government)* 1998 (1) All SA 525 (E) the decision of the MEC to suspend payment of arrear pensions, payable in terms of the *Social Assistance Act 59 of 1992*, due to budgetary constraints, was successfully challenged. See also *Ngxuzza & others v Secretary, Department of Welfare*,

Eastern Cape Provincial Government & another 2000 BCLR 1322 (E); *Bushula & others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government & another* 2000 BCLR 728 (E); *Rangani v Superintendent-General, Department of Health and Welfare, Northern Province* 1999 (4) SA 385 (T); and *Mpofu v MEC for the Department of Welfare and Population Development in Gauteng Provincial Government* unreported WLD case 2848/99 of 18 February 2000.

³² See also *Ngxuza & others v Secretary, Department of Welfare, Eastern Cape Provincial Government & another* 2000 BCLR 1322 (E).

³³ The Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government v Member of the Executive Council for Welfare, Eastern Cape Provincial Government (judgement delivered on 31 August 2001) (Case 493/2000).

³⁴ See *Bushula & others v Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government & another* 2000 BCLR 728 (E); *Rangani v Superintendent-General, Department of Health and Welfare, Northern Province* 1999 (4) SA 385 (T); *Mpofu v MEC for the Department of Welfare and Population Development in Gauteng Provincial Government* unreported WLD case 2848/99 of 18 February 2000.

³⁵ Act 3 of 2000.

³⁶ See section 33(3) of the Constitution. In terms of section 33(1) everyone has the right to administrative action that is lawful, reasonable, and procedurally fair.

³⁷ which is defined to include any decision taken, or any failure to take a decision, by an organ of state when exercising a constitutional power or a public power or performing a public function, or by a natural or juristic person when exercising a public power or performing a public function: s 1. Certain executive and other functions and decisions are specifically excluded from the purview of the definition.

³⁸ The Act contains a wide definition of the concept: see section 1.

³⁹ Section 3(1).

⁴⁰ Section 3(2)(a).

⁴¹ If it is reasonable and justifiable in the circumstances, an administrator may depart from any of these requirements: section 4(a). Certain relevant factors to be taken into account to determine whether the departure is reasonable and justifiable, are indicated (section 4(b)).

⁴² Section 3(2)(b).

⁴³ After the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action.

⁴⁴ Section 5(1). The reasons must be furnished within a period of 90 days: section 5(2).

⁴⁵ Section 5(3).

⁴⁶ At 77 of the White Paper.

⁴⁷ South Africa's first attempt at responding to the international call for national action in terms of the WPA, dates back to 1985, when the then Cabinet decided to declare 1986 as a national year of the disabled and the establishment in that year, of an Inter-departmental Coordinating Committee on Disability (ICCD), which, in 1987, produced a 37 volume report on disability (HSRC, 1987). Although this initiative did introduce **some improvements** in national policy (e.g. in the area of environmental access—Part S of the Regulations made in terms of the National Building Regulations and Building Standards Act, 1979), it is needless to say, that the policies of apartheid that were applicable at the time, presented an irreconcilable dichotomy between themselves and the philosophy of equalisation of opportunities, thus making it utterly impracticable to implement the goals of full participation set out in the WPA.

⁴⁸ Chapter III of the WPINDS.

⁴⁹ Schneider M and Marshall S (Community Agency for Social Enquiry) *Social Security for People with Disabilities* (1998).

⁵⁰ Executive Summary v—vi.

⁵¹ *Ibid* 21ff.

⁵² *Ibid* vi, 16ff.

⁵³ *Ibid* 33.

⁵⁴ See, amongst others, submissions from Black Sash, CASE.

⁵⁵ Black Sash Submission on Disability in South Africa [2000]

⁵⁶ CASE [1999] p.138-139

- ⁵⁷ The *Employment Equity Act* 55 of 1998 (EEA) defines disabled people as “people who have long-term or recurring physical or mental impairments which substantially limit their prospects of entry into or advancement in employment”—s 1.
- ⁵⁸ According to the *Social Assistance Act* 59 of 1992 a disabled person under the Act means a person older than 18 years who have a physical or mental disability of longer than 6 months’ duration, which makes him/her unfit to provide sufficiently for his/her own maintenance—s 1.
- ⁵⁹ The so-called “social model” of disability is based on the premise that the integration of disabled people entails the removal of physical and attitudinal barriers and not on “normalisation” or cure. Internationally there is a move away from the medical model to the acceptance of the social model—Waddington L *Disability, Employment and the European Community* (1995) 60.
- ⁶⁰ The WPA adopted the WHO International Classification of Impairments, Disabilities and Handicaps—ICIDH (Geneva, 1980), which introduced for the first time in human history, the conceptual separation of “disability”, “impairment” and “handicap”. These concepts have always been used interchangeably and without any regard to the fundamental philosophical distinctions existing between these concepts. It reads as follows:
- “*impairment*”: any loss or abnormality of psychological, physiological, or anatomical structure or function.”
 - “*disability*”: any restriction or lack (resulting from any impairment), of ability to perform an activity in the manner or within the range considered normal for a human being.”
 - “*handicap*”: a disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors for that individual.”
- ⁶¹ Regulation 2(b) as amended.
- ⁶² A “parent” means the legal parent of the child, while a “foster parent” means any person, except a parent of the child concerned, in whose custody a foster child has been placed under Chapter 3 or 6 of the Child Care Act, 1983, or section 290 of the Criminal Procedure Act, 1977, or a tutor to whom a letter of tutorship has been issued in terms of the Administration of Estates Act, 1965.
- ⁶³ The regulations (Reg.1) define a “**medical officer**” as any medical practitioner in the service of the State, including a provincial government.
- ⁶⁴ A “parent” means the legal parent of the child, while a “foster parent” means any person, except a parent of the child concerned, in whose custody a foster child has been placed under Chapter 3 or 6 of the Child Care Act, 1983, or section 290 of the Criminal Procedure Act, 1977, or a tutor to whom a letter of tutorship has been issued in terms of the Administration of Estates Act, 1965.
- ⁶⁵ A “care and rehabilitation centre” is not defined in the Act or the Regulations.
- ⁶⁶ SAHRC. Second Economic & Social Rights Report (1998-1999). September 2000.
- ⁶⁷ Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.
- ⁶⁸ See, amongst others, section 27(1) of the Constitution.
- ⁶⁹ See, amongst others, section 27(2) of the Constitution.
- ⁷⁰ *Government of RSA v Grootboom and others* 2000 BCLR 1169 (CC).
- ⁷¹ In this case, those without any form of temporary shelter.
- ⁷² Road Accident Fund Act 1996
- ⁷³ In addition to this the basis for compensation is steeped in socio economic stereotypes, where an attorney defending the claim of a daughter of a white affluent family may succeed in persuading a judge that she would have become a famous concert pianist and should be awarded a multi-million rand compensation package. In stark contrast to this a son of a family living on the Cape Flats in an informal settlement, is unlikely to succeed in persuading the legal system that he was destined to become Benny McCarthy and should be compensated accordingly.
- ⁷⁴ See par 16 of the paper entitled “Coverage against employment injuries and diseases” (Paper prepared for the Ministerial Committee of Inquiry into a Comprehensive Social Security System by Prof MP Olivier and Adv E Klinck) July 2001 as well as par 17 of the paper entitled “Road Accident (Fund) Insurance” ((Paper prepared for the Ministerial Committee of Inquiry into a Comprehensive Social Security System by Prof MP Olivier) July 2001.
- ⁷⁵ Act 130 of 1993.
- ⁷⁶ Truter L. “People with Disabilities” in Olivier MP, Okpaluba MC, Smit N, Thompson M (eds) *Social Security Law—general principles*. Butterworth. 1999.
- ⁷⁷ Act 78 of 1973.
- ⁷⁸ See the paper entitled “Coverage against employment injuries and diseases” (Paper prepared for the Ministerial Committee of Inquiry into a Comprehensive Social Security System by Prof MP Olivier and Adv E Klinck) July 2001.

- ⁷⁹ See par 9 of the paper entitled “Coverage against employment injuries and diseases” (Paper prepared for the Ministerial Committee of Inquiry into a Comprehensive Social Security System by Prof MP Olivier and Adv E Klinck) July 2001.
- ⁸⁰ The following suggestions are contained in the Fifth Draft of a paper on Old Age and Insurance Position, prepared by Professor A Asher for the Committee of Enquiry. See par 13.2, 13.3 and 14.2 of the said document.
- ⁸¹ COSATU. Submission on Comprehensive Social Security. Dec 2000.